

**APPLICATION TO REGISTER LAND AT DREWS PARK DEVIZES
AS TOWN GREEN
UNDER THE COMMONS REGISTRATION ACT 1965**

REPRESENTATIONS OF LILAC INVESTMENTS LIMITED AND ALAN BROWN

FEBRUARY 2006

**ASHFORDS
Ashford House
Grenadier Road
Exeter EX1 3LH**

CONTENTS

1. Interests of the landowners
2. History and use of the application land
3. Essential requirements for town green status and comments on the application
 - 3.1. the Land
 - 3.2. use for lawful sports and pastimes
 - 3.3. use continuously for 20 years
 - 3.4. use as of right
 - 3.5. use by a significant number of residents
4. Conclusions

Appendix 1 – Plan showing land ownership

Appendix 2 – Statutory declaration of John Piper

Appendix 3 – Statutory declaration of Martin Kehoe

Appendix 4 – Statement of Alan Brown

Appendix 5 - Statutory declaration of Christopher Nicholson

Appendix 6 - Statutory declaration of Simon Bryant

Appendix 7 - Statutory declaration of Martin Brady

Appendix 8 - Article by Lisa Pennington about Roundway Hospital

Appendix 9 – Copy of section 106 agreement

1. Interests of the land owners

The plan which is attached at Appendix 1 shows the land over which the application has been made. That part of the land hatched is owned by Lilac Investments Limited and the area shown cross hatched is owned by Alan Brown. Both landowners object.

Lilac Investments has owned its part of the land since October 2002 and Alan Brown since 2002.

2. History and use of the application land

Until 1995 the land in question was owned by the National Health Service. The land had formed part of the 159 acre estate to the former Roundway Hospital, which since 1851 had been the County mental asylum for Wiltshire. That hospital closed in the early 1990's following the introduction of the care in the community policy for the care of mentally ill people.

As Mr Piper records, in his statutory declaration (Appendix 2), whilst the land was in use as a mental hospital the land would have been secure for the benefit of patients and members of the public. Any persons who used the land at that time would have been aware that the land was part of the hospital and that they had no right to use it.

Following the closure of the hospital in the early 1990's the hospital was 'mothballed' pending its sale. To keep out trespassers and to protect the integrity of the listed building the site, including the land that is the subject of the current application, was guarded by Securicor. Again this is set out in Mr Piper's declaration. This continued until the land was sold by the Secretary of State for Health in December 1995.

In December 1995 the land formed part of the land (including the listed hospital building) that was bought by a development company called Havering Land Company Limited. That company submitted an application to Kennet District Council for the residential redevelopment of the buildings in June 1996. Planning permission and listed building consent were granted in July

1997 following the completion of a section 106 agreement. This text of this agreement (and Plan No.1 referred to in the agreement) is attached as Appendix 9. The development commenced soon afterwards and was completed in about 2000.

The land the subject of the town green application forms part of the land defined in the section 106 agreement as the 'Open Space'. The agreement requires (paragraph 2 of the Third Schedule) that any grass within this area be cut during the growing season. Crucially it does not (when it could have done) require the landowners to permit the public to enter and use the land without hindrance. Such a requirement would have resulted in all use after the date of the agreement being "as of right". Open space does not necessarily and automatically mean land which the public can access and use. It can also be green space which lends a certain character to an area.

Throughout the period from the sale of the land to Havering Land Company until the completion of the development, security was provided over the entire site – including the land that is the subject of the town green application – by a company called MK 1 Security. Evidence of this is set out in the statutory declaration of Martin Kehoe, Appendix 3. During this time no public access was permitted onto the site.

On site security was stopped in 2000. Since then the land the subject of the application was sold by Havering Land Company. Further redevelopment has since taken place to the north of the land, in respect of another part of the curtilage of the former Roundway Hospital. This development has been undertaken by David Wilson Homes. In 2003 and 2004 David Wilson Homes constructed a surfacing water sewer across the land from their development site down to a balancing pond that they have constructed on the part of the land that belongs to Alan Brown. The balancing pond is now fenced and gated and there is no public access. During the construction works for the sewer all of the land belonging to Lilac Investments Limited was rendered inaccessible once again as the land was a building site and there was no public access.

Today the land comprises rough grassland to the north and a mixture of rough grassland, balancing pond and overgrown (and partly fenced off) orchard to

the south. There is a tarmac path which runs across the land – a feature from when the land was in operational NHS use. Apart from this there is no physical evidence of any public access on the site.

3. Essential requirements for town green status

In order for a claim to succeed for the registration of a town green it must be shown to meet all of the following requirements:

'land on which for not less than twenty years a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged in lawful sports and pastimes as of right andcontinue to do so'.

It is submitted that the Applicants fail to meet a number of components of this test and therefore the application to register the land as a town green should be refused.

3.1 The Land

We do query whether those completing the forms of evidence are completely sure of the land to which they are referring, despite the plans exhibited with their evidence. Some refer to "playing fields", "cricket pitch" and similar. They may be confusing the Land with an area of land to the south west of Drews Park which is shown shaded blue on Plan No. to the Section 106 agreement. Another refers to the Katherine McNeil clinic which is an area to the east of the Land.

3.2 Use for lawful sports and pastimes

It is disputed that the land in question has been used for lawful sports and pastimes. The evidence of John Piper is that during his visits to the area over the past five years he has never seen local residents carrying out the activities described in Part 5 of the application form. It is disputed that collecting conkers is in any event a lawful sport or pastime and it is suggested that residents may have spotted birds on the land in question from the adjoining areas where members of the public are permitted or adjacent highways. The land is hardly a destination for bird-spotting in any event – the nature reserve and woodland to the south and southwest might be, but an overgrown piece of land and old orchard?

We come back again to query whether the claimed users are referring to the correct land and the extent to which they have included their use of other land within their evidence. For example, Ann Livermore talks about the nature trail. There is no nature trail on the land. The Nature Reserve is to the south and southwest of the Land. It used to be part of the hospital grounds, but was transferred to Kennet District Council in accordance with the terms of the section 106 agreement for the purpose of providing the nature reserve. Ms Livermore also refers to the cricket pitch which is not part of the land.

The evidence of one of the landowners, Mr Brown, especially with regard to the land to the southern part of the area in respect of which the application has been made, is that much of this is heavily overgrown and again since he has owned the land he has never observed people using the land for the purposes claimed. In any event, if people have indeed used this part of the land for picking apples, this would only be in the early autumn for three or four weeks.

If the public has indeed entered the land in the past few years (which is not agreed), we suggest that this may also be as a means of accessing the woodland and nature reserve to the south and southwest of the land – so it is not the land itself this is the attraction but what lies beyond it. It cannot be said that the land is in use for lawful sports and pastimes.

3.3 Use continuously for 20 years

It is not accepted that the land has been used continuously for 20 years for the uses described in Part 5 of the application form. It is doubted that prior to 1995 the land in question was used as described - either during the period when the hospital was operational, or after it had closed and when security was maintained by Securicor. The position since 1995 is covered in the evidence of Martin Kehoe, John Piper, Simon Bryant, Martin Brady and Christopher Nicholson – together they demonstrate that for the greater part of the last 10 years the public have been denied any *right* to use the land as the landowners had asserted their right to enclose the area and restrict access. The evidence of Mr Kehoe shows that any members of the public who attempted to enter on to the land for the purposes of dog walking or other recreational activities during the period 1995 to 2000 were turned away by the on-site security.

Those who have signed statutory declarations all state that their knowledge of the site dates back many years because they used to work at the Roundway Hospital. In terms of use of the land, however, of the three statutory declarations, one (Michael Underwood) does not appear to be using the land at all, although he refers to infrequent visits since 1989. Another (Stuart Hislop) says that he visits the land at monthly intervals, although it is not clear whether this is due to his work on the adjacent woodlands and nature reserve, or whether he claims to visit the land for its own sake. Finally, Lisa Pennington, says that she has only used the land since 2000 following the purchase of a property in the new Drews Park development. Of the 19 who have submitted forms of evidence, some refer to occasional, seasonal and monthly use.

3.4 Use as of right

It is not accepted that any persons who have used the land have done so as a right. Local residents would have been aware during the time that the hospital was operational that it was hospital land and that they had no *right* to use it. Since the land has been sold the erection of fencing around the land to secure it during the construction period will have made clear to any persons that they had no right to be on the land. We refer to the statutory declarations of Simon Bryant, Christopher Nicholson and Martin Brady. Any persons using the land will therefore have been aware that they were trespassing.

In his statutory declaration, Stuart Hislop refers to the hospital management actively encouraging the community to use the land to minimise stigma. He also says there were no formal restrictions and later that restrictions were not enforced. This is far from clear. We say that the word "encourage" is telling and crucial. During the period when the hospital remained open, any members of the public using the land (if at all) did so assuming that they had permission rather than that they had the right to be there. The hospital did not consent to the use of its land – consent involves consideration of a specific request. Rather, if such use did take place as alleged, it gave a general permission through encouraging such activity.

The use as of right must continue up to the date of registration (*Oxfordshire County Council v Oxford City Council and Catherine Mary Robinson* [2005] EWCA Civ 175). The landowners objected to the previous (withdrawn) application in September 2005. Through that act of objection, the current applicant must have been aware that it was

the landowners' view that the public did not have the right to use their Land. It is recognised that the lodging of an objection may be part of the process by which any use begins to lose its quality as being "as of right". *R v South Gloucestershire District Council ex parte Cheltenham Builders Ltd* [2003] EWHC 2803.

It is difficult to see how the applicant can therefore aver in his application of 28 November 2005 that the use claimed continues to be as of right, even were they to establish to previously such use had had the quality of a right. The landowners sought to erect fencing on the land on 13 February 2006. Throughout the day, the contractor, Martin Brady, was harassed by members of the public, believed to be living at Drews Park. When he returned the next day, 14 February 2006, Mr Brady found that the fence posts which he had erected the previous day had been removed and dumped on the verge. Mr Brady removed the posts to a safe place.

The landowner, Lilac Investments Ltd, reported the incident to the Police and there is an incident log. However, Mr Piper of Lilac Investments Ltd did not wish the matter pursued pending a further attempt to erect fencing – which is scheduled for the next few days. The landowners are asserting their rights to exclude the public from using the land. The public in seeking to prevent this are now using force to enter the land – which defeats the argument that entry is "as of right".

3.5 Use by a significant number of residents of a locality

There is no evidence in support of the application that a significant number of residents – of either the locality or of a neighbourhood within the locality – have used the site. The expression 'locality' does not mean an area which has been arbitrarily delineated on a plan. It must be "a sufficiently cohesive entity which is capable of definition. Merely drawing a line on a plan does not thereby create a locality" (*see R v South Gloucestershire District Council ex parte Cheltenham Builders* 10 November 2003).

The area now shown on the latest application does not appear to be a cohesive entity. It follows administrative boundaries – namely three district ward boundaries of Kennet District Council. It is notable that the area excludes a significant part of Devizes in the area around the Castle, including the Town Hall. The area cannot therefore be said to be "Devizes". Furthermore, the area extends a couple of kilometres at least to the north of Devizes, whereas the Land is at the southern

extreme of Devizes in an area which has only very recently attained a sense of neighbourhood. We therefore find the choice of locality difficult to understand – it does not appear to have, of its own, a form of identity.

Given the proximity of alternative areas for leisure activity – the Green, the Small Green, the Crammer and a park in the town itself – and the Kennet and Avon Canal and Wessex Ridgeway path in the wider vicinity – we believe that the Land has not been used by a significant number of residents of Devizes. The Land itself does not appear to have a particular preferred or favoured name which is what you might expect where a community or neighbourhood claimed the land as its own. All describe the land differently – some are small variations but others are quite different. The only consistency appears to be Roundway Hospital Grounds/Land and meadow/orchard.

No neighbourhood within the locality has been identified. The previous application referred to the area of Drews Park at the old Roundway Hospital. Until 2000 none of the buildings comprising the Old Roundway Hospital were put to residential use and the locality did not exist before that date. We accept that the Drews Park area (on the former Roundway Hospital site) could be a neighbourhood within the locality of Devizes but once again the points already made regarding the existence of that neighbourhood - only for a period of five years - must automatically defeat any application. Again there is no evidence of any other neighbourhood being considered as the appropriate area.

We also question the eyewitness accounts for the period the hospital was open. How can they be sure that most if not all of those using the land at this time were not patients, staff and their families? One of the statutory declarants, Lisa Pennington, has described the Roundway Hospital site in the late 1970's as having the atmosphere of "a small bustling village of about 400 people". It is interesting to read her article at Appendix 8. Not that far from the land was the staff canteen and kitchens. But the hospital was not a locality or a neighbourhood as that time – it was a hospital with grounds.

The evidence submitted indicates that the 22 current users generally live in the area shown edged in red on the attached plan with the significant majority living in within the area shown edged in blue. If the 22 are representative of the pattern of alleged use, it is difficult to see how the locality can be as indicated by the applicant.

4 Conclusions

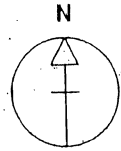
The application to register land at Drews Park as a town green should be refused for the following reasons:

- There are serious doubts about whether some of the claimed users have identified the Land correctly and whether the description of their use and others use relates to the Land or other adjoining amenity land.
- The uses claimed have not been 'as of right' because security guards have made it clear to any persons entering on to the land during the period 1995 to 2000 that they had no right to do so and that they were trespassing. The land was fenced.
- Since September 2005 any persons involved in the previous and current application will be aware that the landowners object to the application and that any use (if any) since that time is not therefore as of right. The landowners have sought to erect signs and fencing, but have been forcibly prevented from doing so. They will continue in their attempts to fence the land and will involve the Police if necessary.
- The uses have not been continuous. During the past ten years there have been major interruptions as a result of the construction work which has taken place in the vicinity of the land. Again this represents an assertion by the land owner of their rights to exclude members of the public if they so choose.
- The use will not continue up to the date of registration following the erection of signs and fencing on the Land – scheduled for the next few days.
- There is no evidence that the uses claimed have been carried on for the period of 20 years by a significant number of people resident within a recognised locality or from a neighbourhood within such a locality. The locality described is not a recognised locality – it is not Devizes because a large part of the town is missing. Neither is it a neighbourhood within a locality.

- The Council as registration authority is respectfully invited to reject the application as, on its face, there is insufficient and inadequate evidence to justify the essential requirements for such an application and to deprive the landowners of their land. The landowners have already incurred expenses and fees in resisting the previous application which was withdrawn at the last minute. They have incurred further fees in dealing with this current application which has had the benefit of seeing the landowners objections and being able to tailor its evidence to deal with those objections. They should not be put to any other expense in seeking to oppose this flawed application.

APPENDIX 1

TITLE NUMBER
WT214662



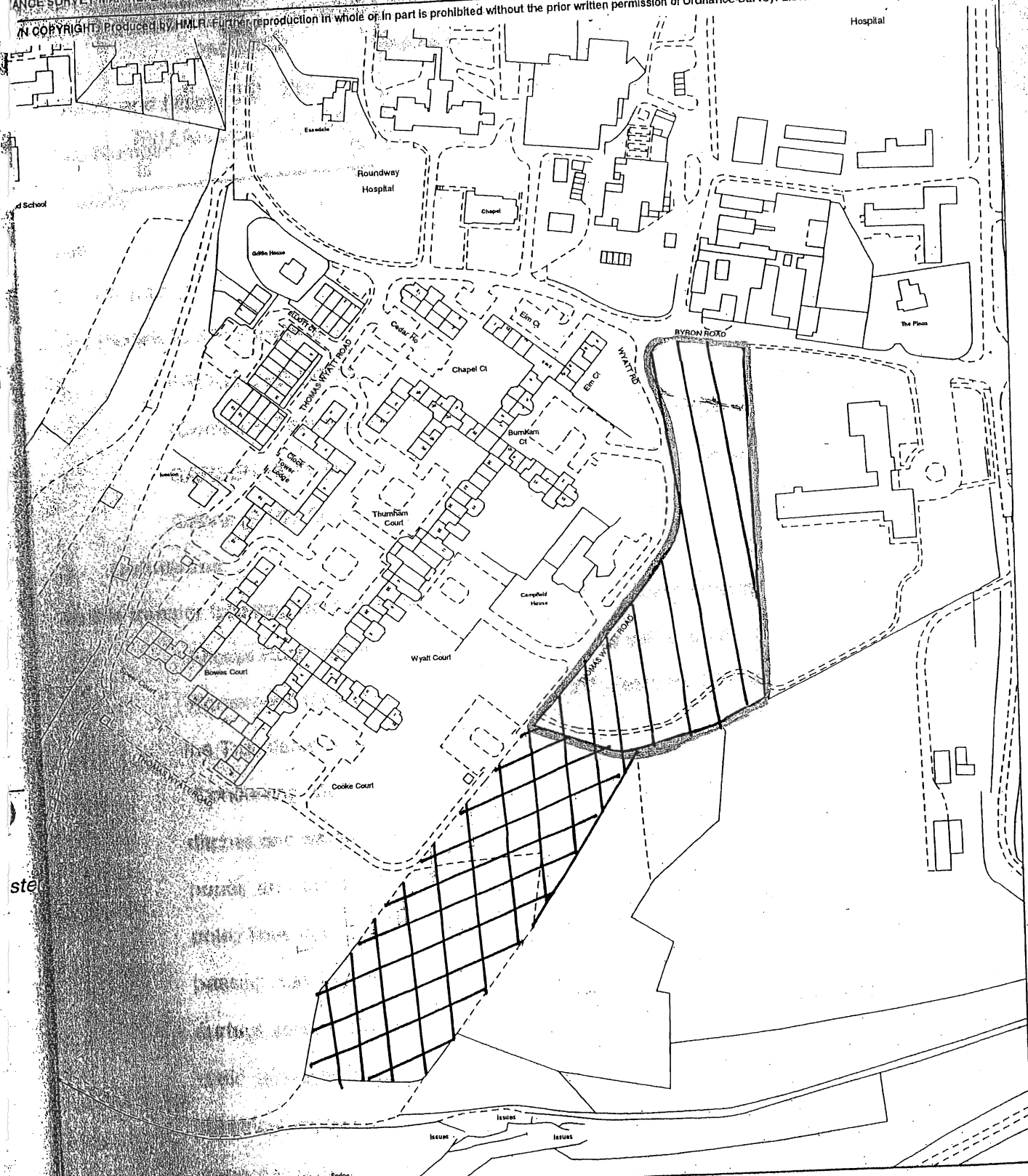
WILTSHIRE : KENNET

SCALE 1:2500

ORDNANCE SURVEY MAP REFERENCE

600059NE

NO COPYRIGHT Produced by HM Land Registry reproduction in whole or in part is prohibited without the prior written permission of Ordnance Survey. Licence Number GD 272728.



APPENDIX 2

JOHN PATRICK PIPER

STATUTORY DECLARATION

STATUTORY DECLARATION

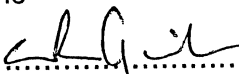
I, **JOHN PATRICK PIPER** OF Mill Stream House, Pig Lane, Bishops Stortford, Hertfordshire, CM22 PA

Do solemnly swear and sincerely declare as follows:-

1. I am familiar with the land that is now known as Drews Park, which was the former Roundway Hospital, Devizes. I have been sent a copy of the application for the registration of land at Drew Park as a Town Green by Wiltshire County Council. Part of the land that is the subject of this application is owned by a Guernsey based company called Lilac Investments Limited. I am neither a share holder nor a director in Lilac Investments Limited but I am authorised by the company to act as its agent in respect of property matters within England and Wales.
2. Lilac Investments has been the owner of this land since September 2002. It acquired that land from the developer of the former Roundway Hospital site, Havering Land Company Limited. I have been familiar the land at Roundway Hospital for longer than this as I was the company secretary to Havering Land Company Limited when it acquired the land from the Secretary of State for Health in 1996.
3. Prior to the sale of the land by the Secretary of State for Health, Roundway Hospital had been a mental institution. The land that is the subject of the Town Green Application had been part of the grounds of that mental institute. Due to the needs of patient security I do not believe that when the hospital was in use that members of the public would have had access to the grounds of the hospital. In any event it would have been obvious to those members of the public that the land was in fact then part of the mental hospital and that members of the public were not entitled to enter on to the land for the purposes of sports and pastimes.
4. Following the closure of the mental hospital and prior to the sale of the land security was provided at the site by Securicor. The land was guarded 24 hours a day and public access would not have been permitted on to the land at that time.
5. Following the acquisition of the site by Havering Land Company Limited a firm called Mark 1 Security was employed to provide 24 hour security on the site. This was necessary because the land was a building site and it would have been dangerous for members of the public to enter on to it. All of the land that is included within the Town Green Application was included in the land secured by Mark 1 Security. Accordingly, members of the public were excluded from the land from the beginning of 1997 until 2000,

STATUTORY DECLARATION
OF JOHN PATRICK PIPER

This is the exhibit marked 'A' referred to in the
statutory declaration of John Patrick Piper made
this13th..... day of September 2005
before me

.....
Signature and Qualification
COLIN GRIMWADE

**DAVID
WILSON
HOMES**



David Wilson Homes South West
Woodlands Grange, Woodlands Lane, Bradley Stoke, Bristol BS32 4JY
Telephone 01454 620460 Fax 01454 207200
www.davidwilsonhomes.co.uk DX 35003 Almondsbury

Our ref: SB/4.2

5th December 2003

John P Piper
Mill Stream House
Pig Lane
Bishop's Stortford
Herts
CM22 7PA

Dear Mr Piper

RE: Land at Roundway Hospital, Devizes, Wiltshire

Firstly please accept my apologies on behalf of David Wilson Homes for the distress caused by finding a partly excavated drainage route through your land last Wednesday, when you met our Construction Director Chris Lavell.

We were not aware that you owned this land, believing it still to be retained by Inventures (formerly Capitec). Had we have realised that you were the owner, we would have contacted you long ago to advise of the proposed drainage route and also advise of the timings of these works – as we did with the owner of the land adjacent.

I believe from the conversation with Chris Lavell that you were not even aware that we had rights to drain through your land, which is referred to in our transfer as the "retained land". I attach a copy of a fax/letter from our solicitor clarifying the situation for us at design stage, almost a year ago, which outlines the rights through the "retained land". I am sure you will wish to take this matter up with the solicitor you used for your land purchase, and if I or our solicitor can be of any further assistance please do not hesitate to contact me.

Thank you for your understanding in this matter and also the temporary footpath works previously carried out.

Yours sincerely

Simon Bryant
DEVELOPMENT ENGINEER

*For and on behalf of David Wilson Homes South West Region
a division of David Wilson Homes Ltd.*

cc. Chris Lavell - DWH



Wilson Bowden plc

David Wilson Homes Limited is a member of the Wilson Bowden Group of companies
Registered Office Wilson Bowden House, Leicester Road, Ibstock, Leicester LE67 6WB
Registered No. 830271 England
VAT No. GB113757575

David Wilson Homes South West is a Division of David Wilson Homes Limited



INVESTOR IN PEOPLE



**DAVID
WILSON
HOMES**



David Wilson Homes South West
Woodlands Grange, Woodlands Lane, Bradley Stoke, Bristol BS32 4JY
Telephone 01454 620460 Fax 01454 207200
www.davidwilsonhomes.co.uk DX 35003 Almondsbury

Our ref: SB/4.2

19th May 2004

John P Piper
Mill Stream House
Pig Lane
Bishop's Stortford
Herts
CM22 7PA

Dear Mr Piper

RE: Land at Roundway Hospital, Devizes, Wiltshire

I am writing further to my letter to you of 5th December 2003. Works are virtually complete now, and reinstatement will take place shortly.

I cannot recall whether in our subsequent telephone conversation I mentioned that we need you to be a signatory to the Section 104 Agreement between David Wilson Homes and Wessex Water. This is a legal requirement by Wessex Water as the newly laid sewers pass through your land, and unless we enter into this agreement the sewers will not ultimately be adopted. We merely require you to provide us with details of your solicitor in order that the engrossments can be sent to them and then you can duly sign the agreement under witness and then the agreement can be returned to our solicitor and then back to Wessex Water. I can confirm that David Wilson Homes will pay all legal fees in relation to the signature of this agreement.

There are two other landowners who are also party to the agreement, who's solicitors details have been provided, and so I would be grateful to receive your details at the earliest opportunity.

Thank you for your assistance in this matter, please do not hesitate to contact me should you have any queries.

Yours sincerely

Simon Bryant
DEVELOPMENT ENGINEER

*For and on behalf of David Wilson Homes South West Region
a division of David Wilson Homes Ltd.*



Wilson Bowden plc

David Wilson Homes Limited is a member of the Wilson Bowden Group of companies
Registered Office Wilson Bowden House, Leicester Road, Ibstock, Leicester LE67 6WB
Registered No. 830271 England
VAT No. GB113757575

David Wilson Homes South West is a Division of David Wilson Homes Limited



INVESTOR IN PEOPLE



Your ref: SB/4.2
Our ref: JPP/SHH

14 June 2004

*Simon Bryant Esq
David Wilson Homes South West
Woodlands Grange
Woodlands Lane
Bradley Stoke
Bristol
BS32 4JY*

Dear Mr Bryant

LAND AT ROUNDWAY HOSPITAL DEVIZES WILTSHIRE.

Thank you for your letter of 19 May

My solicitor is Martin Addrison, Messrs Howe, Roche and Waller, Mindenhall Court, High Street, Stevenage, Herts SG1 3AY.

I did visit my land last weekend to see for myself the restoration. Although it has been levelled off, I would like your confirmation that the exposed areas will be reseeded with grass seed, because at the moment the whole area looks like a barren weed patch.

As far as the legal fees are concerned, I incurred legal costs of approximately £300 when I had to write to your company about the temporary road and path that you put on my land without my permission. We sorted the problem out, but I do think it is only fair that you pay these legal fees as well. Is this agreed?

Yours sincerely

JOHN P PIPER

**DAVID
WILSON
HOMES**



David Wilson Homes South West
Woodlands Grange, Woodlands Lane, Bradley Stoke, Bristol BS32 4JY
Telephone 01454 620460 Fax 01454 207200
www.davidwilsonhomes.co.uk DX 35003 Almondsbury

Our ref: SB/4.2

25th June 2004

John P Piper
Mill Stream House
Pig Lane
Bishop's Stortford
Herts
CM22 7PA

Dear Mr Piper

RE: Land at Roundway Hospital, Devizes, Wiltshire

Thank you for your letter dated 14th June enclosing details of your solicitor.

I can confirm that we will re-seed the area once work to the balancing pond and final sewer connection has been completed. These works should be completed in the next month. Due to the time of year and the fact that we are keen to 'get it right first time' we were intending to seed the affected area in September. In the meantime we are intending to cut the grass and weeds some time w/c 28th June, in order to keep the area as tidy as possible whilst works are still going on.

Many thanks for your ongoing patience and assistance in this matter. Please do not hesitate to contact me should you have any queries.

Yours sincerely

Simon Bryant
DEVELOPMENT ENGINEER

*For and on behalf of David Wilson Homes South West Region
a division of David Wilson Homes Ltd.*



Wilson Bowden plc

David Wilson Homes Limited is a member of the Wilson Bowden Group of companies
Registered Office Wilson Bowden House, Leicester Road, Ibstock, Leicester LE67 6WB
Registered No. 830271 England
VAT No. GB113757575

David Wilson Homes South West is a Division of David Wilson Homes Limited



INVESTOR IN PEOPLE

APPENDIX 3

STATUTORY DECLARATION
OF MARTIN KEHOE

STATUTORY DECLARATION

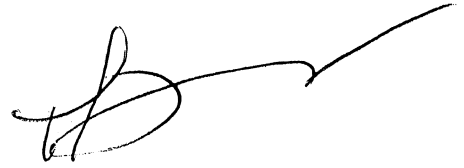
I, **Martin Kehoe** OF 23 Southerwicks, Corsham, Wiltshire, SN13 9NH

Do solemnly swear and sincerely declare as follows:-

1. I am familiar with the land that is now known as Drews Park, which was the former Roundway Hospital, Devizes. I have seen a plan showing land at Drews Park in respect of which a number of local residents have applied to Wiltshire County Council for its registration as a Town Green. I am familiar with that land.
2. The former Roundway Hospital was converted from a hospital to a residential estate between late 1997 and 2000. Both before and during the construction process I ran a security company called Mk 1 Security which provided site security at the construction site. From the beginning of 1997 until 2000 Mk 1 Security provided 24 hour security for both the Roundway Hospital site, the land that is subject to the Town Green Application and the land further to the east, which was known as the Catherine McNeil Clinic. All of this land, down to the woodlands to the south of the hospital were made secure. We erected Haras fencing around the site to prevent public access and for 24 hours a day there was a security guard on site, together with an Alsatian dog. There were signs, on the fences around the site, telling people that it was a construction site and that no public access was permitted.
3. During the first few months that we provided security for the site, there were a number of dog walkers who attempted to walk their dogs in the former hospital grounds. We would approach such persons and advise them that this was a private site and they had no right to walk upon it. On every occasion the dog walkers would leave the site and accept that they had no right to be there. After some three to four months of providing security on the site such dog walking ceased and I can confirm that for the remaining three years or so of the construction process that no persons entered on to the site, including the land that is the subject of the Town Green Application, for any recreational purposes.
4. During the period 1997 to 2000 the land was a building site and the only persons who used the site other than the construction company were the Police. The owners of the site had entered in to an agreement with the Police to allow them to train their dogs on the site and for gun training.

And I make this solemn declaration, conscientiously believing the same to be true and by virtue of the Statutory Declarations Act 1835.

Declared by the said Martin Kehoe
at 7 SADLER STREET.....)
in NEW JERSEY.....)
This 14th day of September 2005)



Before me

Signature C D Jones.....)

Address as above.....)

Qualification A. Schmitz.....)


APPENDIX 4

STATEMENT

I, **ALAN BROWN** OF Chestnut Cottage, South Horrington Village, Wells, BA5 3BW

Do say as follows:-

1. I am the owner of the southern part of the land in respect of which an application has been made to Wiltshire County Council for registration as a Town Green. I have owned the land since [2002] having acquired the land from Haverling Land Management Limited.
2. Some of the land is open (at its northernmost point) and on part of this land a balancing pond has been constructed by David Wilson Homes in respect of surface water that arises from their development to the north of Byron Road. The balancing pond area, for security purposes, has been fenced off so that public access is not permitted. This is for safety reasons. Although the balancing pond is dry for the majority of the year, when it functions for the purposes of South West Water overflow it would be a dangerous area.
3. The majority of the land that I own that is included within the application is an old orchard. A fence surrounds the majority of the orchard although this has been broken down in places. The orchard itself is heavily overgrown. It is not an area where people can easily walk and it is not an area where you would choose to walk given any alternative areas surrounding the orchard which are freely available either under the terms of planning agreements or as public footpaths.
4. During the time that I have owned the land I have not seen any people carrying out any of the following activities within the orchard area:-
 - Walking their dogs;
 - Bird spotting;
 - Collecting conkers;
 - Undertaking general family recreational uses.
5. I am aware that the residents company for what is now Drews Park Residential Area, which was formerly the main Roundway Hospital building would like to renovate the orchard. I believe that that company have attempted to use the town green mechanism as a way of acquiring rights to do so, but I believe their application is misconceived and it should be rejected by the Council.

Signed 
Alan Brown

Dated 19-9-2005

APPENDIX 5

STATUTORY DECLARATION

1, Christopher Nicholson of Pinecraven Properties Limited, Henrietta Mews, Bath BA2 6LR

Solemnly swear and sincerely declare as follows:-

1. I was the Managing Director of Pinecraven (South West) Limited and Woodacre Homes Limited, which together with Frogmore Developments Plc carried out the development at Roundway Hospital, Devizes – now known as Drews Park. Planning permission was obtained to convert the main hospital buildings into housing and the permission was implemented over a period of some three years.
2. Included in the purchase of the former mental health hospital were parcels of adjoining land which had been used by patients and hospital employees. Of this land, one large piece of several acres was given up for use as a nature reserve. This left a large square of land abutting the south-western boundary of the former hospital buildings and another piece to the east which I understand is now the subject of a town green application. These are shown shaded respectively in blue and edged in yellow on the attached plan marked "CN1" which is now produced and shown to me. These pieces of land were offered to the local residents association, but the offer was not taken up. Eventually, the two pieces of land were sold to private buyers.
3. Both pieces of land had not been used for several years and from the time we acquired the land, they were fenced off together with the hospital buildings. Warning signs were posted to the effect that it was private property. This was mainly due to the fact that travellers had attempted to occupy the land on more than one occasion, but also because of the risk of theft from the Grade II listed buildings.
4. A security company – MK1 Security – was employed to occupy and patrol the land 24 hours a day for 365 days a year. At one time, we were approached by Wiltshire police to use these pieces of land for shooting practice which we allowed. I doubt very much that this approach would have been made if there were any possibility of the public coming onto the land.

And I make this solemn declaration, conscientiously believing the same to be true and by virtue of the Statutory Declarations Act 1835.

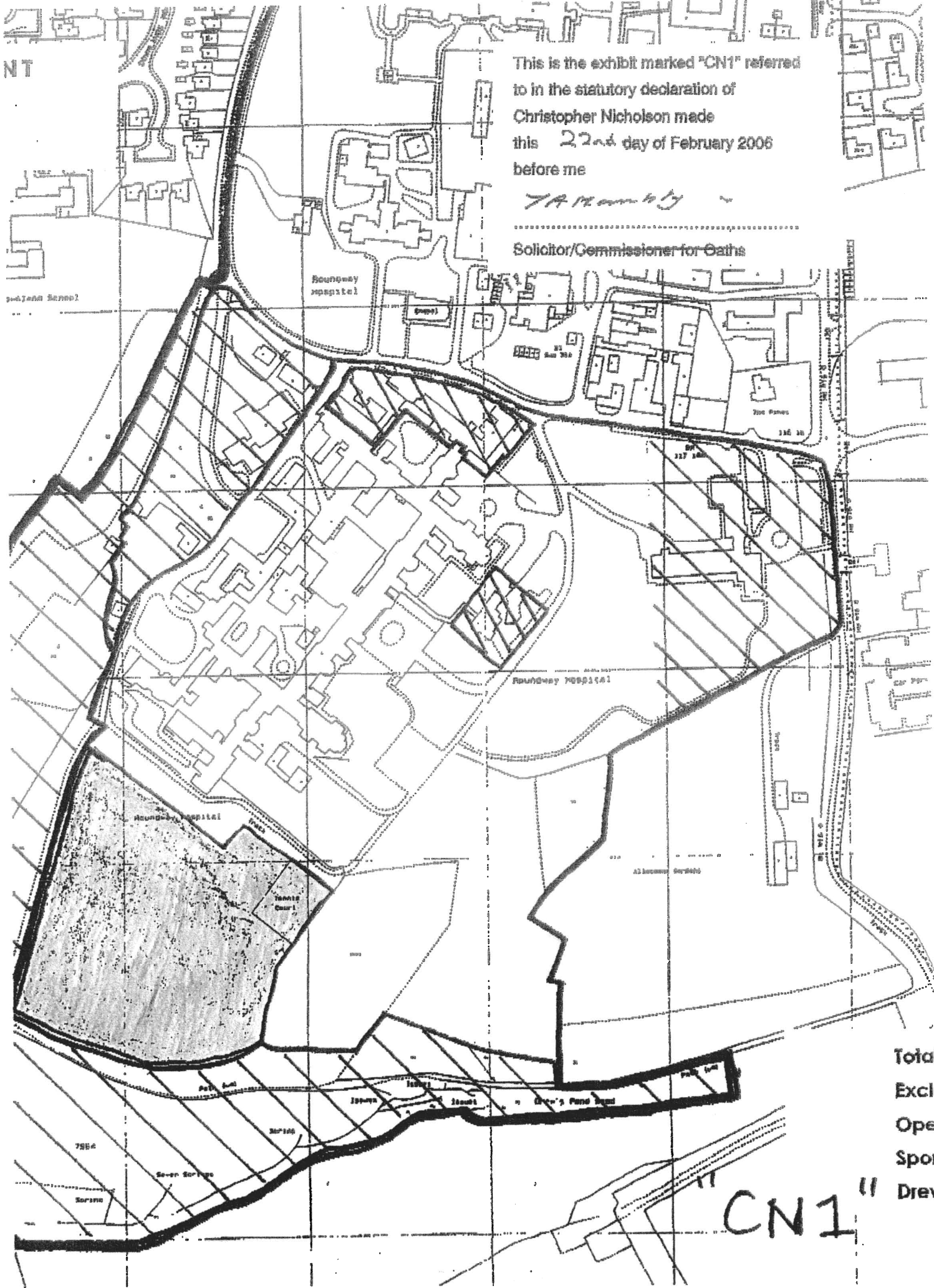
Declared by the said Christopher Nicholson 

at Mowbray Woodwards in 3 Queen Sq.
Solicitors. Bath.

This 22..... day of February 2006

Before me (signature) Y.A. Hambley..... Solicitor/Commissioner for Oaths

Address 3 Queen Sq...... Bath.....



This is the exhibit marked "CN1" referred to in the statutory declaration of Christopher Nicholson made this 22nd day of February 2006 before me

T.A. McQuinn

Solicitor/Commissioner for Oaths

Total
Excl
Ope
Spor
Drev

"CN1"

APPENDIX 6

STATUTORY DECLARATION

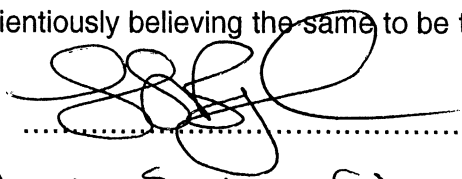
I, **Simon Bryant** of David Wilson Homes South West Limited, Woodlands Grange, Woodlands Lane, Bradley Stoke, Bristol BS32 4JY,

Solemnly swear and sincerely declare as follows:-

1. I am the Development Engineer for David Wilson Homes South West Limited.
2. I am familiar with the land that is now known as Drews Park, which was the former Roundway Hospital, Devizes. I have seen a copy of the plan submitted with the current town green application for land to the east and south-east of Drews Park, which shows the area of land the subject of the application.
3. In 2003 to 2004 I was in charge of major drainage works across the land on behalf of David Wilson Homes. The works commenced in November 2003 and finished in May 2004. The line of the works is illustrated with a blue line on a plan marked "SB1" which is now produced and shown to me. The plan also shows where the soil arisings were piled up and the approximate line of the fencing.
4. The drainage works involved the digging of a deep and wide channel with the excavated earth piled up to the side. The works were such as to cause a risk to any person who might have approached the site. Heras fencing was erected 15 metres either side of the works approximately and the arisings from the works were bunded within this area. There were also some minor diversion works required to existing sewers within the area.
5. The drainage works continued down to a balancing pond (which is shown shaded in the bottom left corner of the plan SB1 and were later continued to the nature reserve.
6. The land was partly fenced off to provide a pathway for visitors to the new hospital and also to prevent the public from straying onto the land where the works were being carried out. Any member of the public seeking to enter the land would have been discouraged from doing so for their own safety.
7. For the duration of the works and for some time after, the land not subject to the works was not tended and became overgrown with long grass and weeds. I cannot say that it was impossible to walk across the land, but it certainly would have been difficult and not a destination of choice for recreation purposes. The land was not tidied up until September 2004 when the grass was re-seeded. We also cut the grass on the remainder of the land which had reached some 2 to 3 feet in height. We were not able to cut the grass sooner because we had to adjust some manhole covers and clear some arisings that would have damaged cutting equipment.

And I make this solemn declaration, conscientiously believing the same to be true and by virtue of the Statutory Declarations Act 1835.

Declared by the said Simon Bryant

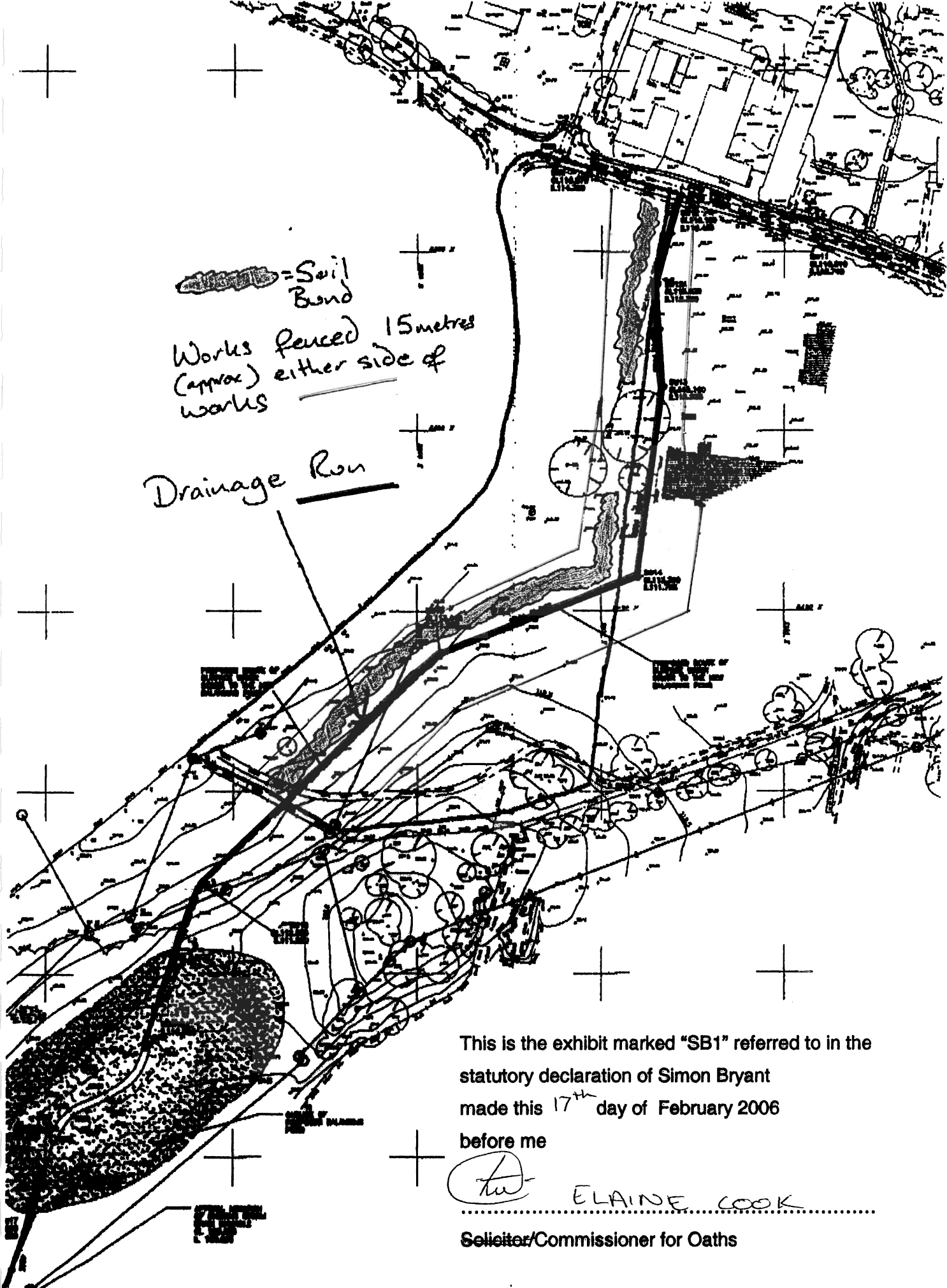


at 6 Fountain Ct, Bradley Stoke in South Gloucestershire

This 17th day of February 2006

Before me (signature) [Signature] ELAINE COOK..... Solicitor/Commissioner for Oaths

Address 6 Fountain Ct, Bradley Stoke, Bristol



This is the exhibit marked "SB1" referred to in the
 statutory declaration of Simon Bryant
 made this 17th day of February 2006
 before me

(Signature)

ELAINE COOK

Solicitor/Commissioner for Oaths

APPENDIX 7

STATUTORY DECLARATION

I, **Martin Brady** of 21 New Square, South Harrington Village, Wells, Somerset BA5 3JS

Solemnly swear and sincerely declare as follows:-

1. I was employed by Pinecraven (South West) Limited through MK1 Security to erect fencing on development land at the former Roundway Hospital, Devizes – now known as Drews Park.
2. There is now produced and shown to me a plan marked "MB1". I understand that the land shown edged in yellow on that plan is now the subject of a town green application. I am certain that this land was fenced by me as part of my contract with MK1 Security.
3. I returned to the land on 13 February 2006 to carrying out some new fencing on the land at the request of the current landowner, Lilac Investments. When I arrived on site, I remembered the land quite clearly and remembered fencing it before.
4. On 13 February 2006, whilst erecting some fencing posts, I was approached by several people who I assume to be local inhabitants. They disputed the right to erect the fencing and kept pressing me as to who had given instructions to do so and why. They said the land was theirs.
5. On 14 February 2006, I returned to the land to continue with the fencing work, only to find that all the posts had been pulled up and left lying on the ground. I retrieved the posts and returned them to the store in case of theft or further damage. I informed John Piper of Lilac Investments and at the time of signing this declaration, I was awaiting his further instructions.

And I make this solemn declaration, conscientiously believing the same to be true and by virtue of the Statutory Declarations Act 1835.

Declared by the said Martin Brady M Brady
 at 16 HIGH STREET, KEYNSHAM IN BRISTOL

This 20th day of February 2006

Before me (signature) [Signature] Solicitor/~~Commissioner for Oaths~~
 Address WHITTAKER TAYLOR CRINES, SOLICITORS
16 HIGH STREET, KEYNSHAM, BRISTOL BS31 1DJ

NT

This is the exhibit marked "MB1" referred to in the statutory declaration of Martin Brady made this 20th day of February 2006 before me

[Signature]
Solicitor/Commissioner for Oaths



Total
Excluded
Open
Sports
Drive

"MB1"

APPENDIX 8

The Way it was...

A year or so ago I read an article by a contributor to The Spectator who is (or was) also a resident at Drews Park. The impression he gave of living here was that it was cold, silent and oppressive – not my view at all...

AS SOMEONE who worked here in the late seventies when it was still Roundway Hospital (originally known as the Wiltshire County Asylum), I felt the atmosphere was that of a small bustling village of about 400 people. In 1943 there were over 1500 patients housed here, but numbers fell to under 200 in the mid nineties at which time the hospital closed.

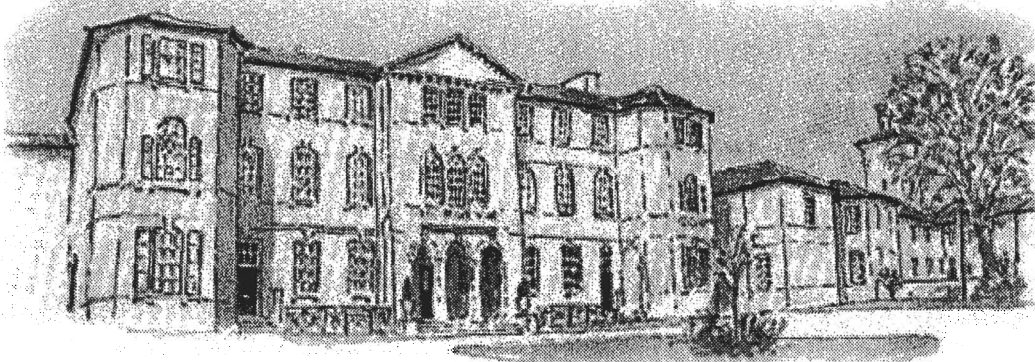
The village atmosphere was compounded by the facilities contained on the site. There was a cobbler's shop and upholstery department roughly where the bungalows are now. There was a huge ballroom in the Chapel Court area which was unfortunately (in my view) demolished. To the rear of the three story Wyatt Court houses was the staff canteen and extensive kitchens which were the hub of the hospital at lunch times.

Nor were the majority of patients 'silent and oppressed'. Of course there were sad stories but many of the long stay patients were secure and felt this was their home. Some would say they were institutionalised, probably true, and in the thirties a young woman could be sent to

Roundway simply for becoming pregnant (which in those days would shame the family). More than one case I knew of here stayed here years for that reason alone.

Without identifying anyone, there were some well known characters, regarded fondly by the staff. One elderly lady would come into my office every day and press sweets on me, some from her pocket covered in fluff, but one could not refuse! One Polish man I remember well, an ex-airman, decided to build his own log cabin in the woods. A splendid job it was too, with a wood burning stove and lovely views. At that time Crown Property did not need planning permission although the NHS usually conformed, but no one had the heart to object until one day he informed us that he was going to sublet his property and build another one! For a mental patient we thought he showed quite modern commercial perspicacity.

If anyone has any memories of Roundway, please send them in, or email them to Lisa Penington at drewsnews@drewspark.co.uk



email: drewsnews@drewspark.co.uk

APPENDIX 9

"Planning Application" the Planning Application described in the Second Schedule hereto

"Planning Permission" detailed permission granted pursuant to the Planning Application in the form of the draft Planning Permission

"the draft Planning Permission" the Planning Permission proposed to be granted pursuant to the Planning Application in the form comprised in Appendix "A" hereto

"Property" that part of the Development Site which is to be transferred to a Registered Social Landlord for the provision of 21 subsidised units and is shown edged red on Plan No 3 annexed hereto

"Sports Facilities" the cricket pitch and tennis court presently within the Development Site and which are shown edged green and coloured blue on Plan No. 1

"Subsidised Housing Unit" means a dwelling house or flat which will be provided on the Property in accordance with the Planning Permission and occupied by tenants or shared ownership leaseholders of a Registered Social Landlord with the benefit of Social Housing Grant or other such public subsidy

"Transfer" the transfer of the Woodlands by the Owner to the Council and the Transfer to be in the form set out in Appendix "B" hereto

"Woodlands" Drews Pond Wood being part of the Development Site and shown edged red on Plan No. 1

"Registered Social Landlord" has the same meaning as in Sections 1 and 2 of the Housing Act 1996

"Plan No. 3" the plan annexed hereto and marked No. 3 indicating the land available for the Subsidised Housing Units ("the Property")

RECITALS

1. The Council is the Local Planning Authority for the purposes of this Deed for the area within which the Development Site is situated and by whom the obligations contained in this Deed are enforceable
2. The Owner is the Registered Proprietor of the Freehold Interest in the Development Site.
3. Sarsen is a Registered Social Landlord within the meaning of Sections 1 and 2 of the Housing Act 1996 and is incorporated under the Industrial and Provident Societies Act 1965 and registered with the Housing Corporation under Section 1 of the Housing Act 1996
4. The Owner through its Agent Pinecraven has made the Planning Application has applied to the Council for permission to develop the Development Site in the manner and for the uses set out in the Planning Application and in the plans specifications and particulars deposited with the Council and forming part of the Planning Application
5. It is the intention of the Owner and Sarsen simultaneously with entering into this Agreement to exchange contracts for the sale of the Freehold Interest in the Property

with completion of the sale twenty-eight days thereafter (the "Completion Date") with the intent that Sarsen shall build the Subsidised Dwellings thereon

6. The Council has decided to grant planning permission for the Development in accordance with the Planning Application subject to the making of this Agreement without which such planning permission for the Development would not have been granted.

NOW THIS DEED is made in pursuance of Section 106 of the Act and is a planning obligation for the purposes of that Section and WITNESSETH as follows:

1. The Owner covenants with the Council to perform the obligations or activities specified in the Third Schedule.
2. Sarsen covenant with the Council to perform the obligations specified in the Fourth Schedule
3. IT IS AGREED AND DECLARED as follows:
 - 3.1. The expressions "the Council", "the Owner", and "Sarsen" shall include their successors in title and assigns.
 - 3.2. The covenants by the Owner and Sarsen with the Council hereinafter contained are made with the intent that the covenants shall in respect of the Development Site be binding on the Development Site or any part thereof and are binding on and enforceable against the successors and assigns of the Owner and of Sarsen and are covenants to which Section 106 applies PROVIDED THAT
 - (i) any mortgagee of Sarsen and any person deriving title from any such mortgagee shall not be bound by the covenants set out in the Fourth Schedule and for the avoidance of doubt shall include any receiver appointed by such mortgagee

- (ii) those areas shown hatched black on Plan No. 1 shall not be bound by the covenants set out in the Third Schedule.
- 3.3. The covenants and obligations contained in this Agreement shall take effect only upon the date upon which the Development is begun by the carrying out of a material operation within the meaning of Section 56 of the Act save that those obligations numbered 1, 12 and 13 in the Third Schedule and the obligations in the Fourth Schedule hereto shall become operative and take effect from the date when planning permission is granted
- 3.4. Subject to the provisions in clause 3.3. above if the permission granted pursuant to the Planning Application shall expire before the Development is begun as defined above or shall at any time be revoked this Agreement shall forthwith determine and cease to have effect.
- 3.5. The Covenants on the part of the Owner and Sarsen and the respective terms and conditions on their parts to be observed and performed as herein contained shall not be enforceable against the Owner and/or Sarsen or their respective successors in title and assigns after it or they shall have parted with their interest in the Development Site or that part thereof in respect of which the breach has occurred except in relation to any antecedent breach or non-compliance with an obligation.
- 3.6. Nothing in this Agreement shall prohibit or limit the right to develop any part of the Development Site in accordance with a planning permission (other than one relating to the Development as specified in the Planning Application) granted (whether or not on appeal) after the date of this Agreement.

- 3.7. This Agreement is a Local Land Charge and shall be registered as such
- 3.8. The Owner shall pay to the Council its proper and reasonable legal costs incurred in connection with this Agreement.
- 3.9. The Owner warrants that it is entitled to carry out the development.
- 3.10. Section 196 of the Law of Property Act 1925 as amended by the Recorded Delivery Service Act 1962 shall apply to the service of Notices under this Agreement.
- 3.11. In the event of any dispute arising between the parties hereto concerning any matter arising out of this Agreement such dispute shall be referred to some independent and fit person holding the appropriate professional qualifications to be appointed in the absence of agreement by the President for the time being of the relevant professional body and such person shall act as an expert and his decision shall be final and binding on the parties to the dispute and his costs shall be payable by the parties in such proportions as he shall determine and failing such determination in equal shares and in the absence of agreement as to the appropriate professional body the question shall be referred to a solicitor appointed by the President of the Law Society whose costs shall be borne as above.

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

FIRST SCHEDULE (the Land)

"Development Site" shall mean all that Land at Roundway Hospital, Devizes Wilts. shown edged blue on plan No. 1 attached hereto

SECOND SCHEDULE (The Planning application)

The planning application shall mean the planning application reference No. K/33069 made by the Owner's Agent and registered on the 20th June 1996 for conversion of existing buildings into 154 dwellings, erection of 17 new dwellings, change of use of tennis court to car park, demolish existing clinic and erect new nursing home at Roundway Hospital, Green Lane, Devizes, Wiltshire

THIRD SCHEDULE (Obligations by the Owner)

1. The Owner hereby covenants with the Council that in the transfer of the Development Site in whole or in part it will contain the grant by the Owners to Sarsen and or to such other purchasers of all rights of access and passage of services and other rights reasonably necessary for the beneficial enjoyment of the dwellings to be erected on the Development Site
2. To use all reasonable endeavours to arrange for the cutting during the growing season of all grassed areas in the Open Space in accordance with the Council's landscape specification comprised in Appendix "C" annexed hereto.
3. At all reasonable times to allow access by members of the public over the estate roads on the Development Site for the purpose only of gaining access to and egress from the Sports Facilities

4. At all times to allow members of the public the right to use the Sports Facilities in accordance with reasonable regulations made from time to time by the Owner or other Management Body
5. To ensure that services of water gas electricity and drainage are laid to the boundary of the Sports Facilities in a position to be determined by the Owner
6. To use all reasonable endeavours to ensure that the Sports Facilities are maintained and managed according to the relevant use thereof in accordance with the reasonable requirements of the Council
7. To use all reasonable endeavours to erect a new cricket pavilion/community building upon the Sports Facilities for public use and to provide associated car parking subject to the availability of funding either by way of grant aid or from the National Lottery Funds, or alternatively, to make an area of 425 sq. m. available for the erection of a pavilion/community building for any local bona fide community group together with associated car parking
8. Subject to the terms in clause 9 hereof immediately when the Development is begun forthwith to pay the Commuted Sum to the Council for the benefit of the appropriate education authority as a contribution by the Owner to the cost of the provision of education facilities arising from the carrying out of the Development or
9. At the Owner's election the Owner may pay the Commuted Sum in pro rata instalments the Owner giving the Council prior written notice thereof as six phased payments of six thousand one hundred and four pound and seventy five pence (£6,104.75) upon the occupation of the last dwelling of each of six phases of twenty-five dwellings within the Development Site and a final payment of Five

thousand three hundred and seventy-one pounds and fifty pence (£5,371.50) upon the occupation of the last dwelling of the final phase of twenty-five dwellings.

10. If within 21 years from the date hereof a publicly adopted roadway built to adoptable standards is constructed to give access to the Development Site then the Owner shall use all reasonable endeavours to ensure that residents upon and users of the Development Site in the event of an alternative route being provided shall abandon the use with vehicles of Pan's Lane and Wicks Lane.
11. The Owner shall make up that part of the estate road between points A and B and those parts thereof coloured pink on Plan No. 2 the making-up-works shall comprise the kerbing of the southern side of the road, the provision of a 2m wide footway visibility splays of 4.5m by 45m (or as close as is achievable within the constraints of retained buildings) at both of the road junctions and street lighting. All the works shall be constructed in accordance with details and specifications which shall first have been agreed by the Council in consultation with the highway authority, such agreement not to be unreasonably withheld or delayed. The works shall be completed to the reasonable satisfaction of the Council before the occupation of the fiftieth dwelling unit on the site or before the nursing home is brought into use whichever is the sooner. The Owner shall be deemed to have dedicated the area coloured pink on Plan No. 2 upon request so to do by the highway authority subject to such request not being made until after the making-up works have been undertaken.
12. Within three months of the date hereof to transfer the Woodlands to the Council
13. The Owner shall complete the transfer of the Property to Sarsen as soon as possible hereafter and in any event by the Completion date such completion not to be unreasonably delayed

FOURTH SCHEDULE (Obligations by Sarsen)

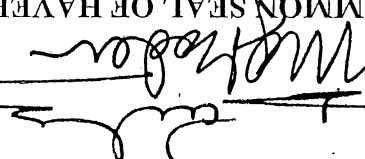
Sarsen hereby covenant with the Council as follows:

1. that Sarsen shall complete the purchase of the Property by the Completion date such completion not to be unreasonably delayed
2. that Sarsen shall commence the construction or conversion of the Subsidised Housing Units within nine months of the Completion Date

THE COMMON SEAL OF KENNET

DISTRICT COUNCIL was affixed to

this Deed in the presence of:



THE COMMON SEAL OF HAVERING

LAND COMPANY LIMITED was

affixed to this Deed in the presence of:

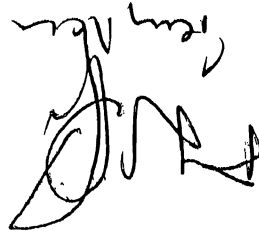


THE COMMON SEAL OF SARSEN

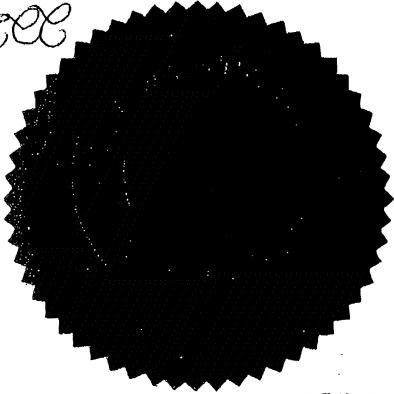
HOUSING ASSOCIATION LIMITED

was affixed to this Deed in the presence

of:



0000



J. D. P. J.P. SECRETARY

S. E. J.P. C. ART. DIRECTOR



Plymouth

Princess Court, 23 Princess Street
Plymouth PL1 2EX
T +44(0)870 4276000
F +44(0)870 4276001
DX 8273 Plymouth 2

Taunton

41 St James Street, Taunton
Somerset TA1 1JR
T +44(0)870 4274000
F +44(0)870 4274001
DX 32115 Taunton

Tiverton

Gotham House, Tiverton
Devon EX16 6LT
T +44(0)870 4273000
F +44(0)870 4273001
DX 49002 Tiverton

Bristol

Regus House, 1 Friary
Temple Quay, Bristol BS1 6EA
T +44(0)870 4273500
F +44(0)870 4273501
DX 151760 Bristol 30

Exeter

Ashford House, Grenadier Road
Exeter EX1 3LH
T +44(0)870 4277000
F +44(0)870 4277001
DX 150000 Exeter 24

London

1 Northumberland Avenue
Trafalgar Square, London
WC2N 5BW
T +44(0)870 4273200
F +44(0)870 4273201