

DATED

6 JANUARY 2015

between

WILTSHIRE COUNCIL

and

STOURTON WITH GASPER PARISH COUNCIL

and

NICHOLAS COLT HOARE

Deed under Section 106 of the Town and Country Planning Act 1990
and all other enabling powers

relating to Land at Brook Cottages, Gasper, Stourton,
Warminster, Wiltshire BA12 6PY

Head of Legal Services
Wiltshire Council
County Hall
Bythesea Road
Trowbridge
Wiltshire BA14 8JN
Ref: 104363

THIS DEED is dated [DATE] 6 JANUARY 2015

- (1) **WILTSHIRE COUNCIL** of County Hall Bythesea Road Trowbridge Wiltshire BA14 8JN (**Council**).
- (2) **STOURTON WITH GASPER PARISH COUNCIL** of 7 High Street Stourton Warminster BA12 6QF
- ³
(2) **NICHOLAS COLT HOARE** of Gasper Mill Stourton Wiltshire BA12 6PU (**Owner**).

BACKGROUND

1. The Owner is the freehold owner and is seised in possession of the Land shown for the purposes of identification only edged red on the Plan
2. The Council is the local planning authority for the purposes of the Act, the highway authority, the education authority and the housing authority for the area in which the Land is situated
3. The Parish Council has agreed to undertake certain functions with regard to the allocation of the Affordable Housing Units
4. The Owner has submitted the Planning Application to the Council and the parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed without which the Planning Permission would not be granted
5. On 3 July 2014 the Council resolved to grant planning permission for the Development subject to conditions and the prior completion of this Deed in the interests of the proper planning of the area.

NOW THIS DEED WITNESSES AS FOLLOWS:

Definitions

The definitions and rules of interpretation in this clause apply in this deed:

- | | |
|-----------------------------|---|
| “the Act” | the Town and Country Planning Act 1990 |
| “Affordable Housing” | housing let in perpetuity to Qualifying Persons at a rent of no more than 80% of local Open Market Rents (including |

		service charges, where applicable) at the time of letting which may be increased by no more than the All Items Index of Retail Prices plus 0.5% annually
"Affordable Housing Unit"		any of the Residential Units forming part of the Development, all such Residential Units comprising Affordable Housing
"Allocations Policy and Procedure"	and	the policy and procedure attached at Schedule 4 which sets out : <ul style="list-style-type: none"> (i) the necessary criteria to be met in order for person(s) to be allocated an Affordable Housing Unit; and (ii) the procedure to be followed by applicants, the Owner and the Parish Council on applications for an Affordable Housing Unit
"Commencement of Development"		the date on which any material operation as defined in section 56(4) of the Act forming part of the Development begins to be carried out with the exception of investigation of ground conditions and remedial work archaeological work demolition and erection of hoardings and Commence and Commenced shall be construed accordingly
"Engineer"		the Director of Highways and Transport or his appointed representative for the time being of the Council
"Development"		any development permitted by the Planning Permission
"Director"		the Associate Director of Economic Development and Planning or his

	appointed representative for the time being of the Council
“Index”	All Items Index of Retail Prices issued by the Office for National Statistics
“Index Linked”	increased in accordance with the following formula: Amount payable = the Contribution x (A/B) where: A = the figure for the Index that applied immediately preceding the date of actual payment and B = the figure for the Index that applied when the Index was last published prior to the date of this Deed
“Interest”	Interest at the rate of 4% above the base lending rate of the HSBC Bank Plc from time to time
“Land”	the land at Brook Cottages Gasper Stourton Warminster Wiltshire BA12 6PY
“Land Compensation Act”	In relation to clause 16 means the Land Clauses Consolidation Act 1845 the Land Compensation Act 1961 the Compulsory Purchase Act 1965 the Land Compensation Act 1973 and the Planning and Compensation Act 1991 and includes the Human Rights Act 1998 and any variation or enactment of the Land Compensation Acts on a date on or after the date of execution of this Deed which confers a right of compensation for the compulsory acquisition of land and/or the diminution in value of land as a result of the carrying out of or the use of public works

“Monitoring Sum”	the sum of £331.44 (three hundred and thirty-one pounds 44 pence)
“Occupation” and “Occupied”	occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction
“Open Market Rent”	means the rent calculated in accordance with the definition of "Market Rent" at Practice Statement 3.3 of the Royal Institution of Chartered Surveyors' Appraisal and Valuation Standards 6th Edition dated January 2008 as amended
“Open Space Contribution”	the sum of £5524.00 (five thousand five hundred and twenty-four pounds) as a contribution towards recreational open space in accordance with saved policy R2 of the Salisbury District Local Plan which is a saved policy of the South Wiltshire Core Strategy
“Plan”	the plan or drawing attached to this Deed and referenced 0253/101rev B which plan is for the purposes of identification only
“Planning Application”	the planning application for full planning permission for the construction of three two bedroom Affordable Housing Units; the construction of one three bedroom Affordable Housing Unit and a structure which would provide garaging for eight vehicles and bike and bin storage registered by the Council on 28 May 2013 and allocated reference number 13/00636/FUL
“Planning Permission”	the/any planning permission for the Development that may be granted

“Qualifying Person”

pursuant to the Planning Application
an individual who fulfils the
requirements of appendix 1 and
appendix 2 of the Allocations Policy

Construction of this Deed

- 1.1. Words importing the masculine include the feminine and neuter gender and vice versa
- 1.2. Words importing the singular include the plural and vice versa
- 1.3. Words importing persons include companies corporations and vice versa and all such words shall be construed interchangeable in that manner
- 1.4. Wherever there is more than one person named as a party and where more than one party undertakes an obligation (including by becoming a successor in title) all their obligations can be enforced against all of them jointly and against each individually
- 1.5. Insofar as different parts of or interests in the Land are owned by different persons each person Covenants with the Council and with one another to co-operate insofar as they are able to ensure that the Covenants herein on behalf of “the Owner/ Developer” are fulfilled as expeditiously as possible
- 1.6. The headings throughout this Deed are for convenience only and shall not be taken into account in the construction and interpretation of this Deed
- 1.7. Any reference to a clause paragraph schedule or plan is to one in to or attached to this Deed and any reference to this Deed includes any schedule, plan, annexure or other attachment to this Deed
- 1.8. In the absence of contrary provision any reference to a Council document to be completed which is annexed or referred to in this Deed shall be the Council document which is current and in force at the date of its completion

- 1.9. In the absence of contrary provision any reference to a statute or statutory instrument includes any statute or statutory instrument amending consolidating or replacing them respectively from time to time and for the time being in force and reference to a statute includes any statutory instrument direction or specification made or issued under the statute or deriving validity from it
- 1.10. References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party and successors to any statutory functions of the Council
- 1.11. Covenants to do or not to do an action shall include respectively a covenant to permit or not to permit that action to be done

Statutory provisions

- 1.12. This Deed is made pursuant to the following:
Section 106 of the Act
Section 111 of the Local Government Act 1972
Section 1 Localism Act 2011
and all other enabling powers
and has been entered into by the Council pursuant to those powers
- 1.13. The covenants restrictions and requirements created by this Deed are planning obligations for the purposes of Section 106 of the Act to the intent that it shall bind the parties and their respective successors in title to each and every part of the Land and are enforceable by the Council as local planning authority

Commencement

- 1.14. This Deed takes effect on the grant of the Planning Permission
- 1.15. The Owner shall notify the Council of the Commencement of Development and the date of Occupation of the first Residential Unit and the Owner agrees that no time shall run to the detriment of the Council if and so long as the Owner has failed to serve notice

- 1.16. If the Owner has not provided the information referred to in clause 1.15 above within 20 Working Days of its becoming available the Council shall have the right to obtain this information by other reasonable means and to charge the Owner its costs in obtaining this information subject to a maximum of one thousand pounds (£1,000) per time **PROVIDED THAT** the information is in fact obtained as aforesaid and reasonable evidence of this is provided by the Council to the Owner

The Owner's Covenants

- 1.17 The Owner will observe and perform the obligations set out in this Deed and the Schedules

The Parish Council's Covenants

- 1.18 The Parish Council will observe and perform its obligations as set out in the Allocations Policy and Procedure

The Council's Covenants

- 1.19 The Council covenants with the Owner as set out in the Second Schedule

General

The parties agree that:

- 1.20 Nothing in this Deed constitutes an obligation to grant planning permission or any other approval consent or permission required from the Council in the exercise of any other statutory function and nothing in this Deed constitutes and such approval, consent or permission.
- 1.21 This Deed does not and is not intended to confer a benefit on a third party within the meaning of the Contracts (Rights of Third Parties) Act 1999 (other than any replacement body of the Council)
- 1.22 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Land or that part of the Land in relation to which such breach occurs but without prejudice to liability for any subsisting breach arising prior to parting with such interest

- 1.23 Insofar as any clause or clauses or any part thereof of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed
- 1.24 If before Commencement of Development the Planning Permission:
a) expires within the meaning of Sections 91 92 or 93 of the Act; or
b) is revoked, quashed or modified without the consent of the Developer;
this Deed shall cease to have effect
- 1.25 The Owner shall pay to the Council:(a) its proper and reasonable legal costs incurred in negotiating preparing and entering into this Deed upon completion of this Deed, and

(b) upon Commencement of Development to pay the Monitoring Sum
- 1.26 The Owner shall pay to the Council on the date hereof its proper and reasonable legal costs incurred in respect of the transfer or other disposal of any land or facility as required by this Deed.
- 1.27 This Deed shall be registerable as a local land charge by the Council
- 1.28 If required by the Council the Owner shall secure registration of this Deed in the Charges Register of the Registered Title to the Land at the Land Registry
- 1.29 Where the agreement approval consent or expression of satisfaction is required by the Owner from the Council under the terms of this Deed such agreement approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement consent approval or expression of satisfaction shall be given in writing on behalf of the Council by the Engineer or Director as appropriate
- 1.30 Nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed

1.31 Nothing contained or implied in this Deed shall prejudice affect fetter or restrict the rights powers duties and obligations of the Council in the exercise of its functions as Local Planning Authority or any other statutory function rights duties powers and obligations under all public and private statutes byelaws and regulations

1.32 This Deed is governed by and interpreted in accordance with the law of England and Wales

Notices

1.33 Any notice or other communication given or made under this Deed shall be in writing and (unless otherwise herein provided) shall be deemed to be sufficiently served if sent by registered or recorded delivery post to the address of the party specified in this Deed or to such other address (in substitution thereof) as may be notified in writing by that party from time to time for this purpose and in the case of the Council shall be addressed to the Head of Legal Services and quote reference 13/00636/FUL

Waiver

1.34 No waiver (whether expressed or implied) by the Council of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default

Change in Ownership

1.35 The Owner agrees with the Council to give the Council immediate written notice of any change in ownership of any of its interests in the Land occurring before all the obligations under this Deed have been discharged. Such notice to give details of the transferee's name and registered office (if a company or usual address if not) together with the area of the Land or unit of occupation transferred by reference to a plan PROVIDED THAT this clause shall not apply to the disposal of an individual Residential Unit

Indexation

1.36 All financial contributions payable to the Council under this Deed shall be Index Linked

Interest

1.37 If any payment due under this Deed is paid late Interest will be payable from the date payment is due to the date of actual payment compounded annually.

VAT

1.38 All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable in respect thereof

1.39 If at any time VAT becomes chargeable in respect of any supply made in accordance with the terms of this Deed then to the extent that VAT had not previously been charged in respect of that supply the person making the supply shall have the right to issue a VAT invoice to the person to whom the supply was made and the VAT shall be paid accordingly

Indemnity

1.40 The Owner hereby undertakes and agrees with the Council that in the event of any claim or claims being made against the Council for any one or more of the following payments:

- a) Compensation (including any claim arising under the Land Compensation Acts)
- b) Damages
- c) Costs
- d) Charges
- e) any other payment

such claim arising in connection with or incidental to or in consequence of any failure on the part of the Owner to comply with its obligations under this Deed the Owner will hold the Council fully indemnified from and against each and every said claim

1.41 The Owner shall not be liable under this clause to indemnify the Council in respect of any claim only insofar as and to the extent that the said claim is found to have resulted from the negligent act or omission of the Council or its servants or agents save that for the purpose of this clause the Owner or persons acting on behalf of the Owner shall not be regarded as servants or agents of the Council

Delivery

1.42 The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

SCHEDULE 1: Covenants by the Owner to the Council and the Parish Council

The Owner covenants with the Council that

1. Affordable Housing

- 1.1 it shall ensure that the Affordable Housing Units are at all times occupied in accordance with the Allocations Policy and Procedure and at no more than 80% of the local Open Market Rent (including service charges where applicable at the time of letting) which may be increased by no more than the All Items Index of Retail Prices plus 0.5% annually
- 1.2 it shall not use the Affordable Housing Units other than for Affordable Housing let in accordance with the Allocations Policy and Procedure;
- 1.3 It shall cooperate with the Parish Council where necessary in the fulfilment of its obligations set out in the Allocations Policy and Procedure

2. Open Space Contribution

- 2.1 Prior to first Occupation to pay the Open Space Contribution to the Council.
- 2.2 Not to Occupy the Development until the Open Space Contribution has been paid to the Council

SCHEDULE 2: Covenants by the Parish Council to the Council and to the Owner

1. At all times and acting reasonably to comply with the Allocations Policy and Procedure
2. To cooperate with the Owner where necessary in the fulfilment of its obligations set out in the Allocations Policy and Procedure

SCHEDULE 3: Covenants by the Council to the Owner

Repayment of Contributions

The Council covenants with the Owner:

1. To use all sums received from the Owner under the terms of this Deed for the purposes specified in this Deed for which they are to be paid
2. To pay to the paying party such amount of any payment made by the Owner to the Council under this Deed which has not been expended or committed in accordance with the provisions of this Deed within ten (10) years of the date of receipt by the Council of such payment on receipt of a written request from the Owner to do so

SCHEDULE 4: ALLOCATIONS POLICY AND PROCEDURE

Stourhead Western Estate

Allocation Policy for new cottages at Brook, Gasper

Purpose:

This policy ensures that the 4 new houses in Gasper Street built by Stourhead Western Estate ("SWE"), the Landlord, are let to tenants with local connection (as defined below), taking into account their housing need.

1 Eligibility to apply

- 1) All members of the public may apply.

There is no requirement to be on the Housing Register.

2 Other criteria to be met

- (a) Applicants must have a local connection, as defined in section 3 below

- (b) Occupation suitable to size of household

Houses will be allocated in accordance with the policy set out in Appendix 1.

- (c) Financial criteria

Tenancies will only be granted to applicants who

- (i) Are unable to afford to buy a home in the village of Stourton; and

- (ii) Do not own any residential property; and

- (iii) Are able to pay rent and outgoings at time of letting from current earnings

Applicants will be asked to provide evidence of their income, debts, savings and capital assets.

3 Definition of Local Connection

To demonstrate a local connection, applicants must meet one or more of the three following requirements at the time of application:

- (a) Local work

Either:

- At least one years's substantial and continuing employment in the village of Stourton; or
- At least one year of self employment or running a business operating to a substantial degree in the village of Stourton

- (b) Local residency

Full time residence in Stourton for at least 5 of the preceding 10 years.

- (c) Family connection

At least one parent resident in the village of Stourton, who has lived in the village full time for the preceding 10 years .

If there are more applicants meeting the Stourton local connection than vacancies, preference will be applied to those meeting the Local Work condition

Stourhead Western Estate Allocation Policy for new cottages at Brook, Gasper

If there are fewer applicants than vacancies meeting the Stourton local connection conditions, the tenancies will be readvertised and Local Area extended to include Stourton and contiguous parishes (currently Zeals, Kilmington, Mere, Bourton, Charlton Musgrove, Brewham and Penselwood).

4 Housing need

If there is more than one applicant for a tenancy, meeting all other criteria and with equal degrees of local connection, the tenancy will be allocated to the applicant with the highest degree of housing need, as defined in Appendix 2.

5 Nominations

Homes will be advertised through appropriate local channels at the Landlord's expense.

Houses will be allocated strictly in accordance with this agreement. The applications will be made to the Landlord, who will make the initial decision.

The Landlord may seek references at its own expense to confirm that applicants meet the criteria in sections 1 2 and 3. Applicants meeting the conditions may nevertheless be vetoed according to the criteria set out in Appendix 3.

Any applicant will have the right to appeal to the Stourton Parish Council if they feel the policy or a veto has been wrongly applied.

Stourhead Western Estate Allocation Policy for new cottages at Brook, Gasper

Appendix 1: Occupation criteria

Bedroom eligibility

Any expected child will be included as part of the household when calculating minimum bedroom requirements

Household make-up
Eligible for two bedroom home:
Single person
Couple
Single or Couple with 1 Child
Single or Couple with 2 Children (both under 10yrs)
Eligible for three bedroom home
Single or Couple with 1 Child
Single or Couple with 2 Children (both under 10yrs)
Single or Couple with 2 Children (one of which over 10yrs)
Single or Couple with 3 Children

Stourhead Western Estate Allocation Policy for new cottages at Brook, Gasper

Appendix 2: Housing Need

The bands of housing need are listed from highest to lowest:

Gold

<i>Seriously Overcrowded</i>	Applicants living in overcrowded accommodation (in need of at least two additional bedrooms)
<i>Hazards</i>	Applicants living in a property assessed by the Private Sector Housing Team in accordance with the HHSRS as having 3 or more category 1 hazards that cannot be remedied.
<i>Insecurity of tenure</i>	Where an applicant is under written notice to leave their accommodation. Applicants assessed as being insecure in their accommodation will generally be under a 2 month or 93 day notice to vacate their accommodation.
<i>High welfare or support needs</i>	Where an applicant has an identified support or welfare need which cannot be alleviated in the current accommodation. Applicants may need to live closer to family or support networks to give or receive support. Consideration will be given to the obstacles relating to the applicants need, such as the distance and transport links between the two areas.
<i>Multiple needs</i>	Applicants meeting more than two needs criteria within silver band.
<i>Split households</i>	Applicants whose family have formerly lived together as a household unit, with dependent children or expecting a child, who are unable to live together because of factors beyond their control, and as a result are living in separate households.

Silver

<i>Serious Disrepair</i>	Applicants living in a property assessed by the Private Sector Housing Team in accordance with the HHSRS as having 1 or 2 category 1 hazards that cannot be remedied.
<i>Overcrowded</i>	Applicants living in overcrowded accommodation (in need of one additional bedroom).
<i>Sharing Facilities</i>	Applicants sharing facilities - e.g. kitchen, bathroom, and toilet - with people who are not included in the application This does not include applicants who choose to share their home with someone who is not included on the housing application.
<i>Tied Accommodation</i>	Applicants living in accommodation tied to their employment.

Stourhead Western Estate Allocation Policy for new cottages at Brook, Gasper

Bronze

<i>Adequately Housed</i>	Applicants who are currently housed in a property that is appropriate for their needs in terms of size and facilities.
<i>Deliberately worsening circumstances</i>	<p>Where there is evidence that an applicant has deliberately worsened their circumstances in order to qualify for higher banding the application will be placed in Bronze band.</p> <p>For an applicant to have deliberately worsened their circumstances there must be evidence that it would have been reasonable for the applicant to have remained in their original accommodation..</p>

Stourhead Western Estate

Allocation Policy for new cottages at Brook, Gasper

Appendix 3: Grounds for veto of an application

Landlord reasons for rejecting an applicant

The Landlord may need to refuse an applicant for one of the following reasons. In that case, it is Landlord's responsibility to inform applicant of the reasons. The applicant may appeal to the Stourton Parish Council if it feels the rejection is unfair and not in accordance with this policy.

Area unsuitable/Anti-social behaviour

Where there is evidence that an applicant might endanger the health and safety or well being of neighbouring residents, the Landlord may refuse the right to offer them accommodation in that particular area.

Property unsuitable – Health and Safety

Where there is reasonable evidence to suggest a property is unsuitable for the applicant due to health and safety concerns. For example, where the applicant has mobility needs that cannot be met without making considerable adaptations to the property.

Suspected fraudulent application

Where there is reasonable evidence that an applicant has provided false information in their application for housing, the Landlord reserves the right not to offer accommodation.

Rent arrears

Where the applicant has a history of uncleared rent arrears with any landlord, the Landlord may refuse the applicant.


No vacant possession guarantee

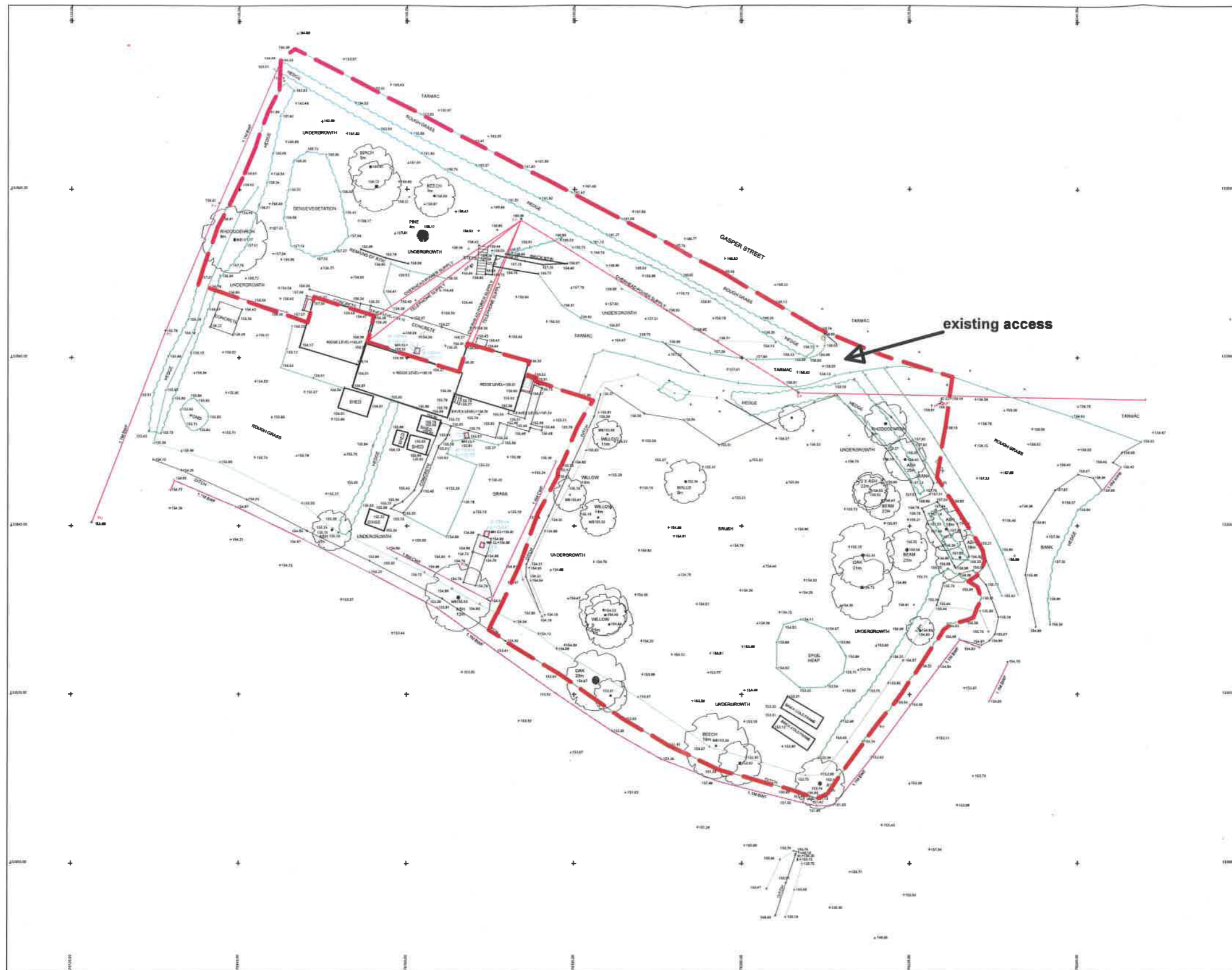
Where the Landlord has advertised a property which has since become unavailable.

Appendix 1: Plan

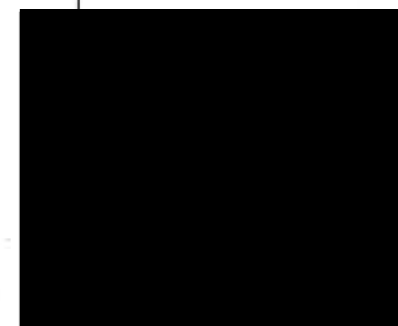


notes / key:

 boundary of site



site location plan



B 09/05/13 Detailed Proposals

client:
brook housing trust

project:
new housing
brook cottages, gasper street
gasper, wiltshire

title:
site location plan

date:
14/12/11

scale:
1:500@A3

job:
0253

drawing:
101

revision:
B

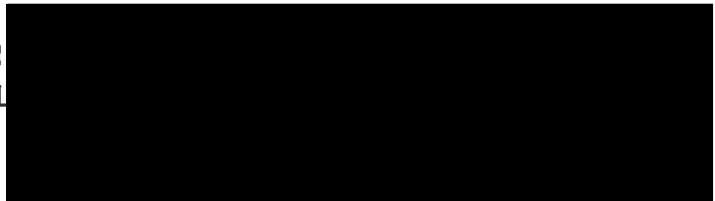
The common seal of WILTS
COUNCIL
was affixed to this document in
presence of:



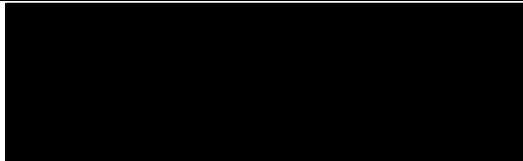
80752

Senior Solicitor

Signed as a Deed by STOURTON
WITH GASPER PARISH COUNCIL
acting by its Chairman HARRY
PARKER in the presence of:



WITNESS SIGNATURE



WITNESS NAME

MARCUS COLEY

WITNESS ADDRESS

THE OLD LAUNDRY, GASPER, WILTS, BA12 6PY

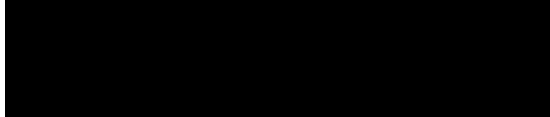
WITNESS OCCUPATION

MANAGEMENT CONSULTANT

SIGNED AS A DEED BY
NICHOLAS COLT HOARE



IN THE PRESENCE OF:



SIGNATURE OF WITNESS

WITNESS NAME

MARCUS COLEY

WITNESS ADDRESS

THE OLD LAUNDRY, GASPER, WILTSHIRE 6PY
BA12 ~~6PY~~

WITNESS OCCUPATION

MANAGEMENT CONSULTANT