CHURCH VIEW

DATED 10th January 1994~~5~~

THE HAMPSHIRE VOLUNTARY HOUSING SOCIETY

AND

HART DISTRICT COUNCIL

SECTION 106 AGREEMENT
Town and Country Planning Act, 1990
Relating to:-
Land at South Warnborough for Social Housing

C C Herbert
Solicitor to the Council
Hart District Council
Civic Offices
Harlington Way
Fleet
Hants GU13 8AE

AGREEMENTS/DC-4-168

THIS AGREEMENT is made the 10th day of January One thousand nine hundred and ninety ~~four~~ five B E T W E E N THE HAMPSHIRE VOLUNTARY HOUSING SOCIETY of 6 St. Clement Street Winchester in Hampshire (hereinafter called "the Society") of the first part and HART DISTRICT COUNCIL of Civic Offices Harlington Way Fleet in Hampshire (hereinafter called "the Council') of the second part

W H E R E A S

(1) The Society is the beneficial owner in fee simple of the Property free from encumbrances

(2) The Council is in respect of the said Land the District Planning Authority for the purposes of the Town and Country Planning Act, 1990 as amended (hereinafter called "the Act")

(3) The Council has adopted the local plan which (inter alia) provides that in certain circumstances the development of housing to meet particular long term local needs may be permitted

(4) The Society is desirous of erecting upon the said land six units more particularly described in Planning Application HDC 23575 (hereinafter called "the Development") and the Council is disposed to grant planning permission provided that the Development is regulated in the manner hereinafter appearing

THIS DEED WITNESSES :-

1. Defined Terms The following terms in this Agreement shall have the following meanings unless the context requires otherwise :-

1.1 'Building Contract' means a contract to be entered into by the Society for the carrying out of the Development to a standard acceptable to the National Housebuilders Confederation

1.2 'Building Contractor' means the person employed under the Building Contract

1.3 'Building Works' means the building works to be carried out under the Building Contract

1.4 'Practical Completion' means the practical completion of the Building Works or of any block of Units in accordance with the Building Contract and references to 'the date of Practical Completion' are to the date on which the certificate of Practical Completion is issued by the Employer's Agent in accordance with the terms of the Building Contract

1.5 'the Property' means the land at South Warnborough, Hampshire shown edged red on the annexed plan

1.6 "Requisite Consents' has the meaning assigned to it by Clause 6.3

1.7 'Unit' shall mean a unit of housing accommodation constituting a separate unit within the Development together with its curtilage and any parking space

1.8 "Perpetuity Period" means the period of 80 years commencing with the date hereof

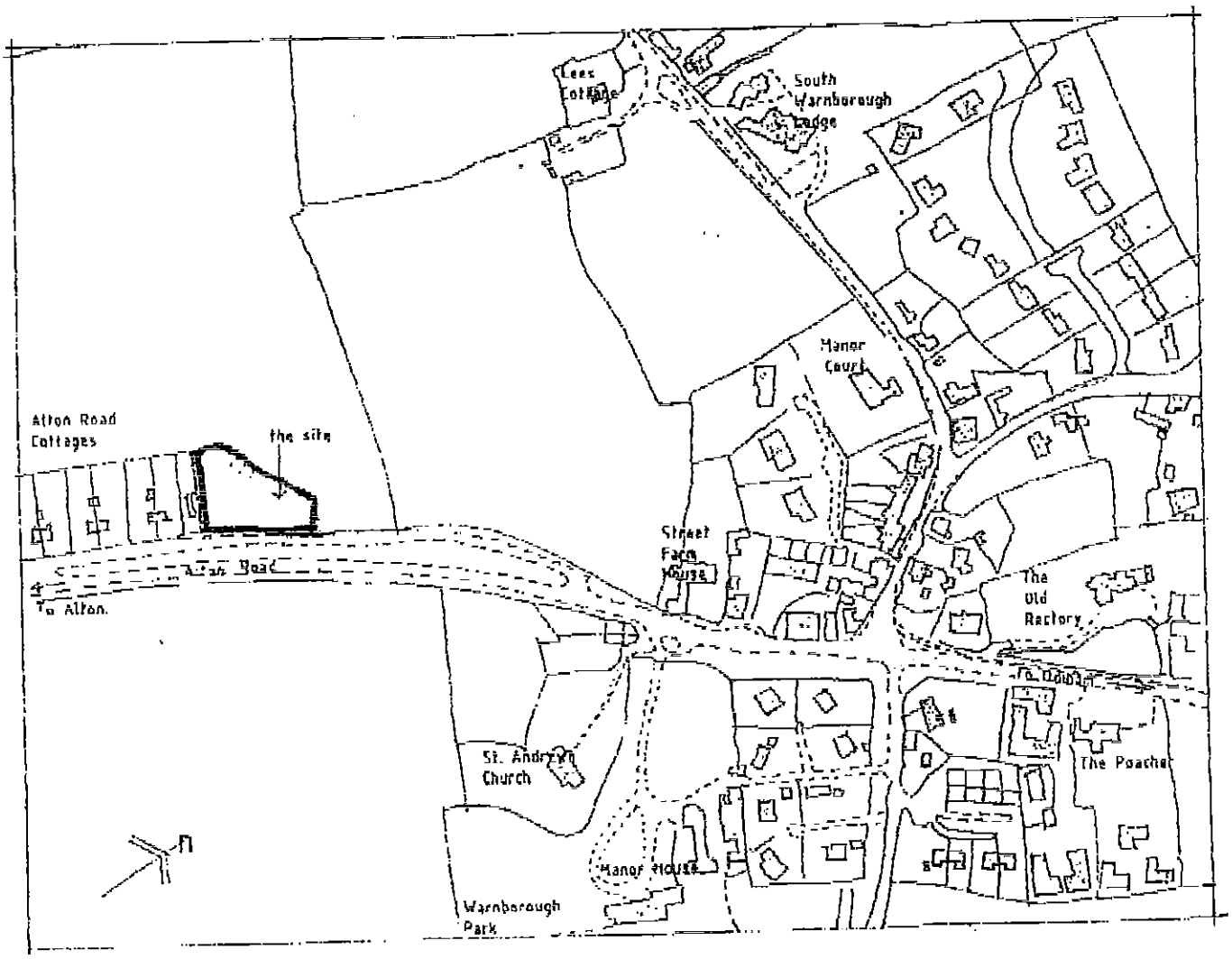
2. Interpretation

2.1 Reference to a clause are references where the context so admits to a clause in this agreement

2.2 The clause headings in this agreement are for ease of reference only and shall not be taken into account in the construction or interpretation of the clause to which they refer

2.3 Words importing the singular meaning where the context so admits include the plural meaning and vice versa

2.4 Words of the masculine gender include the feminine and neuter genders and words denoting natural persons include corporations and firms and all such words shall be construed interchangeably in that manner


Lees Cottage
South Warnborough Lodge
Manor Court
Alton Road Cottages
the site
Street Farm House
Alton Road
To Alton
The Old Rectory
To Odiham
St. Andrew Church
The Poacher
Manor House
Warnborough Park

2.5 Words denoting an obligation on a party to do any act matter or thing include an obligation to procure that it be done and words placing a party under a restriction include an obligation not to permit infringements of that restriction

2.6 All references to legislation are to that legislation as from time to time amended or re-enacted

2.7 References to the Council or the Society shall include their successors in title

3. This Agreement constitutes a Planning Obligation for the purposes of Section 106 of the Town and Country Planning Act, 1990 as amended by the Planning and Compensation Act, 1991 and it is a Planning Obligation enforceable by the Council entered into in respect of the said Land by the ~~Owner~~ Society whose interest in the said Land is detailed above

4. This Agreement is made pursuant to Section 106 of the Act (as amended) Section 33 of the Local Government (Miscellaneous Provisions) Act, 1982 and Section 111 of the Local Government Act, 1972

5. The Society hereby covenant with the Council not to permit the occupation of any part of the Development otherwise than strictly in accordance with the procedures set out in the following Clauses

6. <u>Development of the Site</u>

6.1 The Society shall as soon as practicable after the transfer and subject to all Requisite Consents being obtained enter into the Building Contract and endeavour to procure Practical Completion of all the Units within two years of the date of this agreement subject to this period being extended commensurately with any extension of time granted to the Building Contractor under the Building Contract or as may be necessary should there be circumstances beyond the the Society's control which effectively prevent completion within this period

6.2 The Society will apply for and use all reasonable endeavours to obtain all Requisite Consents

6.3 The Requisite Consents are those permissions consents approvals licences certificates and permits in legally effectual form as may be necessary lawfully to commence carry out maintain and complete the Development including (but without limitation) :-

6.3.1 planning permission and approval of reserved matters and any further details

6.3.2 building regulations consent and bylaw approval

6.3.3 the requirements of all competent authorities regulating the Development

6.3.4 the consents of all persons having interests or rights in or over the Site who by the lawful exercise of their powers in the absence of such a consent could prevent or impede the carrying out or progress of the Development

6.4 The Society will provide the Council with any information which may be requested concerning the progress of the Building Works and the compliance of the Society with the obligations contained within this Agreement

6.5 The Society will enforce the defects liability provisions in the Building Contract and/or as appropriate under the NHBC scheme

7. Maintenance of the Property

7.1 The Society shall remain responsible so as to ensure that any landscaped areas or open space shall be laid out and planted in accordance with the requirements of the Local Planning Authority. Such landscaping to be carried out and completed as soon as reasonably practicable and if not done sooner forthwith on completing the construction of the Units

7.2 Thereafter to maintain the said landscaping areas and open space to a standard acceptable to the Council

7.3 To provide a boundary enclosure around the property as provided for by the conditions to any planning consent and thereafter to maintain at the expense of the Society

8. Designation of Units The Society will give to the Council not less than six weeks prior written notice of the Practical Completion of each Unit such notice to be addressed to the Director of Operations

9. Use of Assured Tenancy Units

9.1 The Society and the Council hereby mutually agree as follows :-

(A) That the units shall at all times be let and managed by and in accordance with the charitable objects of the Society and its current published housing waiting list and allocation system or by and in accordance with similar objects and published documents of any other registered Housing Association

(B) That the Society shall upon completion of the development and at all times thereafter allocate each unit comprised therein to a person

(i) who is considered by the Society to be in need of such accommodation and to be unable to afford housing accommodation on the open market (whether by renting or purchasing) within the Parish of South Warnborough (being a Parish within the administrative area of the Council) and

(ii) who has a strong local connection with the said Parish of South Warnborough and for the purposes of this Deed a person shall be taken to have a strong local connection with that Parish if :-

(a) he was ordinarily resident there for a continuous period of not less than 10 years ending with the date of his application to the Society for housing accommodation; or

(b) he has resided there for not less than 10 years prior to the date of such application being made and another member of his family actually resides there at that date; or

(c) he has a readily demonstrable need to reside there by reason of his current employment there PROVIDED THAT such employment has been continuous for a period of not less than 5 years ending with the date of such application; or

(d) he has a demonstrable need to reside there either to support or to be supported by another member of his family who has resided there for a continuous period of not less than 10 years ending with the date of such application

(C) That if within a reasonable time of any unit comprised in the development becoming available for occupation whether upon practical completion of the development or at any time thereafter the Society (having first consulted the Council's Chief Housing Officer for the time being) is unable to fill any such vacancy arising in accordance with paragraph (B) of this clause then the Society shall allocate (but only with the prior written approval of the said Chief Housing Officer) any such vacant unit to a person who falls within the criteria set out in sub-paragraph (i) of paragraph (B) of this clause and who has a close association with the Parish of South Warnborough even though that person does not satisfy the criteria set out in sub-paragraph (ii) of paragraph (B) hereof

(D) That if within a reasonable time of any unit comprised in the development becoming available for occupation whether on practical completion of the development or at any time thereafter the Society (having first consulted the Council's Chief Housing Officer for the time being) is unable to fill any such vacancy arising in accordance with paragraphs (B) or (C) of this clause then the Society shall allocate any such vacant unit to a person :-

(i) who is considered by the Society to be in need of such accommodation and to be unable to afford housing accommodation on the open market (whether by renting or purchasing) within either of the Parishes of Long Sutton and Greywell (being Parishes within the administrative area of the Council) and

(ii) who has a strong local connection with any of those Parishes and for the purposes of this Deed a person shall be taken to have a strong local connection with any of the said Parishes if he satisfies the criteria set out at (a) to (d) inclusive of sub-paragraph (ii) of paragraph (B) hereof except that references therein to the Parish of South Warnborough shall be read and construed as references to the Parishes of Long Sutton and Greywell

(E) That if within a reasonable time of any unit comprised in the development becoming available for occupation whether on practical completion of the development or at any time thereafter the Society (having first consulted the Council's Chief Housing Officer for the time being) is unable to fill any such vacancy arising in accordance with paragraphs (B) (C) or (D) of this clause then the Society shall allocate any such vacant unit to a person :-

(i) who is considered by the Society to be in need of such accommodation and to be unable to afford housing accommodation on the open market (whether by renting or purchasing) within either of the Parishes of Odiham or Crondall (being Parishes within the administrative area of the Council) and

(ii) who has a strong local connection with either of those Parishes and for the purposes of this Deed a person shall be taken to have a strong local connection with either of the said Parishes if he satisfies the criteria set out at (a) to (d) inclusive of sub- paragraph (ii) of paragraph (B) hereof except that references therein to the Parish of South Warnborough shall be read and construed as references to the Parishes of Odiham and Crondall

(F) That if within a reasonable time of any unit comprised in the development becoming available for occupation whether on practical completion of the development or at any time thereafter the Society (having first consulted the Council's Chief Housing Officer for the time being) is unable to fill any such vacancy arising in accordance with paragraphs (B) (C) (D) or (E) hereof then the Society may with the consent of the Council (such consent not to be unreasonably withheld) allocate any such vacant unit to any person who satisfies the criteria set

out in sub-paragraph (i) of paragraph (B) or sub-paragraph (i) of paragraph (D) of this clause hereof SAVE THAT preference shall be given by the Society to such person ordinarily resident within the administrative area of the Council

9.2 IT IS FURTHER MUTUALLY HEREBY AGREED by and between the parties hereto that for the purposes of Clause 9.1 hereof a person shall be a member of another's family if he or she (as the case may be) is the spouse mother father sister brother daughter son or grandparent of such person

10. The Society will forthwith complete a Nomination Agreement with the Council in the form annexed hereto on their taking an interest in the property sufficient for the Society to let a unit

11. Notices and Notifications Any notice to be given by one part to the other under this agreement shall be made in writing by letter or facsimile and if by first class post shall be deemed to be received two business days after posting and if by facsimile shall be deemed to be received when sent

12. Assignment of a Party's Interest in this Agreement No party shall assign or dispose of its interest under this agreement without the written consent of the other party such consent not to be unreasonably withheld or delayed

13. Agreement not to Constitute a Partnership This agreement shall not constitute or be deemed to constitute a partnership in any manner whatsoever

14. Council not to be Guarantor for Society

14.1 The Council shall not be deemed by virtue of its being a party to this agreement to be a guarantor for the performance or observance of any obligations entered into by the Society with third parties in pursuance of this agreement

14.2 Subject as aforesaid each party shall make advice and assistance available to the other to facilitate the objects and performance of this agreement without prejudice to or limitation of the Council's powers duties rights and obligations statutory contractual or otherwise

15. Dispute

15.1 Where any dispute arises between the parties as to the interpretation or operation of the provisions of this agreement such dispute shall be submitted for determination by an expert

15.2 The expert shall be appointed by the parties jointly or if they cannot or do not agree on the appointment by the President (or other acting senior officer for the time being) of the Royal Institution of Chartered Surveyors on the request of either party

15.3 A person so appointed shall act as an expert and not as an arbitrator

15.4 the expert so appointed shall afford the parties the opportunity to make written representations to him

15.5 The experts decision shall be final and binding

15.6 The fees and expenses of the expert including the cost of his appointment and the parties' own costs with respect to the determination of the issue by the expert shall be borne between the parties as the expert may determine

16. Costs

16.1 The Society will on completion of this agreement pay the Council's costs in connection therewith not exceeding Four Hundred Pounds (£400.00) plus VAT

16.2 The Society shall be liable for all costs expenses liabilities and damages howsoever arising under the Building Contract or any other matter relating to or arising from the Society's obligations under this agreement

IN WITNESS whereof the Council and the Society have caused their respective Common Seals to be affixed to this Deed the day and year first before written

THE COMMON SEAL of
HART DISTRICT COUNCIL
was hereunto affixed
in the presence of :-

Member of the Council

Chief Executive

THE COMMON SEAL of
THE HAMPSHIRE VOLUNTARY
HOUSING SOCIETY was
hereunto affixed in
the presence of :-

Member of Sealing Committee x

Member of Sealing Committee x