

Application Ref: NP/22/0110/MOD

Case Officer	Matthew Griffiths		
Applicant	Waterstones		
Agent			
Proposal	Modification of Section 106 Agreement		
Site Location	Land off Walton Road, Broad Haven, Haverfordwest, Pembrokeshire, SA62 3JX		
Grid Ref	SM86121339		
Date Valid	13-Feb-2022	Target Date	09-Apr-2022

The application is reported to Committee at the request of the Director of Planning and Park Direction as it was considered of Member interest.

Public Response

As a request for a deed of variation to an existing section 106 agreement there is no requirement to undertake public consultation on the application.

Policies considered

Please note that these policies can be viewed on the Policies page Pembrokeshire Coast National Park website –

[Local Development Plan 2 - Pembrokeshire Coast National Park](#)

LDP2 Policy 01 - National Park Purposes and Duty

LDP2 Policy 06 - Rural Centres

LDP2 Policy 08 - Special Qualities

LDP2 Policy 46 - Housing

LDP2 Policy 47 - Housing Allocations on and with Planning Permission

LDP2 Policy 48 - Affordable Housing

LDP2 Policy 49 - Affordable Housing Exception Sites

LDP2 Policy 50 - Housing Development Proposals

LDP2 Policy 51 - Housing Densities

LDP2 Policy 52 - Housing Mix

LDP2 Policy 55 - Infrastructure Requirements

Constraints

Special Area of Conservation - within 500m

Contaminated Land

LDP Allocation

Safeguarding Zone

Hazardous Zones

Recreation Character Areas

Low Coal Risk

Surface Coal

High Coal Risk
Affordable Housing Submarkets
Seascape Character Areas
Landscape Character Area

Officer's Appraisal

Site and Proposed development

The site of development is now known as "Sand Banks" which is a development on the Southern Edge of Broad Haven, to the east of Walton Road.

The site is occupied by a development of 18 residential properties and is partially completed.

The developer has approached the Authority to vary the terms of the Section 106 agreement at the site. Further details of the current section 106 agreement are provided in the planning history below. The primary requirement of the agreement is to provide six affordable housing units and sell them on the open market at 70% of Open Market Value.

The developer subsequently approached the Authority to request a deed of variation to make the agreement requirements more clear. While drafting this variation it became clear that the developer had sold all of the open market units at the site and partially completed the affordable housing units.

The requirements of the original agreement were that no more than 6 open market housing units were occupied without the affordable housing units being provided or placed for sale on the open market. This requirement of the agreement was therefore breached. The owner requested that the deed of variation also addresses this issue.

The developer has provided a valuation undertaken by an appropriately qualified RICS surveyor to establish the Open Market Value of the properties and this has been accepted by the Authority. This would allow for the commencement of marketing of the Affordable Housing properties.

Procedurally the Authority has to consider this as a request to modification to a section 106 agreement by agreement under section 106A(1)(a). It is not an application to modify or discharge the agreement, under section 106A(3) as these can only be formally made after five years from the signing of the agreement.

Relevant Planning History

NP/17/0315/FUL – Residential development comprising of 18 dwellings with associated works – Land off Walton Road, Broad Haven, Haverfordwest, Pembrokeshire SA62 3JX – Approve (Subject to Section 106 Agreement)

The Authority was approached by the developer in April 2020 regarding the section 106 agreement that had been signed for this site. The developer indicated that they

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were concerned that the terms of the agreement were not entirely clear. The Authority instructed solicitors in May 2020 to review the agreement and advise on interpretation of its requirements.

Principle of variation

The substantive changes to the agreement are to reflect the primary requirement of the original agreement to provide for six affordable houses on site at 70% of open market value and to remove discretionary and unclear requirements from the agreement.

The deed of variation has a requirement to market the affordable housing for 45 working days to qualifying persons in the Community Area as defined in the original agreement. While this is a reduction from the original 60 working days, it is considered that this still represents a substantial period of marketing and is accepted.

The developer has requested that the subsequent period of marketing to qualifying persons within Pembrokeshire as a whole is reduced to 20 working days. However officers view is that the marketing period should be 60 working days, reflecting the larger area and likely wider demand in this area.

Due to the progression of development at the site, clauses are required to secure that there is no further disposal of land related to the affordable housing units. Our solicitors have provided a draft clause that will require a restriction being placed on the land registry preventing sale until an affordable housing commuted sum is paid.

The commuted sum payment remains as a cascade provision which would operate where there is not demand for the affordable housing.

Conclusion

The proposed deed of variation largely retains the requirements of the original agreement to provide and market the affordable housing units provided at the site and gives greater clarity to some matters. Notwithstanding the breach of the agreement in that market houses have been disposed of before affordable houses are provided or placed for sale, the substantive requirements of the agreement have been progressing with the applicant's recently providing a valuation certificate to the Authority which has been agreed – appropriate marketing of the properties as affordable housing can therefore commence. In the circumstances now pertaining at the site, where all market houses have been sold, the Authority's position in terms of securing the affordable housing contribution remains protected through a restriction on the sale of the properties.

The variation is considered to be in line with the requirements of the LDP and will facilitate the provision of affordable housing in accordance with policies: 1, 6, 8, 46, 47, 48, 49, 50, 51, 52, and 55.

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Recommendation

Approve the request for a variation to the section 106 agreement by agreement.

Dated *16th July* 2018

Deed

Relating to land at Walton Road Broad Haven Pembrokeshire

between

(1) PEMBROKESHIRE COAST NATIONAL PARK AUTHORITY

(2) WATERSTONE HOMES LIMITED

(3) PEMBROKESHIRE COUNTY COUNCIL

(4) 

THIS DEED is made the 16th day of JULY 2018

BETWEEN

(1) PEMBROKESHIRE COAST NATIONAL PARK AUTHORITY of Llanion Park
Pembroke Dock Pembrokeshire SA72 6DY ("the PCNPA")

(2) WATERSTONE HOMES LIMITED incorporated and registered in England and Wales
with company number 4177167 whose registered office is at One Waterton Park,
Bridgend CF31 3PF ("the Owner")

(3) PEMBROKESHIRE COUNTY COUNCIL of County Hall Haverfordwest
Pembrokeshire being the local housing authority ("the Council")



Background

- (A) The PCNPA is the local planning authority for the purposes of the TCPA 1990 for the area in which the Property is situated.
- (B) The Council is the local housing, highway and education authority pursuant to Section 1 of the Housing Act 1985 for the area in which the Property is situated.
- (C) The Owner owns a freehold interest in the Property which interest is in the course of registration at the Land Registry, but forms part of Title number CYM369615.
- (D) The Owner or an agent on behalf of the Owner has made the Planning Application and is proposing to carry out the Development of the Property and the PCNPA is minded to grant approval of the Planning Application subject to the Owner first entering into this Deed.
- (E) The Mortgagee has a charge over the Property dated 3rd May 2017, which is in the course of registration at the Land Registry with the application for registration referred to in recital C.
- (F) The Owner has agreed to:
 - 1) pay the Contributions in accordance with this deed; and
 - 2) provide six of the Housing Units as Affordable Housing Units.
- (G) The covenants restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the PCNPA as the local planning authority and the Council as local housing local housing, highway and education authority against the Owner.

Agreed terms

1 Definition and Interpretation - General

1.1 In this Deed the following definitions and interpretations shall apply:-

ACG: means the published list of acceptable costs per dwelling according to the relevant dwelling type in question determined by the Welsh Government from time to time (or a subsequent list of costs used or published at the relevant time and having the same effect as that which was published by the Welsh Government at the date of this Deed)

Affordable Housing: means subsidised housing to be provided by the Owner in accordance with and subject to the provisions of this Deed and that will be made available to persons who cannot afford to rent or buy housing generally available on the open market.

Affordable Housing Contribution: means 30% of the OMV being a contribution to be paid to the Council as a contribution towards Affordable Housing in the County of Pembrokeshire in the event that the conditions and obligations relating to Affordable Housing Units set out in the Second Schedule hereto are released pursuant to a sale by a mortgagee in possession, or by a sale following a lack of demand pursuant to the provisions of this Deed, or where otherwise provided in this Deed.

Affordable Housing Units: means six of the Housing Units to be constructed by the Owner pursuant to the Planning Permission on the Property the locations tenure size and design of which has been agreed prior to the date of this Deed and which will be erected on the Property as part of the Development by the Owner and which upon completion shall be sold on the open market as Affordable Housing Units subject to the conditions set out in the Second Schedule hereto or shall be transferred to the PCNPA or the Council or to a RSL for the purpose of Affordable Housing at the Purchase Price and a reference to an "**Affordable Housing Unit**" means a single Housing Unit.

Affordable Rent: means (in cases where the relevant landlord is not a local authority) a rent payable for a Social Rented Housing Unit which is equal to or less than the benchmark rent levels for the PCNPA as determined by the Welsh Government from time to time or (in cases where the relevant landlord is a local authority) a rent payable for an affordable rented housing unit determined by the Welsh Government from time to time and calculated using statistical information provided by individual local authorities

Base Rate: the base rate from time to time of Barclays Bank plc.

The Commencement of Development: for the purpose of this Deed means the date on which any material operation begins (as defined in Section 56(4) of the TCPA 1990) in connection with providing or forming a Housing Unit but excluding

(for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and "Commencement of Development" shall be construed accordingly.

Chargee: means any mortgagee or charge of a purchaser of an Affordable Housing Unit only or such successors in title to such mortgagee or charge or any receiver or manager (including and administrative manager) appointed pursuant to the Law of Property Act 1925

Chargee Disposal: a disposal of an Affordable Housing Unit by a Chargee subject to the provisions of paragraph 1.4 of Schedule 2

Community Area: shall mean the Havens Community Council electoral ward area as defined in the existing statutory provisions or regulations relating to the definition of the same or any successor statutory provisions or regulations relating to the electoral boundaries of the Havens Community Council or any successor councils (subject to the extension of the definition to accord with the provisions relating to the absence of demand contained in paragraph 5.1 of Part 3 of Schedule 1).

Contribution(s): the sums set out in Part 2 of Schedule 1 hereto being contributions to be made by the Owner to the Council in accordance with the Local Development Plan together with any special guidance issued by the PCNPA and all other material considerations in relation to the provision of infrastructure in the locality of the Property that are considered necessary to make the Development acceptable.

Default Interest Rate: 3% per annum above the Base Rate.

the Development: means the development of the Property described in the Planning Application

Housing Unit: means a dwelling house or flat which is either an Affordable Housing Unit or an Open Market Housing Unit to be provided as part of the Development and a reference to "**Housing Units**" means more than one Housing Unit

Index: means the All In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation.

Index Linked: increased in accordance with the following formula:

Amount payable = the Contribution(s) x (A/B) where:

A= the figure for the Index that applied immediately preceding the date of actual payment.

B= the figure for the Index that applied when the index was last published prior to the date hereof.

Occupation: means the beneficial occupation for the purposes permitted by the Planning Permission of a Housing Unit but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and reference to Occupy and Occupied shall be construed accordingly.

OMV: means an open market value that an Affordable Housing Unit might reasonably be expected to realise on the open market if it was sold free of the obligations set out in this Deed at the time of its disposal by a willing seller to a willing buyer. In relation to the calculation of the OMV for the purpose of the Affordable Housing Contribution it shall mean the actual sale price unless the Council reasonably considers that the sale price of the Affordable Housing Unit does not represent its true value, and in the event of a dispute the matter will be determined by an Expert in accordance with this Deed.

Open Market Housing Unit/s: means a dwelling house or flat to be erected on the Property as part of the Development by the Owner and sold or rented in an arms length transaction on the open market and "Open Market Housing Units" shall be construed accordingly.

Plan: means the plan annexed to this deed.

Planning Application: means the application for planning permission submitted to the PCNPA for the Development and allocated planning reference number NP/17/0315/FUL and which shall include all reserved matters applications.

Planning Permission: the planning permission granted pursuant to the Planning Application including any reserved matters approvals together with any varied planning permissions granted pursuant to an application under section 73 of the TCPA 1990.

Purchase Price: means 55% of ACG for the relevant Housing Units

Property: means the land situated off Walton Road Broad Haven Haverfordwest Pembrokeshire against which this Deed may be enforced shown edged red on the Plan annexed hereto and registered at the Land Registry under title number CYM369615.

RSL: means a Registered Social Landlord (as defined in Part 1 of the Housing Act 1996 which is registered with the Welsh Government pursuant to Section 3 of that Act and has not been removed from the register pursuant to Section 4 of that Act) nominated by the Council.

Sale Price: 70% of OMV

Social Rented Housing: means housing provided by a local authority or an RSL where rent levels have regard to Affordable Rents

SPG: the PCNPA's Supplementary Planning Guidance on Affordable Housing adopted in November 2014

Trigger Date: means the date on which 3 Housing Units have been Occupied

TCPA 1990: means the Town and Country Planning Act 1990.

Valuation Certificate: means a certificate given by a member of the Royal Institute of Chartered Surveyors (or an alternative valuer agreed in writing by the Council) duly setting out and certifying the current OMV of an Affordable Housing Unit.

Working Day/s: means any day from Monday to Friday (inclusive) which is neither Christmas Day Easter Day nor a statutory Bank Holiday

- 1.2 Clause headings shall not affect the interpretation of this Deed.
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to any party shall include that party's personal representatives, successors or permitted assigns and in the case of the PCNPA and the Council the successors to its respective statutory functions.
- 1.8 A reference to a statute or statutory provision is a reference to it as it is in force at the date of this Deed.
- 1.9 A reference to a statute or statutory provision shall include any subordinate legislation made from time to time.
- 1.10 A reference to writing or written does not include faxes or e-mail.
- 1.11 A reference to "this Deed" or to any other Deed or document referred to in this Deed is a reference to this Deed or such other document or Deed as varied or novated (in each case, other than in breach of the provisions of this Deed) from time to time.
- 1.12 References to clauses paragraphs and plans are to the clauses and plans of this Deed.
- 1.13 An obligation in this Deed on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.14 Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

- 1.15 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.

2 Statutory Provisions

- 2.1 This Deed constitutes a planning obligation for the purposes of section 106 of the TCPA 1990, Section 65 of the Environment Act 1995 section 2 of the Local Government Act 2000 and section 111 of the Local Government Act 1972 and any other enabling powers, and are entered into by the Owner with the intention that they bind the interests held by the Owner in the Property and their respective successors and assigns.
- 2.2 This Deed shall come into effect on the date of this Deed.
- 2.3 To the extent only that any of the obligations contained in this Deed are not planning obligations within the meaning of the TCPA 1990 they are entered into pursuant to the powers contained in Section 65 of the Environment Act 1995 and if relevant the Local Government Act 1972 and Local Government Act 2000.
- 2.4 It is acknowledged that the obligations contained in this Deed are:
- 2.4.1 necessary to make the Development acceptable in planning terms;
 - 2.4.2 directly related to the Development; and
 - 2.4.3 fairly and reasonably related in scale and kind to the Development
- 2.5 In the event that any new planning permission(s) are granted by the PCNPA pursuant to Section 73 of the TCPA 1990 (as amended) and unless otherwise agreed between the parties:-
- 2.5.1 the obligations in this Deed shall relate to and bind any subsequent planning permission(s) in respect of the Property granted pursuant to Section 73 of the TCPA 1990 and the Property itself, and
 - 2.5.2 the definitions of Application, Development and Planning Permission in this Deed shall be construed to include reference to any application under Section 73 of the TCPA 1990, the planning permission(s) granted thereunder and the development permitted by such subsequent planning permission(s), and
 - 2.5.3 this Deed shall be endorsed with the following words in respect of any future Section 73 application:-
"The obligations in this Deed also relate to and bind the Property in respect of which a new planning permission referenced No 17/0315/FUL has been granted pursuant to Section 73 of the Town and Country Planning Act 1990 (as amended)".
- PROVIDED THAT nothing in this clause shall fetter the discretion of the PCNPA in determining any application(s) under Section 73 of the TCPA 1990 or the appropriate nature and / or quantum of Section 106 obligations in so far as they

are materially different to those contained in this Deed and required pursuant to a determination under Section 73 of the TCPA 1990 whether by way of a new deed or supplemental deed pursuant to S106 of the TCPA 1990

3 Covenants

The Owner covenants with the Council and the PCNPA to observe and perform the restrictions and obligations in respect of the Property as set out in this Agreement and the Schedules.

4 PCNPA's and Council Covenants

- 4.1 The PCNPA covenants with the Owner to observe and perform its obligations as planning authority in respect of this Agreement
- 4.2 The Council covenants with the Owner to observe and perform its obligations as the local housing, highway and education authority in respect of this Agreement
- 4.3 On the written request of the Owner at any time after each or all of the obligations have been performed or otherwise discharged (and subject to the payment of the Council's reasonable and proper costs) the Council and PCNPA (as appropriate) will issue a written confirmation of such performance or discharge
- 4.4 The PCNPA has resolved and hereby covenants with the Owner to issue the Planning Permission on the date hereof.

5 Index Linked

- 5.1 All Contributions payable to the Council shall be Index Linked.
- 5.2 Where reference is made to an index and that index ceases to exist or is replaced or rebased then it shall include reference to any index which replaces it or any rebased index (applied in a fair and reasonable manner to the periods before and after rebasing under this deed) or in the event the index is not replaced, to an alternative reasonably comparable basis or index as the Council shall advise the Owner in writing.

6 Mortgagee's consent and Indemnity

- 6.1 The Mortgage acknowledges and declares that this Deed has been entered into by the Owners with its consent and that the Property shall be bound by the obligations contained in this Deed and that the security of the mortgage over the Site shall take effect subject to this Deed PROVIDED THAT the Mortgagee shall otherwise have no liability under this Deed unless it takes possession of the Property in which case it too will be bound by the obligations as if it were a person deriving title from the Owner.

- 6.2 The Owner covenant to indemnify the Mortgagee in respect of any liabilities actions demands proceedings costs and expenses arising directly or indirectly as a result of the Mortgagee having entered into this Agreement

7 Confirmation of Interests

The Owner hereby warrants and confirms that apart from the parties hereto there are no other persons with a legal estate or beneficial interest in the rest of profits or proceeds of sale of the Property or any part thereof.

8 Obligations of the Owner

The Owner hereby undertakes and covenants with the PCNPA and the Council as the local housing authority by way of a planning obligation pursuant to Section 106 of the TCPA 1990 with the intention of binding the Property and each and every part thereof into whosoever hands the same may come that the Property shall be subject to the several restrictions and provisions as to the use thereof as specified herein

9 Site Not to be Encumbered

The Owner hereby covenants with the PCNPA that it will not encumber nor deal with the Property in any manner whereby any party hereto or successor in title may be prevented from carrying out their covenants and obligations contained herein.

10 Right of Access

Without prejudice to the PCNPA'S statutory rights of entry the Owner shall permit the PCNPA's and the Council and their authorised employees and agents upon reasonable written notice to enter the Property at all reasonable times for the purpose of verifying whether or not any obligation arising hereunder has been performed or observed.

11 Waiver

No waiver (whether express or implied) by the PCNPA or the Council of any breach or default by the Owner in performing or observing any of the covenants undertakings obligations or restrictions contained in this Deed shall constitute a continuing waiver and no such waiver shall prevent the PCNPA or the Council from enforcing any of the said covenants undertakings obligations or restrictions from acting upon any subsequent breach or default in respect thereof by the Owner.

12 Enforcement Costs

Without prejudice to the terms of any other provision herein the Owner shall pay all costs charges and expenses (including without prejudice to the generality thereof legal costs and Surveyor's fees) reasonably incurred by the PCNPA or the Council for the purpose of or incidental to the enforcement of any right or power of the PCNPA or the Council or any obligation of the Owner arising hereunder.

13 Councils Legal Fees

The Owner shall pay on the date of this Deed to the Council, by way of a banker's draft or solicitor's client account cheque the Council's reasonable costs in the sum of £500 in relation to the preparation and negotiation of this Deed.

14 VAT

- 14.1 All consideration given in accordance with the terms of this Deed shall be exclusive of any VAT properly payable in respect thereof.
- 14.2 The Owner hereby acknowledges and agrees that if at any time VAT is required to be paid in respect of any Contributions then to the extent that VAT had not been previously charged in respect of that contribution the Council shall have the right to issue a VAT invoice to the Owner and the VAT shall be paid accordingly.

15 Community Infrastructure Levy

The Parties agree that to the extent that any obligations that are contained in this Deed directly or indirectly relate to the provision or payment in relation to Infrastructure as defined under the Community Infrastructure Levy Regulations (including the provision of any land or property for the purposes of Infrastructure provision) extant at the date of this Deed shall in relation to such obligations be in full and final settlement of any Infrastructure Levy which may apply to the Property due to, and following, the grant of the Planning Permission in respect of the Development.

16 Liability for Owners' Covenants

- 16.1 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 Property but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 16.2 This Agreement shall not be enforceable against owner occupiers or tenants of dwellings constructed pursuant to the Planning Permission nor against those

deriving title from them (save for the obligations contained in Part 3 of the First Schedule, in so far as they apply).

- 16.3 This Agreement shall not be enforceable against any statutory undertaker or other person who acquires any interest in any part of the Property for the purpose of the supply of electricity, gas, water, drainage, telecommunications, services, public transport or other similar services

17 Dispute Provisions

- 17.1 In the event of any dispute or difference arising between the PCNPA or the Council and the parties to this Deed in respect of any matter contained in this Deed such dispute or difference shall be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in Wales with such matters as may be in dispute and such person shall act as an expert whose decision shall be final and binding on the parties in the absence of manifest error and any costs shall be payable by the parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the parties in equal shares.
- 17.2 In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to Clause 17.1 or as to the appropriateness of the professional body then such question may be referred by either part to the president for the time being of the Law Society for him to appoint a solicitor to determine the dispute such solicitor acting as an expert and his decision shall be final and binding on all parties in the absence of manifest error and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties in equal shares.
- 17.3 Any expert howsoever appointed shall be subject to the express requirement that a decision was reached and communicated to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty-eight working days after the conclusion of any hearing that takes place or twenty-eight working days after he has received any file or written representation.
- 17.4 The expert shall be required to give notice to each of the said parties requiring them to submit to him within ten working days of notification of his appointment written submissions and supporting material and the other party will be entitled to make a counter written submission within a further ten working days.

- 17.5 The provisions of this clause shall not affect the ability of the PCNPA or Council to apply for and be granted any of the following: declaratory relief, injunction, specific performance, payment of any sum, damages, and any other means of enforcing this Deed and consequential and interim orders and relief.

18 Local Land Charge

- 18.1 The covenants on behalf of the parties hereto to be observed and performed under this Deed shall be treated as Local Land Charges and registered in the Register of Local Land Charges for the purposes of the Local Land Charges Act against the Property until such time as all the terms and conditions contained herein have been complied with subject to the Council removing upon demand any entry against any Open Market Housing Units in the event that all the terms and conditions contained herein have been strictly complied with.

- 18.2 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall upon receipt of written request from the Owner effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed excepting any entry relating to the Affordable Housing Units which shall only be removed in the event of a sale:

18.2.1 in the event that a Affordable Housing Unit is sold by a mortgagee in possession free from the occupancy conditions in accordance with the provisions of the Second Schedule herein; or

18.2.2 on the open market where an Affordable Housing Contribution has been paid in accordance with the provisions of this Deed

19 Third Parties

Save for successors in title of the parties to this Deed no provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Deed.

20 Deed ceasing to have effect

This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development.

21 No limit on other development

Nothing in this undertaking shall prohibit or limit the right to develop any part of the Property in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.

22 Repayment of Contributions

- 22.1 The Council hereby covenant with the Owner 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 or for such other purposes for the benefit of the Development as the Owner and the Council shall agree.
- 22.2 The Council covenant with the Owner that it will pay to the Owner such amount of any payment made by the Owner to the Council under this Deed which has not been expended in accordance with the provisions of this Deed (and money shall be deemed to be expended if the Council has properly entered into a contract for the expenditure of the money for the purpose for which it is paid which is reasonably likely to result in the fulfilment of that purpose) within five years of the date of receipt by the Council of such payment together with interest at the base rate of Barclays Bank PLC from time to time for the period from the date of payment to the date of refund.
- 22.3 The Council shall provide to the Owner such evidence, as the Owner shall reasonably require in order confirming the expenditure of the sums paid by the Owner under this Deed.

23 Repayment of Affordable Housing Contribution

- 23.1 If the Council shall not utilise the Affordable Housing Contribution for the purpose of Affordable Housing within five years from receipt of the same the Council shall repay to the Owner:-
- 23.1.1 the Affordable Housing Contribution with any interest accruing on it at the rate of inflation from the date of payment by the Owner until the day of repayment; or
- 23.1.2 if the Affordable Housing Contribution has been partially expended the sum equivalent to the remaining part of the Affordable Housing Contribution that is unspent and any interest that has accrued on that part at the rate of inflation from the date of payment by the Owner until the date of repayment.
- 23.2 The Council shall provide to the Owner such evidence, as the Owner shall reasonably require in order to confirm the expenditure of the Affordable Housing Contribution.

24 Interest on late payment

If the Contribution has not been paid to the Council prior to or on the Trigger Date, the Owner shall pay interest on the relevant Contribution for the period from the due date to and including the date of payment at the Default Interest Rate.

25 Governing Law

This deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

26 Severance

- 26.1 If any court or competent authority finds that any provision of this deed (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this deed shall not be affected.
- 26.2 If any invalid, unenforceable or illegal provision of this deed would be valid, enforceable and legal if some part of it were deleted, the parties shall amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the parties' original commercial intention.

27 Notices

- 27.1 Any notice or other communication required to be given under this Deed shall be in writing and shall be delivered personally, or sent by pre-paid first class post or recorded delivery or by commercial courier, to any person required to receive the notice at its address as set out below:

PCNPA: PEMBROKESHIRE COAST NATIONAL PARK AUTHORITY of Llanion Park
Pembroke Dock Pembrokeshire SA72 6DY

Council: Head of Planning, Pembrokeshire County Council County Hall
Haverfordwest Pembrokeshire SA61 1TP;

Owner: Andrew Bowen, WATERSTONE HOMES LIMITED of Number One, Waterton
Park, Bridgend, Mid Glamorgan, CF31 3PH

or as otherwise specified by the relevant person by notice in writing to each other person.

27.2 Any notice of other communication shall be deemed to have been duly received;

27.2.1 if delivered personally, when left at the address and for the contact referred to in this clause;

27.2.2 if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Working Day after posting; or

27.2.3 if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

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

Schedule 1
Owner's Covenants

Part 1
Notification and Restriction

The Owner covenants with the PCNPA and the Council:

1. To give at least 21 Working Days written notice to the Council of the Commencement Date and the Trigger Date.
2. Not to allow more than 3 Housing Units to be Occupied unless the Contributions have been paid to the Council in full.

Part 2
Financial Contributions

The Owner Covenants with the PCNPA and the Council to pay the following contributions to the Council in full on or before the Trigger Date:

1. Community Facilities

The Owner shall pay a sum of £3,366 (calculated as £187 per Housing Unit permitted by the Development) in connection with works to the Broad Haven Village Hall, Marine Road, Broad Haven, Pembrokeshire, SA62 3JS

2. Open access play and recreation

The Owner shall pay the following sums:

- a) the sum of £11,382.72 by way of contribution towards enhancing the play area and towards work on the Pond Boardwalk at Trafalgar Terrace, Broad Haven, Pembrokeshire SA62 3JU (calculated as £948.56 for each 3 plus bedroom Housing Units permitted by the Development); and
- b) the sum of £5,691.36 by way of contribution towards work on the boardwalk (calculated as £948.56 for each 1 bed Housing Units permitted by the Development);

Part 3
Affordable Housing

1 The Owner Covenants relating to the phasing of the Development

the Owner covenants with the PCNPA and the Council not to Occupy or allow Occupation of more than 6 of the Open Market Housing Units on the Property until such time as the Owner has constructed and served written notice on the PCNPA and the Council confirming that the Affordable Housing Units have either been provided and placed on sale on the open market subject to the provisions of Schedule 2, or have been sold to the Council or PCNPA or a RSL in accordance with the provisions contained herein.

2 Provision of Services

The Owner covenant with the PCNPA and the Council at its own cost to provide pedestrian and vehicular access car park spaces foul and surface water sewers and water gas electricity and telecommunication service systems for the Affordable Housing Units linking in each case to the estate roads sewers and service systems to be constructed and laid as part of the remainder of the Property and connected to highways and sewers maintainable at the public expense.

3 Construction of Affordable Housing Units

The Owner covenants with the PCNPA and the Council to construct or procure the construction of the Affordable Housing Units as part of the Development at no cost to the PCNPA or the Council and in accordance with the Welsh Housing Quality Standard and on completion of the disposal of each Affordable Housing Unit the Owner shall issue a NHBC Buildmark Insurance Certificate or a similar guarantee certificate agreed in writing by the PCNPA and the Council (acting reasonably) to any purchaser upon the transfer of an Affordable Housing Unit.

4 Notice of Completion of Affordable Housing Units

- 4.1 At such time as an Affordable Housing Unit is fit for Occupation the Owner shall notify the PCNPA and the Council of its completion and provide a Valuation Certificate for the approval by the PCNPA and the Council

- 4.2 Upon written approval by the PCNPA or the Council of the OMV as set out in the Valuation Certificate the Owner may proceed to sell the Affordable Housing Unit subject to the provisions of this Deed and if no response is given by the PCNPA or the Council within 20 working days of receipt of written notice given under paragraph 4.1 of this schedule then approval will be deemed to have been given PROVIDED THAT such written notice is served upon the PCNPA and the Council by recorded delivery and clearly addressed and marked for the urgent attention of the PCNPA's and the Council's Head of Planning and given reference S.106/[].
- 4.3 If PCNPA or the Council do not approve the assessment of the OMV of the Affordable Housing Unit the OMV of each Affordable Housing Unit not approved as aforesaid shall be determined by an Expert in accordance with this Deed.
- 4.4 No disposition of any Affordable Housing Unit shall take place unless such Unit is fit for Occupation and is sold subject to and in accordance with the provisions of this Deed.
- 4.5 Notwithstanding the provisions contained in paragraphs 4.1, 4.2, 4.4 and paragraph 5 of this part 3 of Schedule 1 the Owner may prior to the Affordable Housing Unit being fit for Occupation, market and sell a Affordable Housing Unit in accordance with the provisions of this Deed on the strict understanding that such a sale shall only be permitted to a Qualifying Person from the Community Area or to an RSL and subject to the written approval by the PCNPA or the Council of the OMV as set out in the Valuation Certificate
- 5 Provisions relating to the sale of and absence of demand on the sale of Affordable Housing Unit upon its first sale by the Owner
- 5.1 The Owner may at their discretion either:
- (a) Subject to paragraph 5.2 of this part 3 of Schedule 1, offer one Affordable Housing Unit for sale on the open market at the Sale Price subject to the provisions of Schedule 2 hereto for a continuous minimum period of 60 Working Days, and offer the remaining Affordable Housing Units for sale to an RSL, free from any occupancy restrictions in this deed at the Purchase Price, other than a requirement that the Affordable Housing Units shall not be used other than for Affordable Housing as Social Rented Housing in

perpetuity (save that this obligation shall not be binding on a person exercising a right to acquire or a Chargee Disposal)

- (b) Offer all of the Affordable Housing Units for sale to an RSL, free from any occupancy restrictions in this deed at the Purchase Price, other than a requirement that the Affordable Housing Units shall not be used other than for Affordable Housing as Social Rented Housing in perpetuity (save that this obligation shall not be binding on a person exercising a right to acquire, or a Chargee Disposal)

5.2 On satisfying the Council that reasonable efforts have been made to dispose of an Affordable Housing Unit on the open market within the Community Area subject to the provisions of Schedule 2 hereto for a continuous minimum period of 60 Working Days and that no offer to acquire an interest in the Affordable Housing Unit has been received during that period, then, on obtaining written confirmation from the Council that it is so satisfied (acting reasonably), the Owner may advertise the Affordable Housing Unit for sale in the County of Pembrokeshire subject to the provisions of Schedule 2 hereto or alternatively the Owner shall upon the written request of the Council ("**Offer Notice**"), received within such further 60 Working Days period, transfer the Affordable Housing Unit to either PCNPA or the Council free from any occupancy restrictions in this deed at the Purchase Price, save for the requirement that the Affordable Housing Units shall not be used other than for Affordable Housing as Social Rented Housing in perpetuity (save that this obligation shall not be binding on a person exercising a right to acquire or a Chargee Disposal)

5.3 On obtaining written confirmation from the Council that it is so satisfied (acting reasonably) that reasonable efforts have been made to dispose of: the Affordable Housing Unit (as provided in paragraph 5.1 of this part 3 of Schedule 1) either:

- (a) in the County of Pembrokeshire subject to the provisions of the Second Schedule for a further 60 Working Days (in accordance with paragraph 5.2 of this part 3 of Schedule 1) and that contracts have not been exchanged to sell the Affordable Housing Unit, and the PCNPA or the Council have not served an Offer Notice on the Owner; or
- (b) to an RSL for a period of 120 Working Days from the date which written notification of its completion in accordance with paragraph

4.1 of this Schedule is given by the Owner to the Council has been received, and that the Owner has failed to exchange contracts with an RSL within such period

the Owner may then market the Affordable Housing Unit or Affordable Housing Units (as the context permits) to any willing purchaser on the open market and pay the Council the Affordable Housing Contribution within 10 Working Days of the sale of the relevant Affordable Housing Unit

5.4 The continuous minimum marketing periods referred to in paragraphs 5.2 and 5.3.1 above shall be deemed to commence in respect of any Affordable Housing Unit on the date on which written notification of its completion in accordance with paragraph 4.1 of this Schedule is given by the Owner to the Council and evidence of reasonable efforts to dispose of a Affordable Housing Unit in accordance with paragraph 5.2 above shall consist of proof of adequate public advertisement of the Affordable Housing Unit during the appropriate period and which must including advertising for a period of at least 30 Working Days in a local newspaper with general circulation in the Community Area together with advertising with a well established local estate agent for the entire cascade period set out above in paragraphs 5.2 and 5.3.1 of this schedule.

5.5 If the Council or PCNPA fails to exchange contracts within the later of:

- (a) 60 Working Days from service of an Offer Notice ;or
- (b) 30 Working Days of the approval or deemed approval of the form of transfer or lease (as applicable) in accordance with paragraph 6 of part 3 of this schedule;

then the Owner may then market the Affordable Housing Unit to any willing purchaser on the open market and pay the Council the Affordable Housing Contribution within 10 Working Days of the sale of the relevant Affordable Housing Unit.

6 Form of Transfer of Affordable Housing Units

6.1 The Owner covenants with the PCNPA and the Council not to execute any transfer of the Affordable Housing Units comprised within the Development except upon the following terms and conditions unless otherwise agreed in writing by the parties to the transfer and the PCNPA and the Council:

- (a) title to the Affordable Housing Units to be deduced in accordance with the Land Registration Act 2002

- (b) the Affordable Housing Units will be transferred free of any financial charges together with the rights and easements but subject to the exceptions reservations rights easements and other matters contained and referred to in the Owner title and subject to other matters as the parties may agree
- (c) vacant possession of the Affordable Housing Units to be given on completion

6.2 The transfer or lease of each Affordable Housing Unit shall be prepared by the Owner and approved in writing by the PCNPA and the Council (such approval not to be unreasonably withheld or delayed) and shall contain:

- (a) a covenant by the Owner to construct and procure adoption of roads and footpaths to serve the Affordable Housing Units, if the design allows
- (b) full and free rights of access both pedestrian and vehicular from the public highway to the Affordable Housing Units;
- (c) a covenant by the Owner to construct and procure adoption of drains and sewers to serve the Affordable Housing Units; if the design allows
- (d) such rights as may be reasonably required for the full and free rights to the passage of running water soil electricity gas telephone signals and other services through the pipes drains channels wires cables watercourses and conduits which are now or may be within a period of eighty years from the date hereof by in or under or over the Property and benefitting the Affordable Housing Units and which shall be in the adjoining land up to and abutting the boundary to the Affordable Housing Units all such services to be connected to the mains;
- (d) such other rights or covenants as may reasonably be required by the Owner provided that such rights or covenants are no more onerous than the covenants imposed by transfers of the Open Market Housing Units.

6.3 It is hereby agreed if no response is received by the Owner within 10 Working Days following the making of a written request for approval of the transfer or lease to the PCNPA and the Council (sent by recorded delivery) it shall be deemed to have approved the transfer.

6.4 The transfer or lease of the Affordable Housing Units shall be subject to the provisions contained in this deed which shall be expressed in the transfer as being made pursuant to section 106 of the TCPA 1990.

6.5 The Owner covenants that no transfer assent or lease giving effect to a disposal of an Affordable Housing Unit, save where such disposal is to the Council, PCNPA or an RSL, shall take place unless there is a restriction registered against the Affordable Housing Unit in the following form (Form N of Schedule 4 to the Land Registration Rules 2003) subject to any amendments required by the Land Registry and agreed between the parties hereto:-

"No disposition of the registered estate (other than a charge) by the proprietor of the registered estate or, by the proprietor of any registered charge, not being a charge registered before the entry of this restriction is to be registered without a certificate signed by a conveyancer that the provisions of Part 3 of the First Schedule of the affordable housing planning agreement dated [date hereof] and made between (1) PEMBROKESHIRE COAST NATIONAL PARK AUTHORITY (2) WATERSTONE HOMES LIMITED (3) [REDACTED] (4) PEMBROKESHIRE COUNTY COUNCIL have been complied with"

Schedule 2

(Affordable Housing Covenants)

1 Occupancy Conditions Applicable to Affordable Housing Units:

1.1 The occupation of each of the Affordable Housing Units shall be limited to:-

- (a) a qualifying person as defined in paragraph 1.2 of this Schedule (hereinafter referred to as "Qualifying Person") and
- (b) any of the following:
 - (i) a wife or husband or common law partner or cohabitee of a Qualifying Person
 - (ii) a dependant of a Qualifying Person

- (iii) a dependant of the wife or husband or common law partner or cohabitee of a Qualifying Person

Provided in each case that he or she occupies the Affordable Housing Unit in question as his or her sole or main residence along with the Qualifying Person

1.2 For the purposes of this Schedule a Qualifying Person in relation to an Affordable Housing Unit is a person who has obtained written confirmation from the Council that the Council is reasonably satisfied in its discretion that he or she:-

- (a) intends to or has acquired a freehold or leasehold interest in the Affordable Housing Unit; and
- (b) is unable by reason of limited financial means to compete in the open market for residential properties in the Community Area as defined in paragraph 1.3 below; and
- (c) is in "housing need" as defined in the SPG; and
- (d) is able to establish a local connection in accordance with paragraph 1.4 below.

1.3 A person shall be regarded as having a local connection for the purposes of paragraph 1.2 (d) above if he or she:-

- (1) Has lived within the area as their only or principal home, continuously for the last 5 years, or
- (2) Can demonstrate that they have lived in the area for at least 10 years previously, before moving away, and that they have one of the following reasons to return.
- (3) A permanent job (at least 16 hours per week) or unpaid work for the emergency services or coast guard, is located within the area and they have a need to live close to work. This can include volunteering for the emergency services and RNLI.
- (4) A child who is a member of the household attends a school that is located within the area, and they currently have to travel more than 10 miles each way to attend this school. The child must be expected to attend this school for at least the next 3 years.

- (5) A parent or close family member (grandparents, parents, siblings, child) who lives in the area as their only or principal home and who would provide support to or receive support from you. This support
 - (i) must not be provided by other (including professional care) and
 - (ii) would dramatically improve the quality of life of the person receiving the support, and
 - (iii) must not currently be sustainable because you currently live too far away to reasonably provide or receive this support.

1.4 Any Chargee prior to seeking to dispose of the Affordable Housing Unit pursuant to any default under the terms of its mortgage or charge shall give not less than 20 working days prior written notice to the Council of its intention to dispose and;

- (a) in the event that the Council responds within 20 working days from receipt of the notice indicating that arrangements for the transfer of the Affordable Housing Unit can be made in such a way as to safeguard them as Affordable Housing then the Chargee shall co-operate with such arrangements and use its best endeavours to secure such transfer
- (b) if the Council does not serve its response to the notice served under paragraph 1.7. (a) above within 20 working days then the Chargee shall be entitled to dispose free of the restrictions set out in this Schedule which shall from the time of completion of the disposal cease to apply
- (c) if the Council or any other person cannot within 20 working days of the date of service of its response under paragraph 1.4 (a) secure such transfer then provided that the Chargee shall have complied with its obligations under paragraph 1.4 (a) the Chargee being a company regulated by the Financial Services Agency (or any replacement organisation or body) shall be entitled to dispose free of the restrictions set out in this Schedule 2 which shall from the time of completion of the disposal cease to apply PROVIDED THAT at all times the rights and obligations in this paragraph shall not require the Chargee to act contrary to its duties under the charge or mortgage and that the Council must give full consideration to

protecting the interest of the Chargee in respect of moneys outstanding under the charge or mortgage subject to the obligation on the Chargee to pay the Affordable Housing Contribution or any part thereof out of any balance of the proceeds of sale of the Affordable Housing Unit after all the moneys outstanding under the charge or mortgage have been settled.

2 Disposal Conditions Applicable to Affordable Housing Units:

2.1 The owner for the time being of the Affordable Housing Unit Covenants;-

- (a) not to dispose of any Affordable Housing Unit:
 - (i) at a price exceeding seventy per cent (70%) of the OMV
 - (ii) to anyone who is not a Qualifying Person provided that nothing in this paragraph shall prevent or restrict the grant of a mortgage or charge on the security of an Affordable Housing Unit to any person or body
- (b) to occupy the Affordable Housing Unit as their sole or principal residence.
- (c) to notify the Council in writing of their intention to sell the Affordable Housing Unit together with a Valuation Certificate, and if within 30 Working Days of the said notification the Council shall not have notified the owner of a Qualifying Person to whom an offer shall be made, the owner may dispose of the Affordable Housing Unit in accordance with paragraph 2.2
- (d) if the Council shall have notified the owner of a Qualifying Person in accordance with the preceding paragraph (time being of the essence) then in the case of dispute regarding the OMV of the Affordable Housing Unit set out in the Valuation Certificate, the dispute shall be determined by an Expert in accordance with this Deed
- (e) Following agreement or determination of the OMV of the Affordable Housing Unit, the owner will issue an offer to the nominated Qualifying Person to sell the Affordable Unit at 70% of the Agreed OMV ("Offer Notice")

2.2 If either:

- (a) The Council fails to nominate a Qualifying Person in accordance with paragraph 2.1 (d) of this Schedule 2; or
- (b) the nominated Qualifying Person fails to exchange contracts within 60 working days of the Offer Notice

then the owner may then market the Affordable Housing Unit to any willing purchaser on the open market and pay the Council the Affordable Housing Contribution within 10 Working Days of the sale of the relevant Affordable Housing Unit.

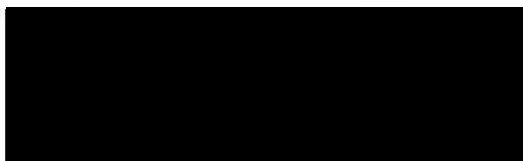
THE COMMON SEAL of
PEMBROKESHIRE COAST NATIONAL
PARK AUTHORITY was hereunto
affixed in the presence of :



Authorised Signatory

Seal No. 842

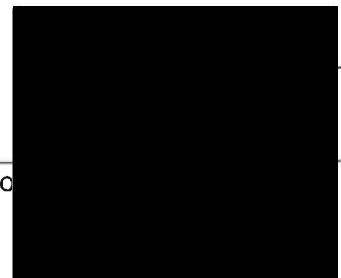
THE COMMON SEAL of
PEMBROKESHIRE COAST NATIONAL
PARK AUTHORITY was hereunto
affixed in the presence of :



Authorised Signatory

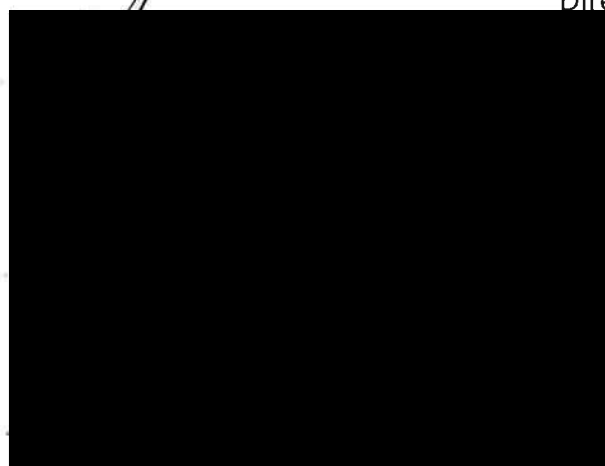
Executed as a deed by **WATERSTONE HOMES LIMITED** acting by a director in the presence of:

Director



Witness
signature

Name
(in block
Address



Executed as a deed by

[REDACTED]

in the presence of :-

[REDACTED]

Witness' signature

[REDACTED]

Witness' name in full

[REDACTED]

Address

[REDACTED]

Executed as a deed by

[REDACTED]

in the presence of :

[REDACTED]

Witness' signature

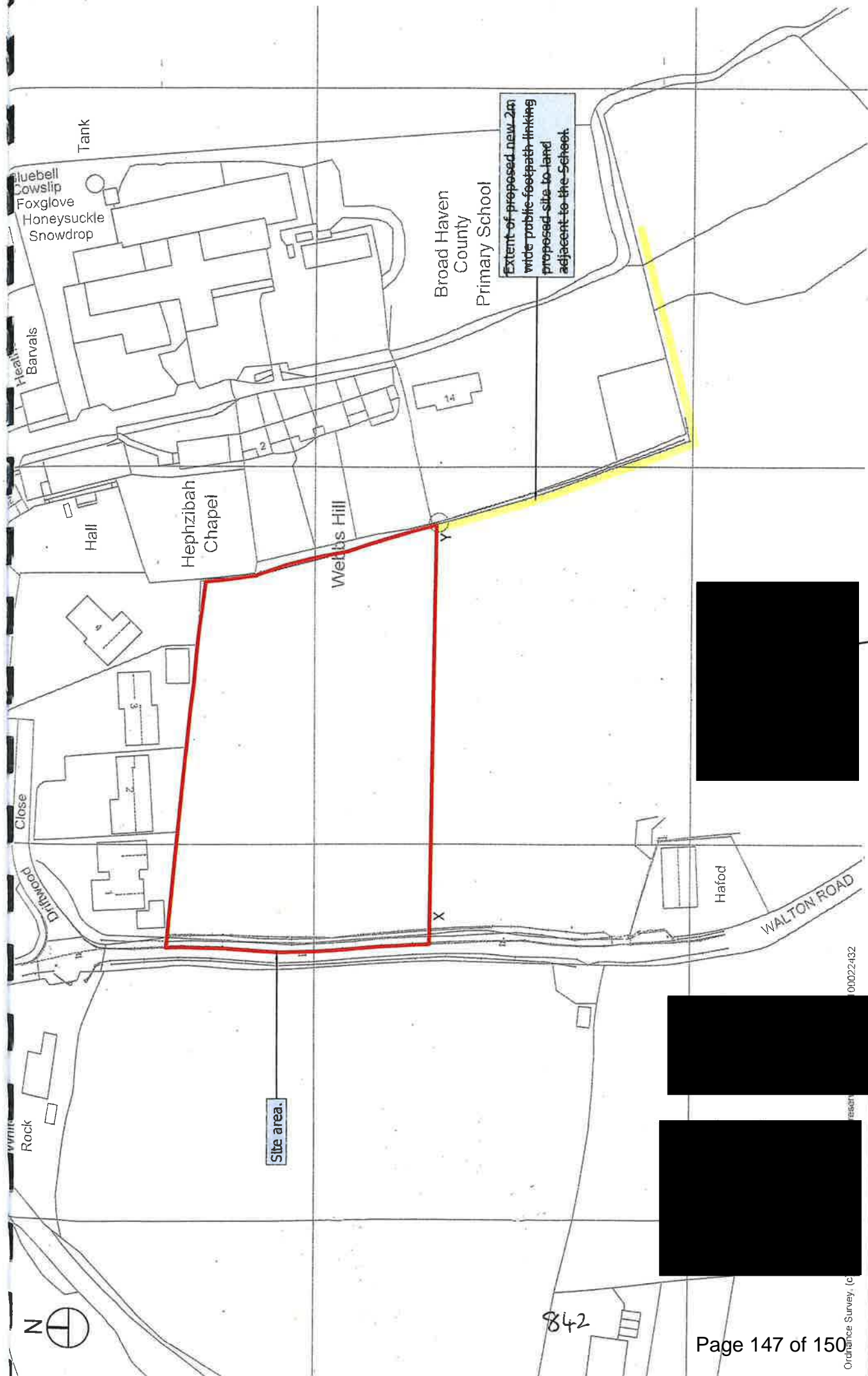
[REDACTED]

Witness' name in full

[REDACTED]

Address

[REDACTED]



Extent of proposed new 2m wide public footpath-linking proposed site to land adjacent to the School.

Site area.

Status: LEGAL

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rev date description

by Drawn: CSM

Client: Waterstone Homes

Project: Walton Road, Broad Haven.

Title: Conditional Contract Plan.

Ref: 2219/200

Checked: CTW

Date: Apr. 2017

Scale: 1:1250 (A4)

Rev: 1

spring

Unit 3 Chapel Barns | Merthyr Mawr
Bridgend | CF32 0LS | 01656 659287

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Ordinance Survey, (c)

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