

DATED 13th March 2001

WEST SOMERSET DISTRICT COUNCIL

-and-

LADY ELIZABETH PERIAM ACLAND HOOD GASS

-and-

WEST SOMERSET RURAL HOUSING ASSOCIATION LIMITED

under Section 106 of the
Town and Country Planning Act 1990
relating to land at Portway Lane,
Holford, Somerset

NB

1 **DATE**

THIS AGREEMENT is made the 13th day of March Two thousand and one

2. **PARTIES**

2.1 **WEST SOMERSET DISTRICT COUNCIL** of Council Offices Williton Somerset TA4 4QA ("the Council")

2.2 **LADY ELIZABETH PERIAM ACLAND HOOD GASS** of Fairfield, Stogursey, Bridgwater TA5 1PU ("the Owner")

2.3 **WEST SOMERSET RURAL HOUSING ASSOCIATION LIMITED** whose registered office is at Falcon House, 3A South Street, Wellington, Somerset TA21 8NR ("the Association")

3. **DEFINITIONS**

In this agreement in addition to the parties hereinbefore referred to the following words and expressions have the following meanings unless inconsistent with the context:-

3.1 The "Act" shall mean the Town & Country Planning Act 1990 (as amended)

3.2 "Affordable Housing" shall mean housing managed by a Registered Social Landlord (previously approved by the Council) for rent and which can be demonstrated to the satisfaction of the Council to be affordable by people whose income does not otherwise enable them to rent or buy locally on the open market

3.3 "Cascade Criteria" shall mean in order of priority :-

3.3.1 existing residents of the Parishes of Holford, Kilve and Strington

3.3.2 people with strong local connections with the Parishes of Holford, Kilve and Strington

3.3.3 existing residents of the Parishes of Stogursey, East Quantoxhead, and Nether Stowey

3.3.4 people with strong local connections with the Parishes of Stogursey, East Quantoxhead, and Nether Stowey

3.3.5 such persons as may be nominated by the Council in writing being persons listed on the Council's housing waiting list within its administrative area or otherwise in demonstrable need for Affordable Housing

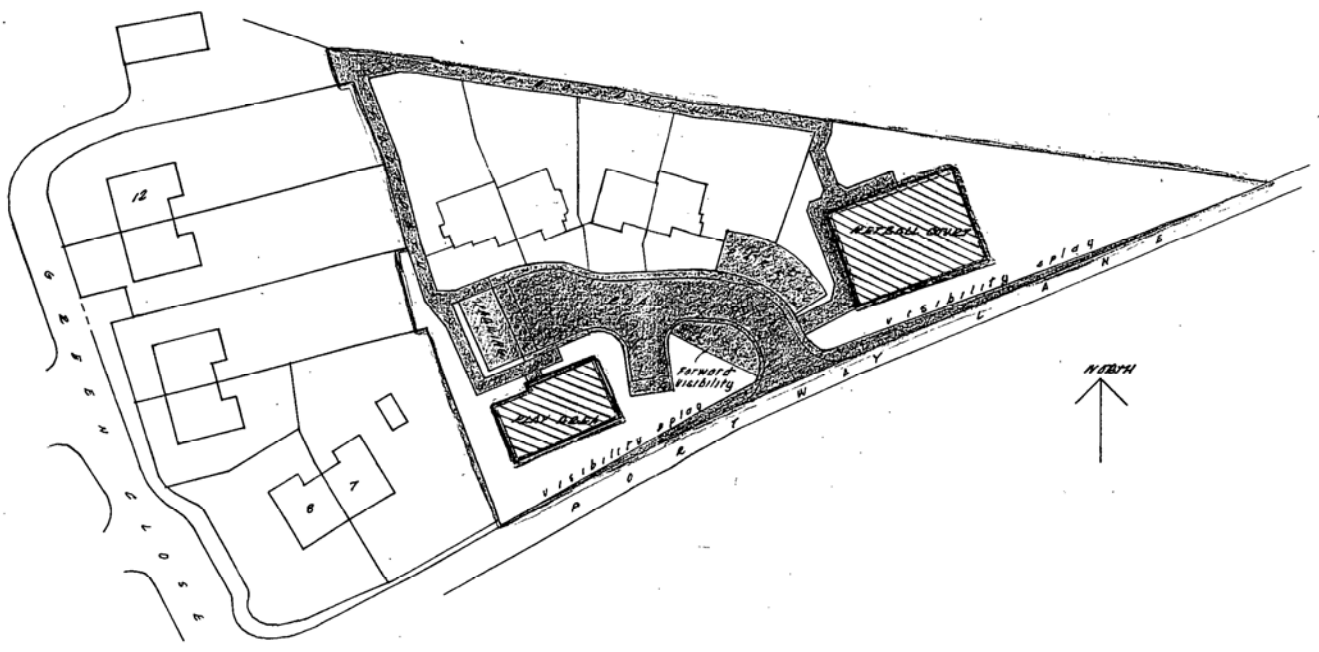
and for the purpose of determining local connections regard shall be made to family associations within the relevant parishes, periods of residence in the relevant parishes not immediately pre-dating the allocation and whether the person has permanent employment in the relevant parish

Provided that

- (i) If upon a unit of accommodation within the Development becoming available for occupation whether on practical completion of the Development or at any time subsequently the Association is unable to fill any vacancy arising in accordance with the terms herein beforementioned then the Association shall be entitled to allocate any vacant unit of accommodation to any person who is considered by the Association to be in need of such accommodation and who has immediately prior to such allocation been ordinarily resident within the Parishes of Stogursey, East Quantockhead and Nether Stowey but if there is no such person then to any person nominated by the Housing Department of the Council from the Council's list of priority need cases within its administrative area.

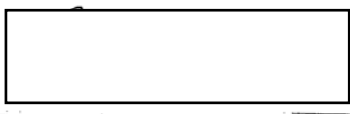
(ii) If within six weeks of the units of accommodation within the Development becoming available for letting whether on practical completion of the Development or at any time subsequently the Association is unable to fill any vacancy arising in accordance with proviso (i) above then the Association may allocate any vacant unit to any person who is considered by the Association to be in need of such accommodation.

- 3.4 "Development" shall mean the development authorised by the Planning Permission or any similar development
- 3.5 The "Planning Services Manager" shall mean the Planning Services Manager for the time being of the Council or his duly appointed agent
- 3.6 The "Land" shall mean the land at Portway Lane Holford Somerset edged red on the Plan (excluding the Children's Play Area) in respect of which part of the Planning Application has been made
- 3.7 The Children's Play Area shall mean the land at Portway Lane Holford aforesaid edged blue on the Plan in respect of which part of the Planning Application has been made
- 3.8 The "Planning Application" shall mean the application made by the Association (reference number: 3/16/99/014) to the Council for planning permission to develop the Land by the erection of four houses, formation of access and parking together with Children's Play Area and shall include any amended or substantially similar application relating to the Land
- 3.9 The "Planning Permission" shall mean any permission given in respect of the Planning Application
- 3.10 "the Plan" means the plan annexed to this agreement



HOUSING DEVELOPMENT AT HOLFORD
FOR WEST SOMERSET HOUSING ASSOCIATION

Scale 1:500



3.11 "Registered Social Landlord" shall mean any social housing landlord registered under Section 1 of the Housing Act 1996 ("the 1996 Act") with the Housing Corporation as defined in Section 56 of the 1996 Act or any successor in function

4. **INTERPRETATION**

For the purposes of this agreement

4.1 The validity construction and performance of this agreement shall be governed by English Law and each party agrees to submit to the exclusive jurisdiction of the English Courts as regards any claim or matter arising under this agreement

4.2 Reference to any statute or statutory provisions includes a reference to:-

4.2.1 that statute or statutory provision as from time to time amended extended re-enacted consolidated or replaced; and

4.2.2 all statutory instruments or orders made pursuant to it whether before or after the date of this agreement

4.3 Unless the context otherwise requires words denoting the singular shall include the plural and vice versa and words denoting any one gender shall include all genders and words denoting persons shall include bodies companies unincorporated associations and partnerships

4.4 Unless the context otherwise requires reference to any clause sub-clause or schedule is to a clause sub-clause or schedule (as the case may be) of or to this agreement

4.5 The headings in the document are intended for convenience only and shall not affect the construction or interpretation of the agreement

4.6 Any reference to the parties or any other legal or natural person shall unless the context indicates otherwise include his her its or their heirs assigns and successors in title and in the case of any local authority shall also include any

successor in function Any covenants obligations or other commitments given by more than one party shall be joint and several and where any party consists of two or more persons obligations expressed to be made by or with that party are deemed to be made by or with such persons jointly and severally

4.7 The remedies provided in this agreement are cumulative and not exclusive of any remedies provided by law

5 **RECITALS**

5.1 The Owner is seised for an estate in fee simple in possession of the Land and Children's Play Area free from incumbrances

5.2 The Association has made the Planning Application

5.3 The Association has an interest in the Land and Children's Play Area as a leaseholder by virtue of the following Leases

Date	Parties	Premises
	The Owner (1)	The Land
	The Association (2)	
	The Owner (1)	Children's Play Area
	The Association (2)	

5.4 The Council has resolved to grant simultaneously with the exchange of this agreement Planning Permission in the form annexed hereto subject to certain terms and conditions regulating the use of the Land and Children's Play Area and as the local planning authority for the area in which the Land and Children's Play Area are situate wishes to ensure that if the Development is commenced the Land is used for Affordable Housing and the Children's Play Area as a children's play area

6. **COMMENCEMENT**

6.1 The terms of the agreement shall take effect from the date the Development permitted by the Planning Permission is commenced

7. **STATUTORY PROVISIONS AND COVENANTS**

7.1 This agreement will be registered as a Local Land Charge and is entered into pursuant to Section 106 of the Act Section 111 of the Local Government Act 1972 and all other statutory and other enabling powers and shall be enforceable accordingly but without prejudice to all and any other means of enforcing them at law or in equity or by statute

7.2 The covenants and obligations created by this agreement are planning obligations for the purposes of Section 106 of the Act and are enforceable by the Council

7.3 Nothing in this agreement shall be construed as restricting the exercise by the Council of any powers exercisable by it under the Act or any other powers vested in the Council under any statute (already or in the future to be passed) or any government department public or competent authority or Court of competent jurisdiction

7.4 No failure or delay by the Council to exercise any right power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same or of some other right power or remedy by the Council

7.5 The Association shall pay to the Council its proper and reasonable legal costs incurred in connection with this agreement

7.6 The Association and the Owner shall not be liable for any breach of the covenant and restrictions or obligations contained in this Agreement which shall occur after they have parted with their interest in the Land and Children's Play Area

8. **COVENANT**

8.1 The Owner and the Association for and on behalf of their heirs assigns and successors in title with the intention that the following provisions shall bind the Land and the Children's Play Area and every part of it into whosoever hands it may come covenants with the Council that

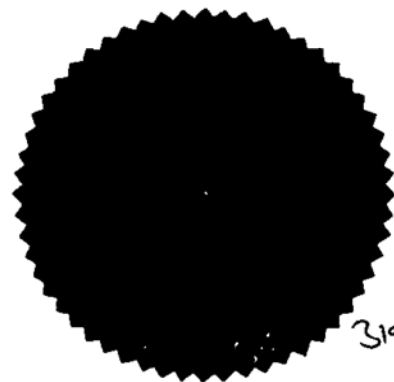
8.1.1 the Land shall be used only for the provision of Affordable Housing and the Children's Play Area only as a play area

8.1.2 Upon completion of the Development and at all times subsequently each unit of accommodation within the Development shall be allocated to a person strictly in accordance with the Cascade Criteria

8.2 The Owner shall not be liable for any breach of the covenants and restrictions or obligations contained in this Agreement (and in particular clause 8.1) which shall occur during any period when an estate or interest in the Land and/or Children's Play Area has been granted to a third party.

EXECUTED as a Deed by the parties and delivered the day and year first before written

**THE COMMON SEAL of WEST)
SOMERSET DISTRICT COUNCIL)
was hereunto affixed in the presence of:-)**



SIGNED by the said **LADY ELIZABETH PERIAM ACLAND HOODGASS** as this)
her Deed in the presence of)



W Name
I
T Address
N
E Signature
S
S Occupation

DAVID BARKER



Chartered Surveyor

THE COMMON SEAL of WEST)
SOMERSET RURAL HOUSING)
ASSOCIATION LIMITED was hereunto)
affixed in the presence of :-)

Member of Committee

Member of Committee

Secretary

