

DATED 28th November 2014

ASHFIELD DISTRICT COUNCIL

and

JOHN WILLIAM NUNN and BARBARA ELSIE NUNN

AGREEMENT

(under S106 of the Town and Country Planning Act 1990)

re Residential Development at the Site of the Former Larwood Nursing Home,
Main Road, Kirkby in Ashfield, Nottingham, NG17 9EU

Ashfield District Council
Urban Road
Kirkby-in-Ashfield
Nottingham
NG17 8DA

THIS AGREEMENT is made the 28th day of November 2014

BETWEEN:

(1) ASHFIELD DISTRICT COUNCIL of Council Offices Urban Road Kirkby
in Ashfield Notts NG17 8DA ("the Council")

and

(2) JOHN WILLIAM NUNN & BARBARA ELSIE NUNN of Whitecroft,
Landmere Lane, Ruddington, Notts, NG11 6ND ("the Owner")

BACKGROUND

- 1) The Council is the local planning authority for the purposes of the Act for the area within which the Site is located
- 2) The Owner is the freehold owner of the part of the Site registered with Title Absolute under Title Numbers NT224831 and NT243499
- 3) The Owner has submitted the Application to the Council
- 4) The Council has resolved to grant the Planning Permission subject to conditions and the completion of this Agreement
- 5) The Council requires and it is the purpose of this Agreement to secure a contribution towards off-site open space without which the Planning Permission will not be granted
- 6) The Council considers that the obligations contained in this Agreement are:
 - a. Necessary to make the Development acceptable in planning terms;
 - b. Directly related to the Development; and
 - c. Fairly and reasonably related in scale and kind to the Development.
- 7) The parties have agreed to enter into this Agreement with the intention that the obligations contained in this Agreement may be enforced by the Council against the Owners and (subject as mentioned below) its successors in title and assigns and with the intention that this Agreement

shall bind the owners and occupiers of the Site other than the owners and occupiers of any Residential Units and any service authority and/or utility company

8) In this Agreement the following terms shall have the following meanings:

“the Act” means the Town and Country Planning Act 1990 (as amended)

“the Application” means the Application for planning permission made under the Council’s reference v2014/0239

“the Commencement Date” means the date upon which the Development shall be commenced by the carrying out on the Site pursuant to the Planning Permission of a material operation as specified in Section 56 of the Act excluding any operations relating to the demolition of any existing buildings or clearance of the Site, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, temporary means of enclosure, the temporary display of site notices or advertisements

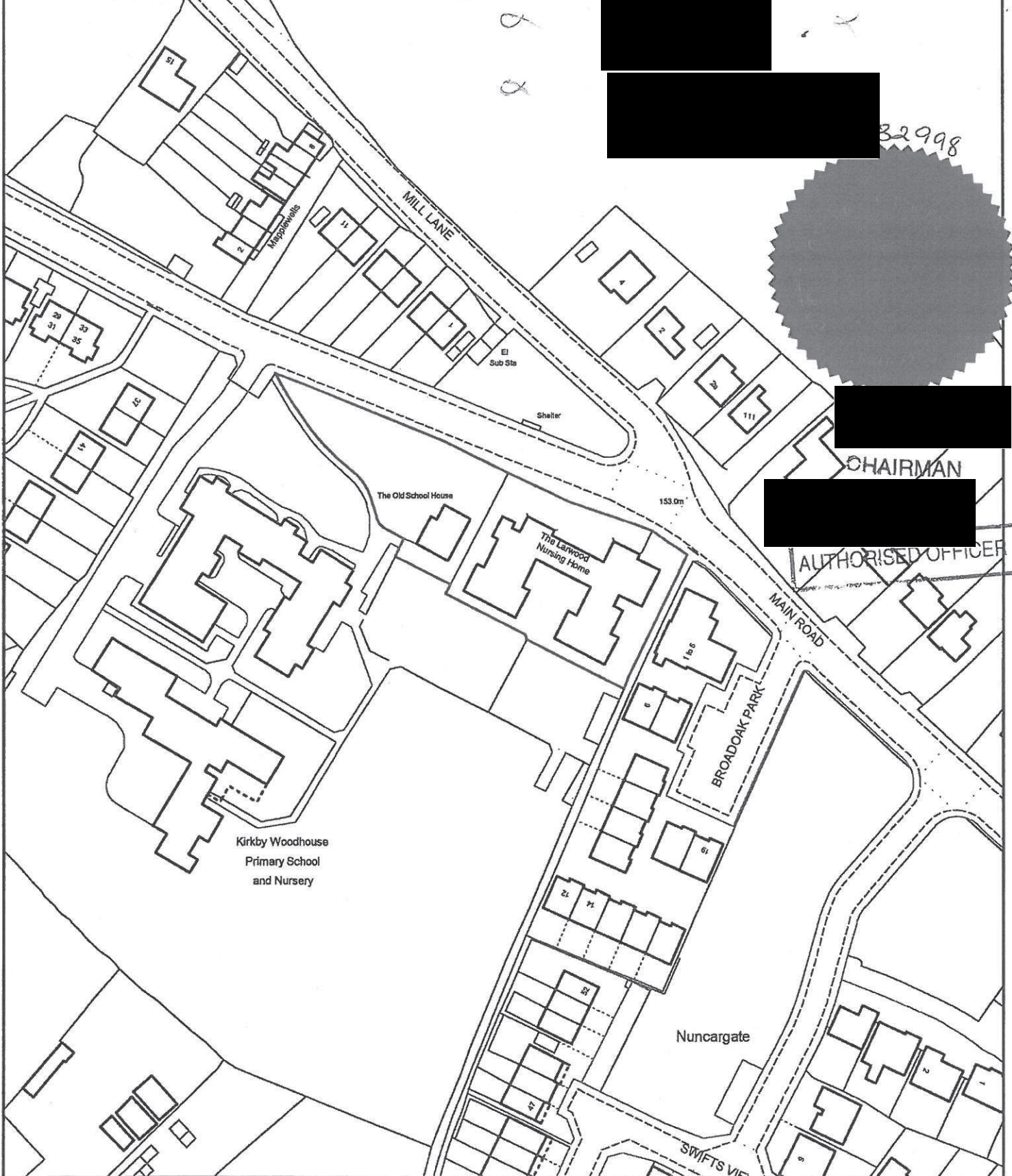
“Completed, Complete and Completion” means any dwelling which has been plastered out and is capable of being occupied with the minimum amount of finishing required including the final fix of bathroom and kitchens

"Development"	means the development of the Site for housing as set out in the Planning Permission
"Index"	means the All Items Retail Prices Index published by the Office for National Statistics contained in the monthly Digest of Statistics (or contained in any official publication substituted therefor) or such other index as may from time to time be published in substitution therefor
"Index Linked"	means such increase or decrease to sums payable to the Council under this Agreement on an annual basis or pro rata per diem from the date of grant of the Planning Permission until such time that payment of any sums in this Agreement is made such index linking to be equivalent to any inflationary increase or decrease on such sums in proportion to the increase or decrease taking as the measure of inflation the Index last published before the date of the Agreement or any publication substituted for it
"Interest"	means the Interest Rate referred to in Clause 23
"the Open Space Contribution"	means £3,000.00 (three thousand pounds) Index Linked per Residential Unit permitted to be constructed in accordance with the Planning Permission as a contribution to the off-site open space in the vicinity of the Development as set out in the Second Schedule

“the Plan”	means the Plan annexed hereto
“the Planning Permission”	means the outline planning permission which may be granted pursuant to the Application a draft of which is attached to this Agreement in the Third Schedule
“Repayment Interest”	means the LIBOR RATE for the time being in force
“Residential Unit”	means a dwelling (including a house flat or maisonette) to be constructed on the Site pursuant to the Planning Permission
“the Site”	means ALL THAT property as shown edged red on the Plan to include the freehold property registered under title numbers NT224831 and NT243499 in Nottingham

9) Where the context so admits:-

- (a) the masculine feminine and neuter genders include each of the other genders and the singular includes the plural and vice versa;
- (b) save as expressly provided in this Agreement or where to construe otherwise would be inconsistent with the requirements or provisions of the same covenants, restrictions, liabilities, obligations and liabilities of a party comprising more than one person are obligations of such persons jointly and severally;
- (c) reference to “the Owner” in this Agreement shall include its successors in title and assigns and all persons deriving title under them except as stated in paragraph (8) and in operative clause 7 and where otherwise expressly provided;



Section 106 Plan
Larwood Nursing Home
Main Road
Kirkby in Ashfield
NG17 9EU
V/2014/0239



Ashfield

Scale 1:1,250

Date 3rd October 2014

- (d) a covenant, restriction, liability or obligation by any party to this Agreement not to do something shall be construed as including a covenant, restriction or obligation not to permit or knowingly suffer it to be done by a third party;
- (e) reference to any statutory or other body or to the Head of Planning and Regulatory Services or Group Manager Planning shall include reference to its successors in function;
- (f) reference to a clause or schedule is a reference to a clause or schedule contained in this Agreement;
- (g) reference to Statutes Acts Orders Directions Regulations and Instruments includes (where appropriate) reference to their amendments and replacements

OPERATIVE CLAUSES

1. This Agreement is made pursuant to Section 106 of the Act and this Agreement and the covenants restrictions liabilities and obligations contained in this Agreement or agreed or completed pursuant to it are planning obligations for the purposes of that section which are enforceable by the Council.
2. The parties have agreed to enter into this Agreement with the intention that the obligations contained in this Agreement may be enforced by the Council against the Owner and their respective successors in title and assigns and with the intention that this Agreement shall bind the Site
3. In so far as any of the covenants, restrictions, liabilities and obligations contained in this Agreement are not planning obligations within the meaning of the Act they are entered into pursuant to the powers contained in Sections 111 and 120 of the Local Government Act 1972, Section 2 of the Local Government Act 2000, Section 33 of the Local

Government (Miscellaneous Provisions) Act 1982 and all other powers enabling the parties hereto to enter into the Agreement and in consideration of the covenants, restrictions, liabilities and obligations hereinafter contained

4. The covenants, restrictions, liabilities and obligations in this Agreement shall only come into effect on the Commencement Date unless otherwise specifically indicated in this Agreement or to construe otherwise would be inconsistent with the requirements of any such covenants
5. The Owner covenants with the Council so as to bind the Site and each and every part thereof to carry out and comply with the covenants restrictions liabilities and obligations contained mentioned or referred to in the First Schedule
6. The Council covenant with the Owner to comply with their respective obligations set out in the Second Schedule
7. No person shall be liable for any breach of the covenants, restrictions, liabilities or obligations contained in this Agreement occurring after they have parted with all of their interest in the Site or the part of the Site in respect of which such breach occurs but without prejudice to their liability for any subsisting breach prior to parting with such interest
8. For the avoidance of doubt it is agreed and declared that if the Planning Permission shall expire before the Commencement Date or be quashed as a result of legal proceedings, then this Agreement shall forthwith determine and cease to have effect
9. All notices, approvals, consents or other documents to be served on or by the Council under the provisions of this Agreement shall as appropriate be issued by or served on the Head of Planning or Group Manager Planning of the Council as appropriate.
10. Any approval required pursuant to this Agreement must not be unreasonably withheld or delayed

11. Anything in this Agreement which has to be done to the Council's satisfaction must be done to the Council's reasonable satisfaction and in the case of any provision of this Agreement which requires confirmation (by whatever name) of such satisfaction (or reasonable satisfaction) by the Council the parties agree that the same shall not be unreasonably delayed or refused
12. Nothing in this Agreement shall be construed or implied so as to prejudice or affect the rights, discretions, powers, duties and obligations of the Council under all Statutes Byelaws Statutory Instruments Orders or Regulations or in the exercise of their statutory functions
13. This Agreement shall be registered as a Local Land Charge
14. Unless expressly stated otherwise, nothing in this Agreement will create any rights in favour of any person pursuant to the Contracts (Rights of Third Parties) Act 1999
15. Unless otherwise specifically indicated in this Agreement or to construe otherwise would be inconsistent with the requirements of this Agreement, nothing in this Agreement shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Agreement
16. No waiver (whether expressed or implied) by the Council or the Owner of any breach or default in performing or observing any of the covenants terms or conditions of this Agreement shall constitute a continuing waiver and no such waiver shall prevent the Council or the Owner from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default
17. Any dispute under or arising out of the operation of this Agreement may be referred to a single arbitrator if both parties shall agree on one or in default of agreement to a single arbitrator to be nominated (upon the application of any party to the dispute) by the President for the time

being of the Law Society in accordance with and subject to the provisions of the Arbitration Act 1996

18. All consideration given in accordance with the terms of this Agreement shall be exclusive of any value added tax properly payable
19. It is hereby agreed that none of the terms obligations and covenants in this Agreement shall to any degree be binding upon or enforceable against:-
 - a) any owner of an interest in any part of the Site who occupies that part as a Residential Unit; and or
 - b) any owner of an electricity sub-station and or gas governor site and or pumping station or other service supply installationand such persons are not to be treated as a person deriving title from the Owner for the purposes of Section 106(3) of the Act
20. Any variations of the terms of this Agreement (other than minor amendments or variations of a transitory nature not affecting the nature or extent of liability hereunder) may be evidenced only by a supplemental deed executed as a deed of variation by the parties unless the Council otherwise indicates in writing and a copy of any supplemental agreement shall be sent to the Council for the purpose of amending the Local Land Charges Register
21. This Agreement is governed by and interpreted in accordance with the law of England and Wales
22. The provisions of this Agreement (other than this clause which shall be of immediate effect) shall be of no effect until this Agreement has been dated
23. If the Owner fails to make any payment due to any other party under this Deed by the due date for payment then without limiting such other party's other remedies the Owner shall pay interest on the overdue amount at the rate of 8% per annum, Such interest rate shall accrue on a daily basis from the due date until the date of actual payment of the

overdue amount whether before or after judgment. The Owner shall pay the interest together with the overdue amount. For the avoidance of doubt the due dates for payment are as set out in the First Schedule of this Deed

24. If the Council agrees in writing with the Owner pursuant to an application under Section 73 of the Act to any variation or release of any condition contained in the Planning Permission the covenants or provisions of this Agreement shall be deemed to bind the varied permission and apply in equal terms to the new planning permission.

THE FIRST SCHEDULE

The Owners Obligations

1. For the purposes of monitoring compliance with this Agreement the Owner shall:
 - 1.1 give the Council notice in writing within 14 days of the Commencement Date that Development has commenced on the Site
 - 1.2 notify the Council in writing of the total number of the Completed Residential Units comprised in the Development in respect of any part of the Site in its ownership each and every month from the first Completed Residential Unit on the Site
2. The Owner shall pay to the Council on completion of this Agreement the Council's reasonable legal costs and disbursements in connection with the negotiation, preparation and completion of this Agreement
3. The Owner shall:
 - 3.1 not commence the Development or cause or permit the Development to be commenced unless payment has first been made to the Council of 50% (fifty percent) of the Open Space Contribution in accordance with paragraph 3.2
 - 3.2 pay 50% (fifty percent) of the Open Space Contribution to the Council prior to the Commencement Date
 - 3.3 not Complete or cause or permit to be Completed (disregarding any show houses or sales offices) 50% (fifty percent) of the Residential Units to be built in accordance with the Planning Permission unless payment has first been

made to the Council of the remaining 50% (fifty percent) of the Open Space Contribution in accordance with paragraph 3.4

3.4 pay the remaining 50% (fifty percent) of the Open Space Contribution to the Council prior to the Completion of 50% (fifty percent) of the Residential Units on the Site in accordance with the Planning Permission

THE SECOND SCHEDULE

The Council's Obligations:

1. To use the Open Space Contribution as follows:-

1.1 To provide to the Owner on request evidence as to how much of and how the Open Space Contribution has been spent expended or allocated

1.2 At the written request of the Owner to refund the Owner (or otherwise the real or corporate person who has paid the Open Space Contribution to the Council) such part of the Open Space Contribution as has not been allocated committed or expended in accordance with paragraph 1.1 above within 5 years from the date of receipt by the Council of such final contribution together with the Repayment Interest for the period from the date of payment to the date of refund

1.3 At the written request of the Owner the Council shall provide written confirmation of the discharge of the obligations on the part of the Owner contained in this Agreement subject to such obligations having been duly discharged and shall remove this Agreement from the Local Land Charges Register.

THE THIRD SCHEDULE

Draft form of notice of planning permission

Planning Permission reference v2014/0239 in the draft form annexed to this Agreement to be issued pursuant to the Application

ASHFIELD DISTRICT COUNCIL

Urban Road,
Kirkby-in-Ashfield,
Nottingham,
NG17 8DA

Tel: 01623 450000
Fax: 01623 457033
www.ashfield-dc.gov.uk/planning

**Ashfield****TOWN AND COUNTRY PLANNING ACT 1990**

Town and Country Planning (Development Management Procedure) Order 2010
Town and Country Planning (Control of Advertisements) (England) Regulations 2007
Town and Country Planning (Tree Preservation) England Regulations 2012
Planning (Listed Buildings and Conservation Areas Act 1990
Planning (Hazardous Substances) Act 1990
Planning and Compensation Act 1991

Approval Notice

Major Full Application

Approval has been granted by Ashfield District Council for the development referred to below providing it is carried out in accordance with the application and plans submitted. The approval is subject to the conditions set out on the attached sheet.

Application Details

Planning Reference Number: **V/2014/0239**

Location of Development: **Former Larwood Nursing Home Main Road
Kirkby In Ashfield
Nottingham
NG17 9EU**

Description of Development: **Erection of 10 no. Dwellings**

Applicant Name: **Broadoak Group**

Date:

CONDITIONS:

1. The development hereby approved shall be begun before the expiration of 3 years from the date of this permission.
2. The development hereby permitted shall not commence until drainage plans for the disposal of surface water and foul sewage have been submitted to and approved by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details before the development is first brought into use.
3. No development shall take place until samples of the materials and finishes to be used for the external elevations and roof of the proposal have been agreed in writing by the Local Planning Authority. Thereafter the development shall be carried out with those materials, unless the Local Planning Authority gives written approval to any variation.
4. No development shall take place until the following matters have been submitted to and agreed in writing by the Local Planning Authority:
 - (a) Full details of the proposed treatment of the site's boundaries.
 - (b) A phasing scheme for the implementation of the agreed boundary treatment.The boundary treatment shall be undertaken in accordance with the agreed details.
5. No part of the development hereby permitted shall be brought into use until the access is constructed with a gradient not exceeding 1:20 for a distance of 5 metres from the rear of the highway boundary, and 1:12 thereafter, in accordance with details to be first submitted to and approved in writing by the Local Planning Authority.
6. No part of the development hereby permitted shall be brought into use until the vehicle access, parking/turning areas, and visibility splays are provided in accordance with the approved plans. The vehicle access, parking/turning areas, and visibility splays shall thereafter be retained as such for the life of the development.
7. No part of the development hereby permitted shall be brought into use until the access driveway and parking/turning areas are surfaced in a bound material (not loose gravel). The surfaced drive and parking/turning areas shall then be maintained in such bound material for the life of the development.
8. No part of the development hereby permitted shall be brought into use until the access driveway, parking and turning areas are constructed with provision to prevent the unregulated discharge of surface water from the driveway, parking and turning areas to the public highway in accordance with details first submitted to and approved in writing by the Local Planning Authority. The provision to prevent the unregulated discharge of surface water to the public highway shall then be retained for the life of the development.
9. No part of the development hereby permitted shall be brought into use until the bin collection areas have been provided in accordance with the approved plans. The approved bin collection areas shall thereafter be retained.
10. No part of the development hereby permitted shall be brought into use until a dropped vehicle footway crossing has been made available for use and constructed in accordance with the Highway Authority specification to the satisfaction of the LPA.
11. During the first period 1 October to 31 March inclusive following completion of the felling, replanting shall take place using six fir trees of a size to be agreed with the Local Planning Authority prior to the felling being carried out. They shall be planted in the vicinity of the felled trees but in such a location that will not cause any further damage to the stone retaining wall. Details shall be submitted to the Local Planning Authority prior to the replanting to show how a root barrier is to be included in order to inhibit the passage of roots back towards the wall.
12. Following completion of the re-planting, the new trees shall be protected against any damage. If they fail they shall be replaced and in every way be properly maintained.

13. Prior to the commencement of development, a scheme to protect the proposed residential dwellings from noise from the adjacent school, shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented in full and a validation report provided to the mitigations measures suitability.
14. Prior to the commencement of development, scheme to protect the proposed residential dwelling from lighting associated with the school shall be submitted to and approved in writing by the Local Planning Authority. Any proposed mitigation measures shall be implemented in full.
15. No development shall take place until there has been submitted to and approved by the Local Planning Authority a scheme of hard and soft landscaping. All planting, seeding or turfing indicated on the approved landscaping scheme shall be carried out in the first planting and seeding seasons following the occupation of the building or the completion of the development, whichever is the sooner; and any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.
16. Prior to the commencement of development a scheme for the provision of bat and bird boxes to be installed within the application shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented in full.
17. This permission shall be read in accordance with the following plans: Site Location Plan, scale 1:1250 Received on the 19th May 2014, Site Layout BRO-03 Rev 'C', Elevations and Floor Plans BRO-04 Rev 'A', BRO-05 Rev 'B', BRO-06 Rev 'A' Received 19th August 2014. The development shall thereafter be undertaken in accordance with these plans unless otherwise agreed in writing by the Local Planning Authority.

REASONS:

1. To comply with the requirements of Section 91 of the Town and Country Planning Act 1990 as amended.
2. To ensure that the development provides a satisfactory means of drainage, in order to reduce the risk of creating; or exacerbating a flooding problem, and to minimise the risk of pollution.
3. To ensure the satisfactory appearance of the development.
4. To safeguard the amenities of residents living in the vicinity of the application site.
5. To enable vehicles to enter and leave the public highway in a slow and controlled manner and in the interests of general Highway safety.
6. In the interests of Highway safety.
7. To reduce the possibility of deleterious material being deposited on the public highway (loose stones etc).
8. To ensure surface water from the site is not deposited on the public highway causing dangers to road users.
9. In the interests of Highway safety.
10. In the interests of Highway safety.
11. To safeguard the visual amenity of the area and for the avoidance of doubt.
12. To safeguard the visual amenity of the area.
13. To prevent unreasonable noise and disturbance to the future occupants in the interests of residential amenity.
14. In the interest of residential amenity.
15. To ensure the satisfactory overall appearance of the completed development and to help assimilate the new development into its surroundings.
16. To ensure suitable replacement nesting and roosting for bats and birds is secured.
17. To define the terms of this permission and for the avoidance of doubt.

INFORMATIVE

1. The applicant/developer is strongly advised to ensure compliance with all planning conditions, if any, attached to the decision. Failure to do so could result in LEGAL action being taken by the Ashfield District Council at an appropriate time, to ensure full compliance. If you require any guidance or clarification with regard to the terms of any planning conditions then do not hesitate to contact the Development & Building Control Section of the Authority on Mansfield (01623 450000).
2. The development makes it necessary to construct a vehicular crossing over the public highway. These works shall be carried out to the satisfaction of the Highway Authority. You are, therefore, required to contact the County Council's Highways Area Office tel. 0300 500 80 80 to arrange for these works to be carried out.
3. It is requested that all works are undertaken outside of the bird breeding season (March to August inclusive) because all birds' nests (except pest species), their eggs and nests are protected by the Wildlife and Countryside Act 1981 (as amended). If work has to take place during bird breeding season it is recommended that searches are carried out by a qualified ecologist before work begins. If birds are present, work will have to be suspended and the nest left undisturbed.
4. The applicant must be made aware of their legal obligations regarding any bats that may be found during works. Should any bats be found, work must stop immediately. The Bat Conservation Trust should be contacted on 0845 1300228 for further advice. Alternatively, FPCR Ecologists should be contacted directly on 01509 672772 and they will provide a licensed bat worker to evaluate the situation and give advice. Failure to comply is an offence under the Wildlife and Countryside Act 1981 and the Conservation (Natural Habitats and Conservation) Regulations 1994, which make it an offence to kill, injure or disturb a bat or to destroy any place used for rest or shelter by a bat (even if bats are not in residence at the time). The Countryside Rights of Way Act 2000 strengthens the protection afforded to bats by covering reckless damage or disturbance to a bat roost.
5. This permission shall be read in conjunction with an Agreement made under Section 106 of the Town and Country Planning Act 1990 and dated <<...>>.

For further detail on the decision please see the application report by contacting the Development Section on 01623 457388.

REASONS FOR APPROVAL

The decision to grant permission has been taken having regard to the policies and proposals in the Ashfield Local plan Review (2002) and all relevant material considerations, including Supplementary Planning Guidance:

PROACTIVE WORKING

The processing of this application has been undertaken in accordance with the requirements of the National Planning Policy Framework (Core Planning Principles).

.....
Trevor Watson
SERVICE DIRECTOR – ECONOMY

IN WITNESS WHEREOF these presents have been duly executed as a Deed
by the Parties hereto the day and year first before written

THE COMMON SEAL of ASHFIELD
DISTRICT COUNCIL was hereunto affixed
in the presence of:-

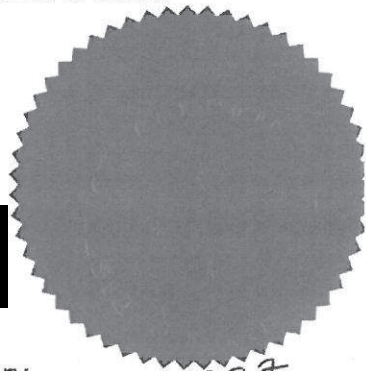
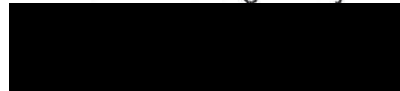
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Chairman

Authorised Signatory



32997

EXECUTED as a DEED by
JOHN WILLIAM NUNN
in the presence of:

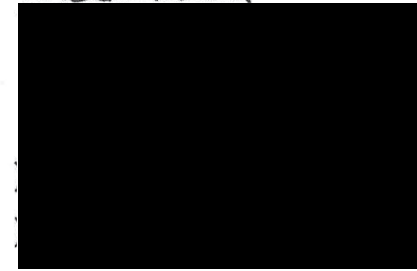
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Witness

KAREN POWELL



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Witness

Karen Powell



Rayrou



WILLIAM

NAME

ADDRESS

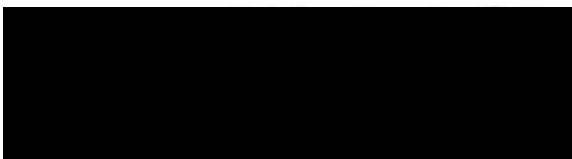
OCCUPATION

EXECUTED as a DEED by
BARBARA ELSIE NUNN

In the presence of:

BARBARA

NAME BARBARA NUNN



OCCUPATION
PARTNER