

DC.20/04 app. A
21/7/04

DATED *Do not date*
17th December 2004

SOUTH HAMS DISTRICT COUNCIL

and

TOR HOMES

DEED

Under Section 106 of the Town and Country Planning Act 1990

- relating to -

Land at Old Council Depot, Fore Street, Kingsbridge, Devon

T HIS DEED is made under section 106 of the Town and Country Planning Act 1990.

Date:

7th December

2004

Parties:

- (1) **SOUTH HAMS DISTRICT COUNCIL** of Follaton House, Plymouth Road, Totnes, Devon, TQ9 5NE ("the Council");
- (2) **TOR HOMES** a Company limited by Guarantee (registration number 3555476) and a registered social landlord (registered number 1074610) whose registered office is at Tor House, St Peter's Quay, Totnes, Devon, TQ9 5SH ("Tor Homes")

1. Definitions

In this Deed:-

"**the Act**" means the Town and Country Planning Act 1990;

"**the Application**" means an application for full planning permission, received by the Council on 3rd June 2004 with the reference number 28/1104/04/F to develop the Land by the conversion of the existing building and the erection of new to provide new houses and flats to provide 20 dwellings;

"**the Council**" means South Hams District Council in its capacity as Local Planning Authority and Local Housing Authority for the area in which the Land is situated and owner of the Land;

"**the Development**" means development pursuant to the Permission;

"**the Dwellings**" means 18 of the dwellings to be constructed on the Land pursuant to the Permission and comprising the Dwellings for Rent and the Shared Ownership Dwellings;

"**the Land**" means land in the parish of Kingsbridge shown edged red on the Plan, namely the Old Council Depot, Fore Street, Kingsbridge;

"**the Obligations**" means the planning obligations contained in The Schedule;

"**the Restricted Market Dwellings**" shall mean two of the dwellings to be constructed on the Land more particularly described in the Application;

"**the Permission**" means the planning permission agreed to be granted by the Council

in respect of the Application conditional upon the execution of this Deed;

“the Shared Ownership Dwellings” means six of the dwellings to be constructed on the Land more particularly described in the Application;

“the Dwellings for Rent” means twelve of the dwellings to be constructed on the Land more particularly described in the Application;

“the Plan” means the plan attached to this Deed.

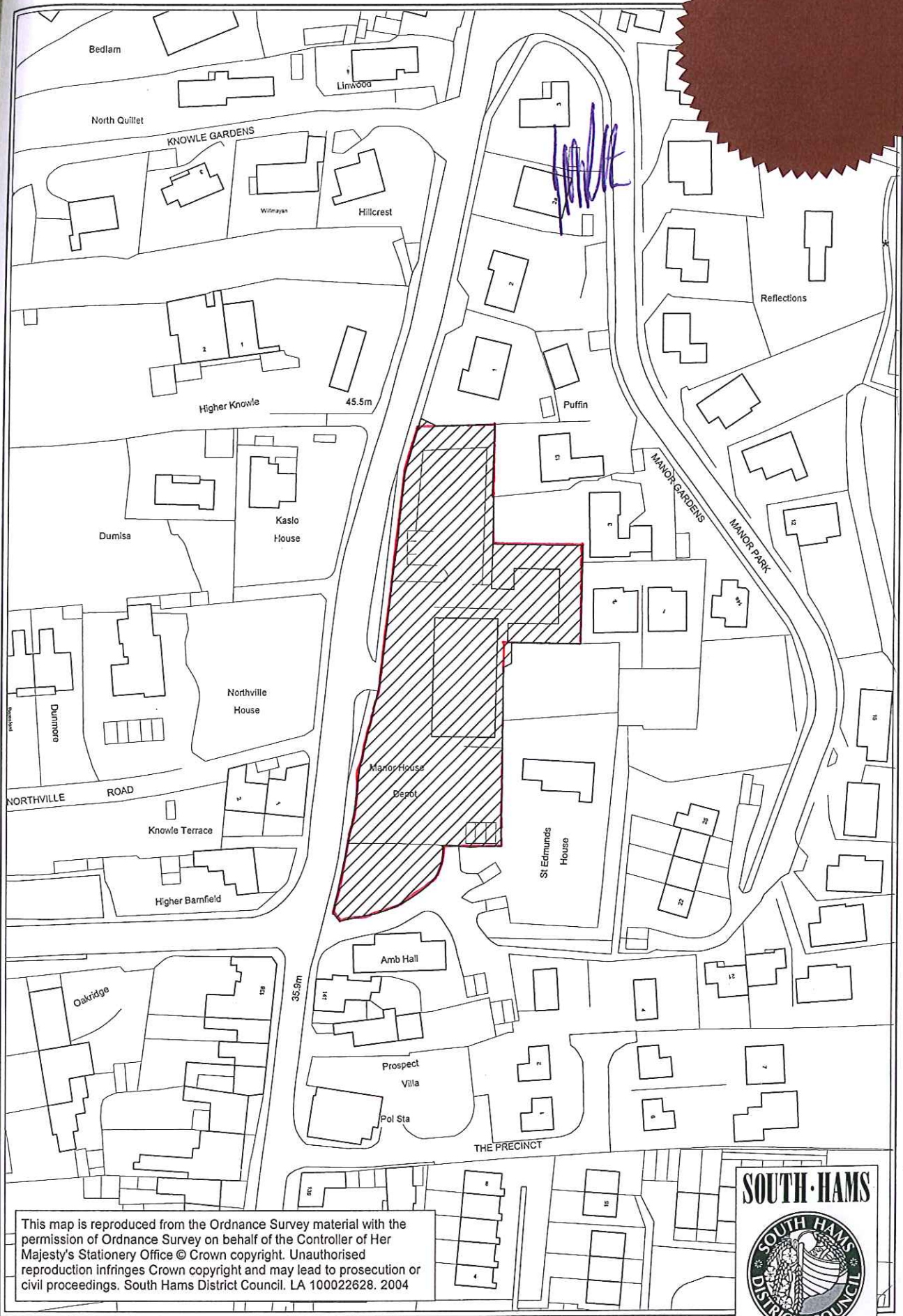
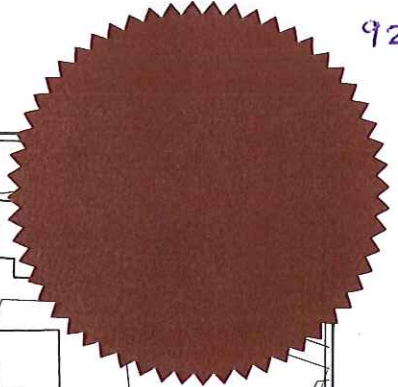
2. Interpretation

In this Deed, except where the context requires otherwise:-

- 2.1 The singular includes the plural, the masculine includes the feminine, and vice versa;
- 2.2 References to clauses and schedules are to the clauses in and schedules to this Deed;
- 2.3 Reference to any party having an interest in land affected by this Deed shall include any successor in title of that party to that land or to any part of it;
- 2.4 Reference to any party having a statutory function referred to in this agreement shall include any successor to that statutory function;
- 2.5 Reference to any Act or Statutory Instrument shall include any subsequent amendment or re-enactment of it;
- 2.6 Where any of the Obligations applies to more than one person, their liabilities shall be joint and several.

3. Land to be subject to Planning Obligations

- 3.1 Tor Homes owns the freehold estate in the Land.
- 3.2 The Council has agreed to grant the Permission for the Development, provided that all persons with an interest in the Land enter into this Deed.
- 3.3 Subject to clause 4, Tor Homes covenants to observe and perform the Obligations, which shall bind the Land (and every part of it) as planning obligations under section 106 of the Act.
- 3.4 The Obligations shall be enforceable by the Council.
- 3.5 Notwithstanding the provisions of the Contracts (Rights of Third Parties) Act 1999,



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the Obligations shall not be enforceable by anyone not a party to this Deed.

3.6 Notwithstanding the provisions of 3.3 and 3.4 herein, a mortgagee/chargee of the Land or any dwelling constructed as part of the Development, who subsequently has to take possession or otherwise enforce its mortgage/charge, shall not be bound by the Obligations, save for those contained within clauses (k) and (l) of the Obligations.

4. Scope of the Obligations

4.1 The Obligations shall take effect upon commencement of the Development.

4.2 No person shall be liable for any breach of any of the Obligations occurring after that party has parted with all interest in the Land.

4.3 If the Permission to which this Agreement relates shall expire before the Development is begun within the meaning of Section 56(2) and (4) of the Act or shall at any time be revoked or otherwise withdrawn this Agreement shall forthwith determine and cease to have effect.

4.4 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Land in accordance with the planning permission other than the one relating to the Development (whether or not an Appeal) after the date of this Agreement.

4.5 Should any of the provisions of this Agreement be subject to the rule against perpetuities then they shall continue until the end of the period of 80 year's (commencing from the date of this Agreement) but shall there upon determine.

5. Financial matters

5.1 Tor Homes shall not seek from the Council any payment of compensation under the Act in respect of the Land, except in the event of the acquisition of the Land or any part of it under Part IX or Part X of the Act.

5.2 Tor Homes agrees to pay upon completion of this Deed the reasonable legal costs of the Council in respect of the preparation and execution of this Deed.

IN WITNESS of which the Council and Tor Homes have affixed their respective Common Seals to this Deed on the above date.

, The Schedule

The Obligations

- (a) The Dwellings shall be occupied and managed in accordance with the objects of Tor Homes as a Registered Social Landlord, subject to the statutory entitlement of the occupier of any of the Dwellings to acquire that Dwelling.
- (b) The Shared Ownership Dwellings shall be occupied on the basis of a Shared Ownership Lease subject to the entitlement of the lessee to subsequently acquire the freehold in that dwelling.
- (c) The Council shall have the right to nominate from its shared ownership register all of the persons to whom an interest in any of the Shared Ownership Dwellings is initially granted and thereafter, 75% of any subsequent vacancy or transfers. The Council must make its nomination within 4 weeks of notification by Tor Homes of any vacancy of a Dwelling (the "Notification Date")
- (d) If the Council fail to make the nomination within the period specified in (c) above, or Contracts for the disposal are not exchanged within 12 weeks of the Notification Date Tor Homes is entitled to allocate the Shared Ownership Dwelling to any person/s it considers in need of that accommodation.
- (e) No Dwelling for Rent shall be occupied other than on the basis of an assured tenancy granted in accordance with the following provisions, subject to the statutory entitlement of the occupier to acquire any such Dwelling for Rent.
- (f) The Council shall have 100% nomination rights in respect of all Tenants to whom the Dwellings for Rent, are let initially and thereafter 75% of the Tenants to whom they are let or such other nomination rights as may be agreed in writing from time to time after the date of this Deed, either generally or in relation to the Dwellings for Rent between the Council and Tor Homes.
- (g) In exercising its nomination rights the Council shall in every case nominate a person from its statutory housing register who is considered by it to be in need of such accommodation and who:

- (i) has immediately prior to such nomination had his or her main residence within the parish of Kingsbridge; or
- (ii) has a strong local connection with the said parish of Kingsbridge; and in making a nomination under this subclause the Council shall (but without limiting its wider discretion in this regard) consider:
 - (A) family associations of such person or persons in the said parish of Kingsbridge;
 - (B) any periods when the main residence of such person or persons has been in the said parish of Kingsbridge not immediately before the date upon which any unit of accommodation becomes vacant; and/or
 - (C) whether such person or persons has or have permanent employment in the said parish of Kingsbridge.
- (h) If the Council is unable to make a nomination in the manner referred to in subclause (g) above then it shall apply the procedures contained in subclause (g) but in place of references to the parish of Kingsbridge there shall be substituted reference to any one of the parishes of West Alvington, Churchstow, Buckland-Tout-Saints, Frogmore & Sherford and Charlton
- (i) If the Council is unable to make a nomination in the manner referred to in subclauses (g) and (h) above then it shall nominate a person or persons from the Council's list of persons of priority housing need or from the housing register.
- (j) If the Council fail to make the nomination in the manner set out above in Clauses (f) (g) (h) and (i) within four weeks (or such other period as may be agreed in writing between the Council and Tor Homes after the date of this Deed) of notification by Tor Homes of a vacancy of a Dwelling for Rent (the "Notification Date"), or the letting so nominated shall not be completed within 12 weeks of the Notification Date then the Owner shall be entitled to allocate any vacant Dwelling for Rent to any person who is considered by Tor Homes to be in need of such accommodation.

- (k) Insofar as is permissible by law, shares in the Dwellings shall be disposed of subject to a covenant that, in the event of any person acquiring a 100% interest in the freehold, the freedom of that person (and any successor in title of his and any person deriving title under him or such a successor) to dispose of the dwelling shall be subject to the same limitation as is contained in section 157(2) Housing Act 1985, but so that:-
- (a) references in section 157(3) to a region shall be deemed to refer to the District of South Hams; and
 - (b) the condition in section 157(3) is also deemed to be satisfied where the person (or one of them) to whom the disposal is made, has for a total of seven years out of the immediately preceding twenty years had his place of work or his only or principal home in the District of South Hams.
- (l) With regards to the Restricted Market Dwellings, they shall be disposed of on the basis that the owner (any successor in title of his and any person deriving title under him or such a successor) of any such dwelling shall be subject to a covenant on the same limitation as is contained in section 157(2) Housing Act 1985, but so that:-
- (a) references in section 157(3) to a region shall be deemed to refer to the parish of Kingsbridge; and
 - (b) the condition in section 157(3) is also deemed to be satisfied where the person (or one of them) to whom the disposal is made, has for either
 - (i) three of the last five years or
 - (ii) seven of the last twenty yearshad his place of work or his only or principal home in the parish of Kingsbridge.
- (m) (i) Tor Homes shall be entitled to refuse to offer a Dwelling to a nominee if it believes, acting reasonably and after making all appropriate enquiries, that such refusal is justified by the apparent inability of the nominee to afford the rent and/or other payments and/or (in the case of any of the

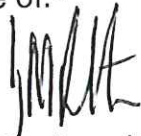
Shared Ownership Dwellings) the premium payable for the grant of the Lease or, because the accommodation of the nominee would not be in accordance with the Housing Corporation's Regulatory Code or other guidance issued by the Housing Corporation or would otherwise not be within the objects or articles of association of Tor Homes as a registered social landlord and charity or for any other justifiable reason.

- (ii) In the event of Tor Homes deciding to refuse to offer a Dwelling to a nominee pursuant to (m)(i) above, or in the event of the nominee indicating to Tor Homes that he or she does not wish to take up the vacancy (or Tor Homes otherwise becoming aware that the nominee does not wish to take up the vacancy), Tor Homes shall promptly notify the Council and include in such notification an indication of the reason as to why the nominee will not be filling the vacancy.

THE COMMON SEAL of SOUTH HAMS)

DISTRICT COUNCIL was affixed to)

this Deed in the presence of:-)



Solicitor/Legal Executive



9282

THE COMMON SEAL of TOR HOMES)

was affixed to this)

Deed in the presence of:-)

Authorised signatory



Authorised signatory



71