

Moncrieff, Evelyn

From: Gedney, David
Sent: 12 March 2015 14:38
To: _planningadvice
Subject: Ref H11-0505-14 - Planning Obligation - 94 London Road, Long Sutton - Viability Assessment (SH008.469)
Attachments: certified true copy s106.pdf

Please scan – S106 agreement

David Gedney | Senior Planning Officer | South Holland District Council
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From: Jacqui Berridge [<mailto:Jacqui.Berridge@lincolnshire.gov.uk>]
Sent: 11 March 2015 14:15
To: Gedney, David; Wilson, Catherine; Fidler, Richard
Subject: Planning Obligation - 94 London Road, Long Sutton - Viability Assessment (SH008.469)

Dear All

The council has now completed a section 106 agreement relating to planning application reference H11-0505-14

Dave – provided there is nothing else outstanding can you please now issue the planning permission. Can you also arrange for a copy of the completed agreement to be included at part II of the planning register.

Catherine – can you please ensure that the agreement is registered in the local land charges register and let me know when this has been done. The agreement needs to be registered against the whole of the land edged red on the plan attached to the agreement MINUS plot 9, which is shown on the “Site plan” attached to the back of the agreement. As usual, any queries please let me know.

Richard – can you please ensure that the agreement is monitored closely, though this is a site upon which I believe the AH contribution provisions no longer apply and the developer may ultimately submit a further application to remove the agreement in due course. They wanted it completing, notwithstanding the recent changes in the AH contributions, as they were desperate to complete on the plots sales.

Many thanks

Jacqui Berridge
Legal Services Lincolnshire
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SPALDING
Lincs PE11 2XE

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LEGAL SERVICES LINCOLNSHIRE

DEED

made under Section 106 of the Town and Country
Planning Act 1990

between

SOUTH HOLLAND DISTRICT COUNCIL

and

D & R PROPERTY SERVICES LIMITED

and

SECURE TRUST BANK PLC

relating to the development of land at London Road, Long
Sutton

Certified as a True Copy

Legal Services Lincolnshire

THIS DEED is made the 4th day of March Two thousand and fifteen

BETWEEN :-

(1) **SOUTH HOLLAND DISTRICT COUNCIL** of Council Offices Priory Road Spalding in the County of Lincoln ("the Council")

(2) **D & R PROPERTY SERVICES LIMITED** (company registration number 06626752) whose registered office is situate at 87 Park Road Peterborough in the County of Cambridge ("the Owner")

(3) **SECURE TRUST BANK PLC** (company registration number 00541132) whose registered office is situate at One Arleston Way Solihull B90 4LH ("the Mortgagee")

RECITALS

- A. The Council is the local planning authority for the purposes of the Act for the area in which the Land is situated *except plot 9 which is in the approximate position shown on the additional plan attached to this Agreement and marked "Site Plan"*
- B. The Owner is the freehold owner the Land *"Site Plan"*
- C. The Mortgagee is mortgagee of the Land/under a Debenture dated 24 October 2014 *except plot 9 which is in the approximate position shown on the attached additional plan attached to this Agreement and marked "Site Plan"*
- D. The Planning Permission (Previous) was granted for the Development by the Council subject to conditions including the following conditions:

"2. Before any of the permitted dwellings are occupied there shall be submitted to and approved in writing by the Local Planning Authority a scheme for the provision of a minimum of one third of the total residential units as affordable housing on the site to meet local housing needs. The scheme shall identify how the affordable housing is to be provided, whether by means of a registered social landlord or otherwise, the location of each affordable unit and the timing of delivery and arrangements for ensuring that the affordable housing to be provided meets identified local housing need"

- E. In view of concerns about the financial viability of the Development the Owner has submitted to the Council the Application for the Development (Amended)
- F. The Council has agreed to grant planning permission for the Development (Amended) subject to the prior completion of this Deed which will ensure that the viability of the Development (Amended) will be reassessed prior to

completion of the Development (Amended) with a view to assessing whether an Affordable Housing Contribution shall be made and the parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed

- G. This Deed is made pursuant to Section 106 of the Act
- H. The covenants restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the 1990 Act and are enforceable by the Council as local planning authority
- I. The parties hereto agree that the terms of this Deed meet the requirements of regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended)

NOW THIS DEED WITNESSES AS FOLLOWS

1. DEFINITIONS

For the purposes of this Deed the following expressions shall have the following meanings

Act	means the Town and Country Planning Act 1990 (as amended)
Affordable Housing	means housing provided to eligible households whose needs are not met by the market and as defined in Annex 2 of the National Planning Policy Framework (NPPF) dated March 2012 or any amendment or supplemental guidance thereto
Affordable Housing Contribution	means (subject to clause 12) a financial contribution equivalent to 50 per cent of the amount by which the Profit Margin exceeds 17.5% of the Gross Sales Receipts from the sale of the Dwellings capped at a total sum equivalent to • 33.3% of the overall Dwellings delivered on the Land (being the percentage by which the Affordable Housing is under-provided on the Land) • multiplied by £53,995 per Dwelling (being the contribution per dwelling sought by the Council where Affordable Housing is provided off-site through financial contributions) and the figure of £53,995 shall be Index Linked
Application	means the application dated 11 June 2014 made under section 73 of the Act for the Development (Amended) which application has been allocated the Council's reference number H11-0505-14
Completed	means in relation to each Dwelling either that

	• a final certificate or a completion certificate has been issued under the Building Act 1984 (or successor legislation) or regulations made thereunder or • (where no final certificate or completion certificate has been requested) the Dwelling is ready for Occupation
Development	means the erection of 9 dwellings and associated works on the Land as approved under planning permission H11-0132-11 but subject to modification of the brickwork previously approved under the said planning permission H11-0132-11
Development (Amended)	means the Development but without complying with condition 2 of the Planning Permission (Previous) relating to the provision of Affordable Housing
Development Costs	means the costs (including all finance and interest charges) reasonably and properly incurred by the Owner in the construction of the Development (Amended) and disposal of the Dwellings excluding any taxes as approved by the Valuer
Dwelling	means any dwelling (including a house bungalow flat or maisonette) to be constructed as part of the Development (Amended)
Expert	means such person as may be appointed to act as an expert under the dispute provisions contained in clause 11
Gross Sales Receipts	means the total consideration in money or moneys worth received for the sale of each Dwelling PROVIDED THAT where any Dwelling has not yet been sold the anticipated sale price for that Dwelling shall be included as approved by the Valuer
Index Linked	means that the figure of £53,995 referred to in the definition of Affordable Housing Contribution above shall be increased in line with any change in the tender price index (as produced by the Building Cost Information Service of the Royal Institution of Chartered Surveyors) or such other published index of building costs as may be substituted therefor from the date hereof to the date of payment and reference to the Affordable Housing Contribution shall be adjusted to take account of any such change
Interest	means interest at 4% per cent above the base lending rate of the Bank of England from time to time
Land	means the land London Road, Long Sutton against which this Deed may be enforced as shown edged red on the Plan and comprising land registry title LL94639
Occupation	means beneficial occupation for the purposes permitted by the Development (Amended) and shall not include daytime occupation by persons involved in the

	construction of the Development (Amended) or insofar as such uses are ancillary to the construction of such Development (Amended) the use of finished buildings for sale purposes for use as temporary offices or for the storage of plant and materials and "Occupy" and "Occupied" shall be construed accordingly
Open Book Analysis	means a review of the Gross Sales Receipts and the Development Costs with supporting documentation prepared and certificated by the Owner as complete and approved and either verified as accurate and reasonable or adjusted (as appropriate) by the Valuer or the Expert (as appropriate) enabling the Valuer or the Expert (as appropriate) to identify the Profit Margin and to calculate the Affordable Housing Contribution (if any) Where any amounts of income value or costs are not realised by the date of the Open Book Analysis reasonable estimates thereof shall be provided and approved by the Valuer or the Expert (as appropriate) and any items not attributable wholly to the Gross Sales Receipts or Development Costs of the Dwellings shall be reasonably apportioned
Plan	means the plan attached to this Deed
Planning Permission (Previous)	means the planning permission granted under section 73A of the 1990 Act for the Development allocated the Council's reference number H11-0302-14 and granted by the Council on 15 May 2014
Planning Permission	means the planning permission to be allocated the Council's reference number H11-0505-14 to be granted by the Council pursuant to the Application subject to the completion of this Deed
Profit Margin	means the Gross Sales Receipts less the Development Costs as determined in accordance with the Open Book Analysis
Valuer	means a valuer agreed in writing by the Council and the Owner employed by the valuation office agency or an expert recommended by the Homes and Communities Agency or such other suitable and independent body approved in writing by the Council
Working Day	means any day from Monday to Friday (inclusive) other than Christmas Day Good Friday and any statutory Bank or public holidays or holidays agreed by either party for all employees of that party

2. CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa

- ed) or insofar
of such
for
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise
- 2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instrument, orders, plans, regulations, permissions and directions for the time being made issued or given under that Act or deriving validity from it
- 2.6 The expression "the Owner" and "the Mortgagee" shall include their successors in title and assigns and (where the Owner is a company) any successor company arising from renaming amalgamation reorganisation merger division reconstruction or similar
- 2.7 The expression "the Council" shall include its successors as the local planning authority for the area in which the Land is situated

3. CONDITIONALITY

- 3.1 This deed is conditional upon the grant of planning permission for the Development (Amended) save for the provisions of paragraph 1 of the First Schedule which shall come into effect immediately upon completion of this Deed

4. THE OWNER'S COVENANTS

- 4.1 The Owner covenants with the Council as set out in the First Schedule

5. THE COUNCIL'S COVENANTS

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

6. MISCELLANEOUS

- 6.1 The Mortgagee hereby consents to the execution of this Deed and acknowledges that subject as herein provided the Land shall be bound by the restrictions and obligations contained in the First Schedule hereto
- 6.2 Nothing herein contained or implied shall give or be construed as giving rights privileges powers or enforceability other than to the parties executing this document and their successor (if any) as defined herein and the provisions of the Contract (Rights of Third Parties) Act 1999 and any benefits or rights which could arise therefrom are otherwise expressly excluded to the intent that no third party within the meaning of that Act shall have any rights of enforcement in respect of any matter herein contained

- 7.1 No waiver breach
- 6.3 This Deed shall be registrable as a local land charge by the Council
- 6.4 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 on behalf of the Council by the Planning Manager
- 6.5 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed
- 6.6 Insofar as any clause or clauses 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
- 6.7 This deed shall cease to have effect (insofar only as it has not already been complied with) if the planning permission for the Development (Amended) the subject of the Application shall be quashed removed or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure
- 6.8 Save for any requirement to provide information forming part of the Open Book Analysis which shall continue to apply until any Affordable Housing Contribution has been paid or the Open Book Analysis as approved by the Valuer or the Expert (as appropriate) shows that the Affordable Housing Contribution is nil 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 but without prejudice to liability for any subsisting breach arising prior to parting with such interest
- 6.9 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 planning permission for the Development (Amended) the subject of the Application) granted (whether or not on appeal) after the date of this Deed
- 6.10 No obligations or liabilities arising under this Deed shall be enforceable against:
- 6.10.1. purchasers lessees or occupiers of the Dwellings nor the mortgagee or mortgagee in possession of any such persons or receiver appointed by a mortgagee or mortgagee in possession of such persons; or
- 6.10.2. a statutory undertaker after the transfer of statutory apparatus and/or any land upon or in which the statutory apparatus is situated by the Owner to that statutory undertaker

7. WAIVER

- 7.1 No waiver (whether expressed or implied) by the Council or Owner 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 or the Owner from enforcing any of the relevant terms or condition or for acting upon any subsequent breach or default

8 VAT

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

9. SERVICE OF NOTICE

- 9.1 Any notices requests demands or other written communications pursuant to this Deed shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party PROVIDED THAT if the said notice request demand or other written communication is received prior to 10.00am on any Working Day the time periods for response laid out in this Deed shall commence from that Working Day whereas if the transmission is received after 10.00am the aforesaid time period shall commence from the following Working Day.

10. JURISDICTION

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

11. DISPUTE

- 11.1 Any dispute between the parties arising as to the true effect or meaning of this Deed or the implementation of any of the provisions contained hereunder or any matters arising from this Deed may be referred to a person to be agreed upon by the parties who shall act as an expert or, failing agreement within twenty (20) Working Days after any such party has given to the other a written request to concur in the appointment of an expert, a person to be appointed on the request of either party by the President of the Law Society of England and Wales or the President of the Royal Institute of Chartered Surveyors as appropriate for the time being. The Expert shall receive submissions from the parties within twenty (20) Working Days of his appointment and shall undertake as a condition of his appointment to issue his decision within forty (40) Working Days of the date of his appointment

- 11.2 The Expert shall be of at least 10 years post qualification experience

- 11.3 The decision of the Expert including any decision as to costs (except in relation to any dispute referred by the Owner or the Council in relation to any approval or adjustment made by the Valuer arising from an Open Book Analysis where the costs shall be borne by the party that submitted the matter to the Expert) shall be final but where no decision as to costs is made each side shall bear their own costs

12. CALCULATION OF AFFORDABLE HOUSING CONTRIBUTION

- 12.1 The parties hereby acknowledge the percentage of the Profit Margin to be allowed prior to calculating the Affordable Housing Contribution (being 17.5%) contained within the definition of Affordable Housing Contribution but nothing herein provided shall prevent the Owner from submitting to the Valuer at the same time as the Owner submits to the Valuer the Open Book Analysis such additional information as the Owner considers appropriate to seek from the Valuer an adjustment to that 17.5% figure

PROVIDED THAT (a) in so doing the Owner also notifies the Council in writing that the Owner has sought such adjustment and (b) the costs of the Valuer in considering such adjustment are met in full by the Owner

AND where the Owner or the Council disputes any adjustment or non-adjustment of the Valuer given under this clause 12 the Owner or the Council may invoke the dispute provisions at clause 11 within 20 Working Days from the date of receipt of the Valuer's notification to the Owner and the Council of the adjustment or non-adjustment but where the dispute provisions are not so invoked by the Owner or the Council the determination by the Valuer of the percentage of the Profit Margin to be allowed prior to calculating the Affordable Housing Contribution shall be deemed to be accepted by the Owner and the Council

IN WITNESS whereof the parties hereto have executed this Deed on the day and year first before written

FIRST SCHEDULE

(The Owner's covenants)

The Owner hereby covenants with the Council as follows

GENERAL

1. to pay to the Council upon completion of this Agreement the reasonable administrative and legal costs of the Council incurred in relation to the negotiation and execution of this Agreement up to a maximum of £750
2. to give the Council immediate written notice of any change in ownership of any interest in the Land occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Land or unit of Occupation purchased by reference to a plan

AFFORDABLE HOUSING CONTRIBUTION

3. not to Occupy nor allow Occupation of more than eight (8) Dwellings (being 90% of the Dwellings authorised as part of the Development (Amended)) unless and until:
 - 3.1 the Owner has submitted the Open Book Analysis to the Valuer for approval or adjustment
 - 3.2 the Affordable Housing Contribution as approved or adjusted by the Valuer or (where the dispute provisions at clause 11 have been invoked) by the Expert has been paid to the Council or the Open Book Analysis as approved by the Valuer or the Expert (as appropriate) shows that the Affordable Housing Contribution is nil
 - 3.3 the Owner shall pay any Affordable Housing Contribution to the Council within 25 Working Days from the date of approval or adjustment of the Affordable Housing Contribution by the Valuer or the Expert (as appropriate) and where payment under this paragraph is late then the Owner shall in addition pay to the Council Interest from the date that payment is due to the date of payment

(a) AND IT IS ACKNOWLEDGED THAT where the Owner or the Council disputes any approval or adjustment of the Valuer given under this paragraph 3 the Owner or the Council may invoke the dispute provisions at clause 11 within 20 Working Days from the date of receipt of the Valuer's notification to the Owner and the Council of the approval or adjustment but where the dispute provisions are not so invoked by the Owner or the Council the calculation by the Valuer of the Affordable Housing Contribution shall be deemed to be accepted by the Owner and the Council

(b) nothing in this paragraph 3 shall prevent the Owner (being the developer and not a purchaser of a Completed Dwelling or Dwellings from the developer) from allowing Occupation of a Dwelling to persons whose only interest in the Dwelling is a tenancy agreement until such time as the Owner (being the developer) is able to sell the freehold or leasehold or commonhold (as appropriate) interest in that Dwelling to a third party and where this paragraph (b) applies such Occupation of such Dwelling shall not count towards the 90% Occupation figure detailed in this paragraph 3 but the Owner shall during such Occupation use reasonable endeavours to secure the transfer of the freehold or leasehold or commonhold interest in the said Dwelling to a third party and shall where requested by the Council provide to the Council evidence of such reasonable endeavours

4. In the event that the Owner fails to secure Occupation of all of the Dwellings authorised by the Development (Amended) and the Council has reason to believe that the Owner has no intention of securing Occupation of all of the Dwellings authorised by the Development (Amended) within a reasonable time being no earlier than three (3) years from the date of the Planning Permission then:
 - 4.1 the Council may require and the Owner shall submit to the Valuer within 10 Working Days of a request an Open Book Analysis in relation to those Dwellings which have been Occupied
 - 4.2 upon final approval or adjustment by the Valuer or the Expert (as appropriate) of the Open Book Analysis the Owner shall pay to the Council any Affordable Housing Contribution due within 25 Working Days of notification of such approval or adjustment and where payment under this paragraph is late then the Owner shall in addition pay to the Council Interest from the date that payment is due to the date of payment
 - 4.3 from the date of receipt of a request from the Council under paragraph 4.1 above the Owner shall not Occupy nor allow Occupation of any Dwellings which remain vacant until such time as the Open Book Analysis has been approved or adjusted by the Valuer and any contribution due under paragraph 4.2 has been paid.

AND IT IS ACKNOWLEDGED THAT where the Owner or the Council disputes any approval or adjustment of the Valuer given under this paragraph 4 the Owner or the Council may invoke the dispute provisions at clause 11 within 20 Working Days from the date of receipt of the Valuer's notification to the Owner and the Council of the approval or adjustment but where the dispute provisions are not so invoked by the Owner or the Council the calculation by the Valuer of the Affordable Housing Contribution shall be deemed to be accepted by the Owner and the Council

AND FOR THE AVOIDANCE OF DOUBT in the event that an Open Book Analysis is provided in accordance with this paragraph 4 this shall not discharge the requirements of paragraph 3 which shall continue to apply but

Developer
Owner)

with due credit being given for any part of the Affordable Housing Contribution already paid in accordance with this paragraph 4

5. The Owner shall provide to the Valuer and (where appropriate) the Expert such further information and evidence as he deems reasonably necessary to verify the accuracy or appropriateness of any information contained within any Open Book Analysis within 10 Working Days of demand
6. That except where any dispute provisions in clause 11 are invoked by the Owner or the Council the Owner shall pay the Valuer's costs in connection with each Open Book Analysis within 25 Working Days of demand either to the Council or to the Valuer direct as directed by the Council

SECOND SCHEDULE

(The Council's covenants)

The Council hereby covenants with the Owner to use the Affordable Housing Contribution paid to the Council by the Owner for the purpose of providing Affordable Housing within the administrative area of the Council

THE COMMON SEAL of the
SOUTH HOLLAND DISTRICT COUNCIL
was hereunto affixed in the presence of



Authorised signatory

SIGNED AS A DEED by
D & R PROPERTY SERVICES LIMITED
acting by a Director in the
presence of

Director

Signature of witness

Name (in BLOCK CAPITALS) ROBERT HENRY BOWKER

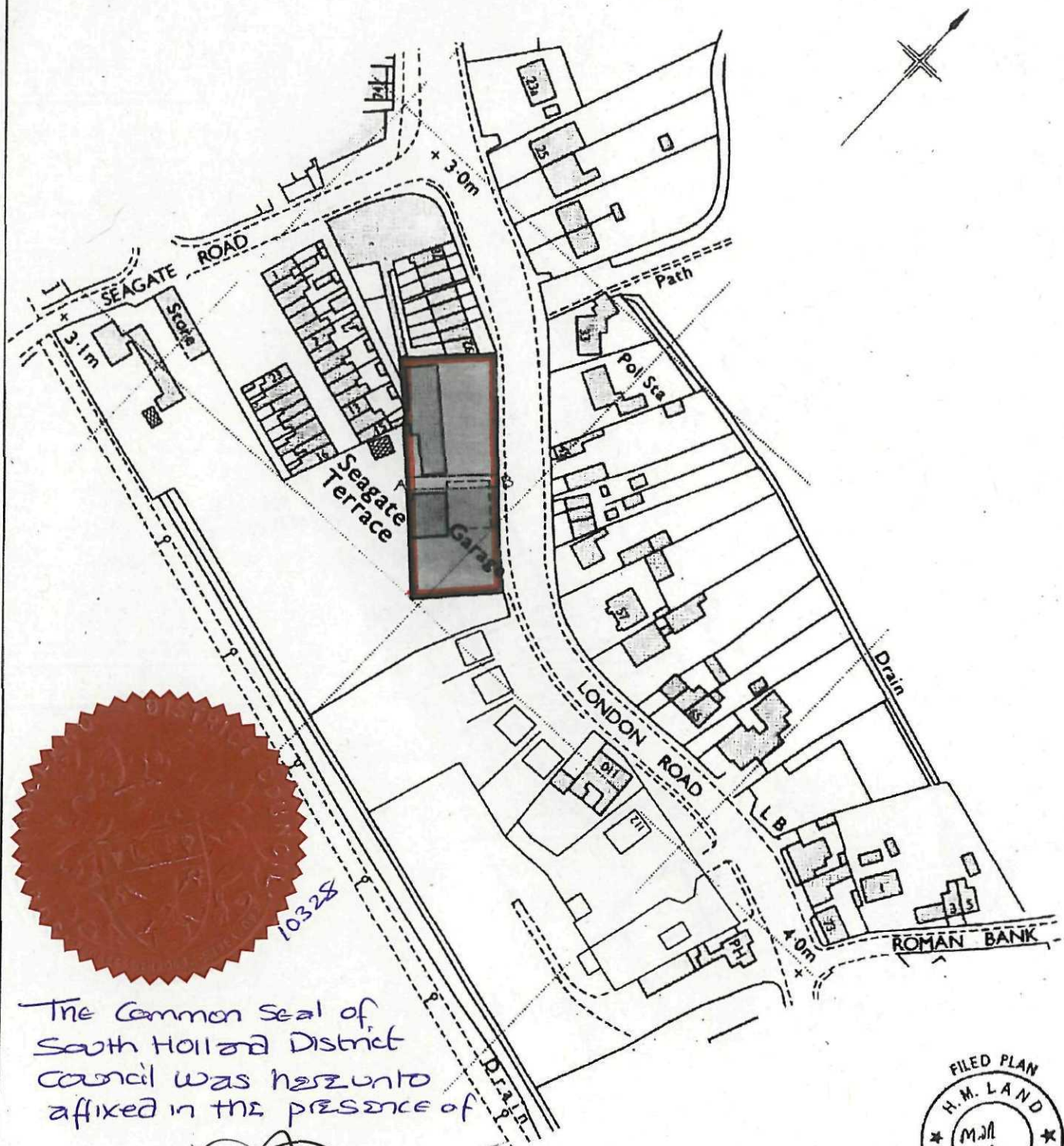
Address 61 High Street, Holbeach. Solicitor

EXECUTED AND DELIVERED as a
Deed by SECURE TRUST BANK PLC
acting by two Directors/Authorised Officers

Director/Authorised Officer

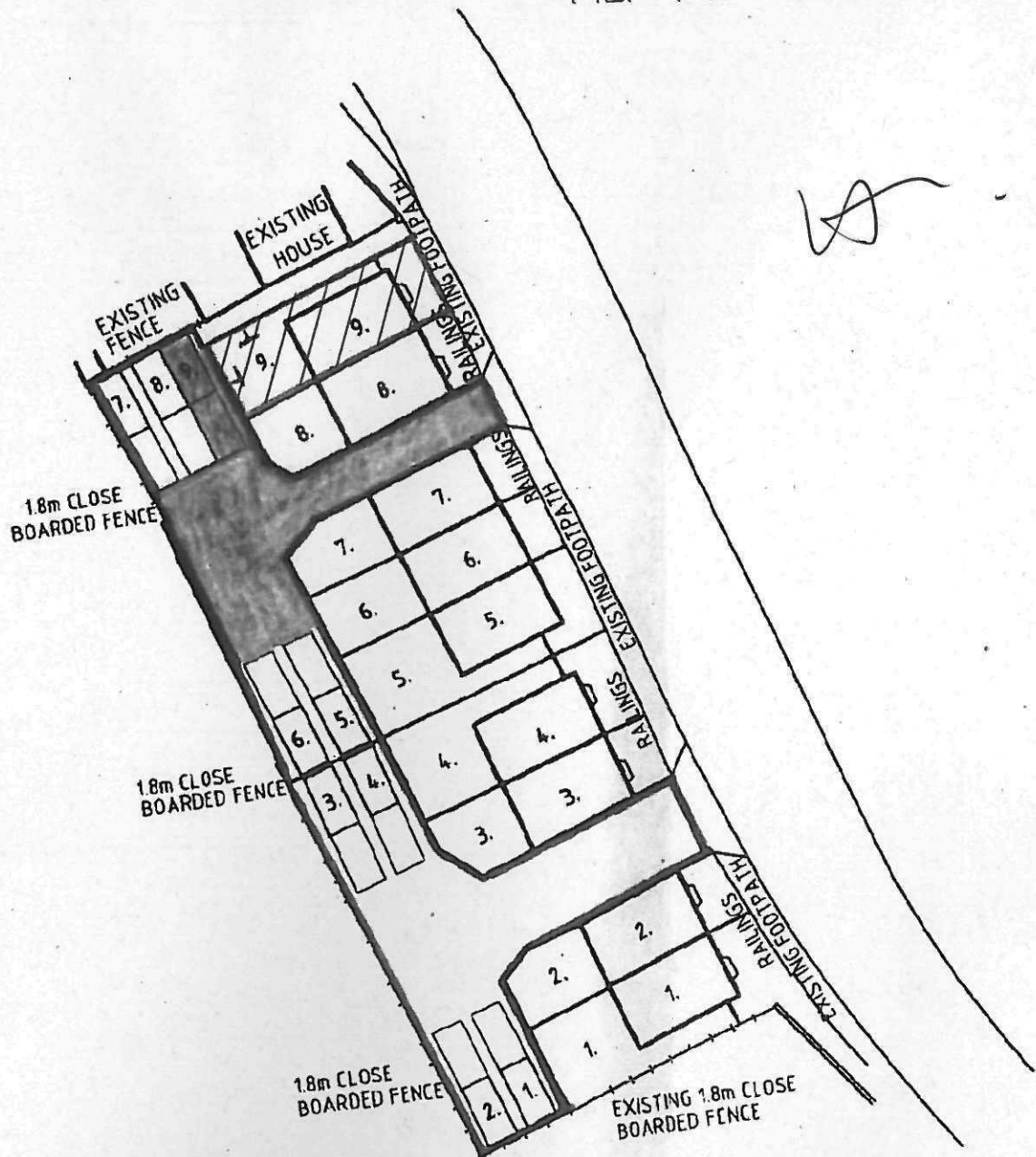
Director/Authorised Officer

H.M. LAND REGISTRY		TITLE NUMBER	
		LL94639	
ORDNANCE SURVEY PLAN REFERENCE	TF 4322	SECTION J	Scale 1/1250 Enlarged from 1/2500
COUNTY LINCOLNSHIRE	DISTRICT SOUTH HOLLAND	© Crown copyright 1988	



SITE PLAN ↑

Plot 9 is hatched black



SITE PLAN 1/500