

Examination of the Tunbridge Wells
Borough Local Plan

**Tunbridge Wells Borough Council
Hearing Statement**

**Matter 8: Meeting Housing
Needs (Policies H1, H2, H3,
H4, H5, H6, H7, H8, H9, H10,
H11 and H12)
Issue 5: Rural Exception Sites**

Document Reference: TWLP/031



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Matter 8 – Meeting Housing Needs (Policies H1, H2, H3, H4, H5, H6, H7, H8, H9, H10, H11 and H12)

Issue 5 – Rural Exception Sites

Inspector’s Question 1: [re. meeting ongoing local needs]

How will the Council ensure that housing permitted to meet local needs under Policy H5 remains available for such purposes thereafter?

TWBC response to Question 1

1. Provision of affordable housing specifically to meet local needs through rural exception sites is supported by NPPF paragraph 78 and the PPG [sub-section on Rural Exception Sites](#).
2. Occupancy of Rural Exception Sites is widely dealt with as part of a s106 Agreement linked to a planning permission. A local example of such an agreement is attached as Appendix 1. Although a little dated, it can be seen that the residential qualifications at paragraph 4.1 of the Schedule align closely with the proposed policy.
3. Reviewing the Local Plan’s coverage of this policy highlights that there is no reference to the use of s106 Agreements as the mechanism whereby eligibility criteria for rural exception sites are set out either in the policy or supporting text. On balance, it is agreed that this could usefully be added to the supporting text and be the subject of an Additional Modification. It is proposed that this be an addition to paragraph 6.345, such that it would read (with additional text underlined):

“Rural Exception Sites are small housing sites that will only be developed for housing that will remain affordable in perpetuity. They are normally used to provide homes for local people, or people that have local connections through work, family, and employment. Eligibility criteria, based on local connections, would be secured by a s106 Agreement.”

Appendices

Appendix 1: Example s106 Agreement



DATED 18th April 2013

**PLANNING OBLIGATION BY WAY OF UNILATERAL UNDERTAKING UNDER
SECTION 106 OF THE TOWN & COUNTRY PLANNING ACT 1990
RELATING TO LAND ON THE SOUTH SIDE OF BRENCHLEY ROAD
BRENCHLEY TONBRIDGE KENT**

by

**GERALD BARRINGTON MACINTOSH WILLIAMS, PAUL MACINTOSH
WILLIAMS & MARTIN BLUE MACINTOSH WILLIAMS**

and

TOWN AND COUNTRY HOUSING GROUP



Charles House
35 Widmore Road
Bromley Kent
BR1 1RW

Tel: 020 8768 7000
Fax: 020 8768 7045

Ref: AW/30215/281

2

THIS UNILATERAL UNDERTAKING is given this (8th day of April 2013 pursuant to Section 106 of the Town and Country Planning Act 1990 as amended ("the Act")

BY :

- (1) **GERALD BARRINGTON MACINTOSH WILLIAMS** of Marle Place, Marle Place Road, Brenchley, Tonbridge, Kent, TN12 7HS **PAUL MACINTOSH WILLIAMS** of Portobello, Hogtrough Lane, Winchelsea, East Sussex, TN36 4AF and **MARTIN BLUE MACINTOSH WILLIAMS** of 20 Rutland Terrace, Stamford, Lincolnshire, PE9 2QD, (**Owner**)

AND :

- (2) **TOWN AND COUNTRY HOUSING GROUP** (Company Number: 30167R) whose registered office is at Monson House, Monson Way, Tunbridge Wells, Kent, TN1 1LQ (**Association**).

TO : **TUNBRIDGE WELLS BOROUGH COUNCIL** of Town Hall Royal Tunbridge Wells Kent TN1 1RS ("the Council")

BACKGROUND

- (A) The Council is the local planning authority for the purposes of the TCPA 1990 for the area in which the Property is situated.
- (B) The Owner owns the Property.
- (C) The Association has the benefit of an agreement with the Owner for the sale and purchase of the Property and has by planning application number 11/03805 applied to the Council for planning permission to develop the Property by the erection of 7 residential dwellings for affordable housing comprising 1 No. 4-bed house, 2 No. 3-bed houses, 2 No. 2-bed houses and 2 No. 1-bed flats with a new access road and parking areas
- (D) The Council has by a decision notice dated 24th July 2012 refused the Planning Application
- (E) The Association has appealed to the Secretary of State for the Department for Communities and Local Government against the Council's decision (appeal reference APP/M2270/A/12/2187248/NWF) and the Owner and the Association are willing to give an undertaking to the Council to perform the obligations set out in this Unilateral Planning Obligation in the event of the appeal being allowed

AGREED TERMS

of 11/1/2013
as amended

1. **INTERPRETATION**

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

Affordable Housing Units: the seven residential units to be constructed on the Property pursuant to the Planning Permission being residential units forming part of the Development which shall meet as a minimum the essential items of the Homes and Communities Agency's (formally the Housing Corporation's) Design and Quality Standards 2007 and Code Level 3 Code for Sustainable Homes or the relevant Homes and Communities standards current at the time that grant funding from the Housing Corporation Homes and Communities Agency is secured.

Base Rate: the base lending rate of the Council's main bank at the time when the sums become due

Choice Based Letting Scheme: a scheme between the Council and Registered Providers of Social Housing who provide affordable housing for rent within the Council's area comprising arrangements for the priority allocation of such housing

Commencement of Development: the carrying out in relation to the Development of any material operation as defined by section 56(4) of the TCPA 1990 but disregarding for the purposes of this deed and for no other purpose, the following operations: demolition works; Property clearance; ground investigations; Property survey works; temporary access construction works; archaeological investigation; and erection of any fences and hoardings around the Property.

Commenced and Commences shall be construed accordingly.

Commencement Date: the date of Commencement of Development.

Contribution: the sum of £ 24,045.31 payable under the terms of this Agreement of which £15,847 shall be in respect of youth and adult recreation and £8198.31 shall be in respect of children's playspace

Council: TUNBRIDGE WELLS BOROUGH COUNCIL of Town Hall Royal Tunbridge Wells Kent, TN1 1RS

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

Head of Housing Services: the Head of Housing and shall be deemed to mean the officer for the Council from time to time holding that appointment or (if no officer holds that appointment) carrying out the duties of that appointment.

Homes and Communities Agency: the Homes and Communities Agency which shall include any successor to the Homes and Communities Agency in respect of the functions relevant to the Affordable Housing Provisions of this Unilateral Planning Obligation

Housing Register: the Housing Register maintained by the Council in accordance with the Housing Allocation Policy 2008 or the applicable replacement policy

Immediate Family: means mother father children over 18 brother or sister over 18

Index: means the All Items Index of Retail Price issued by the Office for National Statistics

Interest: means interest at the Base Rate

Neighbouring Parishes: the civic parishes of Horsmonden Capel and Lamberhurst and Pembury together with the town of Paddock Wood

Parish: the civic parish of Matfield and Brenchley

Plan: the plan attached to this deed.

Property: the freehold land against which this Unilateral Planning Obligation may be enforced being part of the piece or parcel of land known as Land on the South Side of Brenchley Road Brenchley Tonbridge Kent registered at H M Land Registry with Title Absolute under Title Number K964928 and shown edged red on the Plan

Planning Application: an application for planning permission registered by the Council on 9th January 2012 under reference number 11/03805

Planning Permission: the grant of the planning permission granted pursuant to the Planning Application and the subsequent appeal

Reasonable Endeavours: all those reasonable steps which a prudent and determined person or company acting in his or its best interests and anxious to achieve the stated objective would take (save where this Deed otherwise indicates)

Registered Provider of Social Housing: shall have the same meaning as in the Housing and Regeneration Act 2008 and shall be approved by the Council, such approval not to be unreasonably withheld

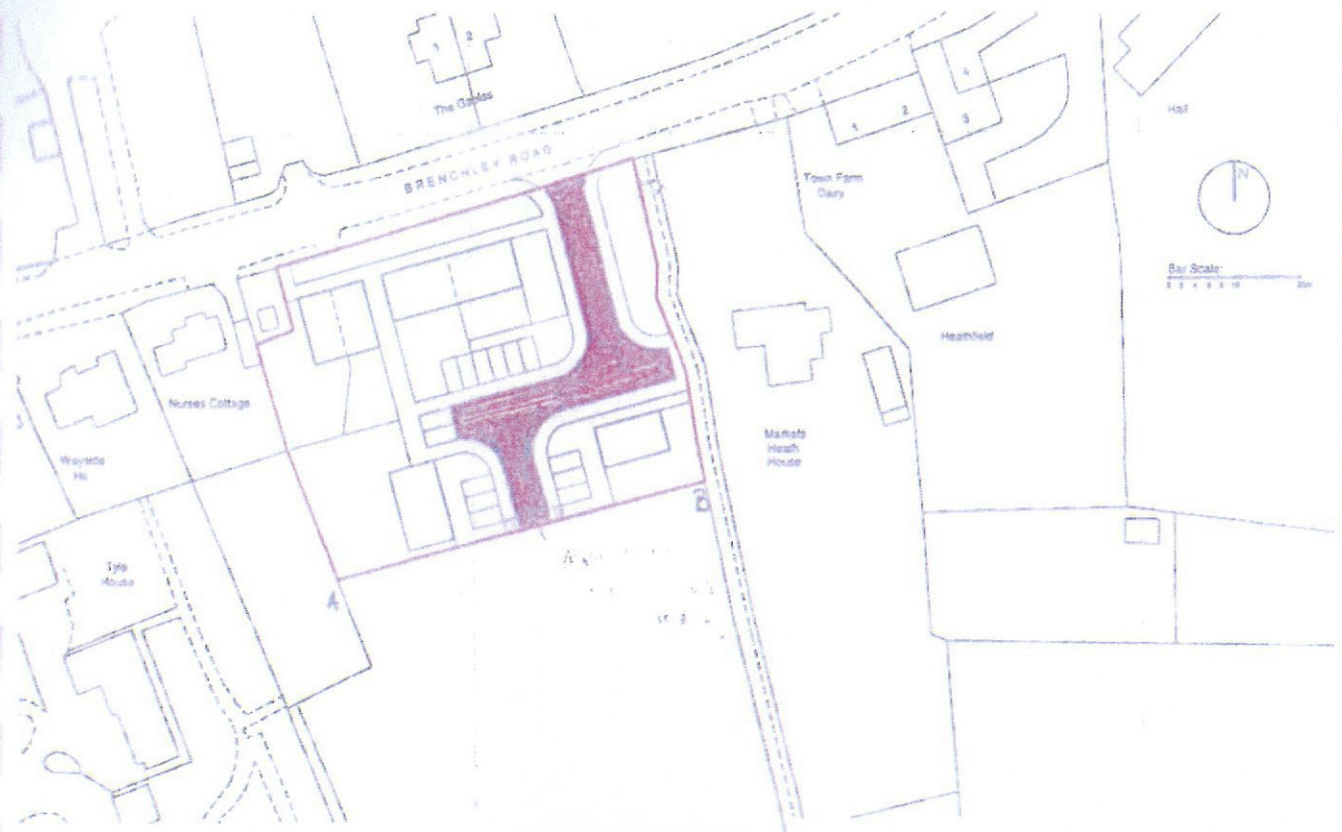
TCPA 1990: Town and Country Planning Act 1990.

Working Day: a day (other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

- 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.

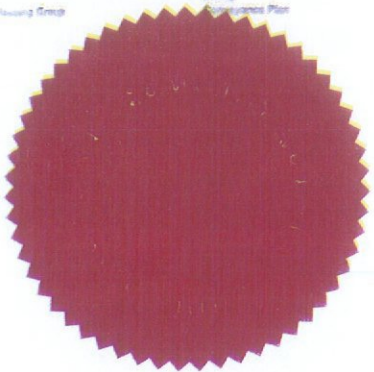
or sister over
tional

Area of 27.4.10.



Notes	Date	Drawn	Checked	Scale	Site No.	Rev
Local adjacent to Mafab Health Boundary Lines Sunshine 1922 No.		Mark and Geahy Housing Group	Approved Plan	1:500 @ A3	27.04.10	4585-0 05

5 Old Lodge Place, St Margerets, Northampton TN1 1PG
 T 0300 890 000 F 0300 890 000 or church@housing



- 1.7 ~~A reference to any party shall include that party's personal representatives, successors or permitted assigns and in the case of 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 amended, extended or re-enacted from time to time; provided that, as between the parties, no such amendment, extension or re-enactment shall apply to the deed to the extent that it would impose any new or extended obligation, liability or restriction, on, or otherwise adversely affect the rights of, any party.
- 1.9 A reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 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 agreement 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 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 111 of the Local Government Act 1972 and any other enabling powers.
- 2.2 The obligations contained in clause 3 of this deed are planning obligations for the purposes of section 106 of the TCPA 1990 and are entered into by the Owner and the Association with the intention that they bind the interests held by those persons ~~in the Property and their respective successors and assigns.~~

representatives.
successors to its

- 1.7 A reference to any party shall include that party's personal representatives, successors or permitted assigns and in the case of 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 amended, extended or re-enacted from time to time; provided that, as between the parties, no such amendment, extension or re-enactment shall apply to the deed to the extent that it would impose any new or extended obligation, liability or restriction, on, or otherwise adversely affect the rights of, any party.
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- 2.2 The obligations contained in clause 3 of this deed are planning obligations for the purposes of section 106 of the TCPA 1990 and are entered into by the Owner and the Association with the intention that they bind the interests held by those persons in the Property and their respective successors and assigns.

13 This deed shall come into effect on the date of grant of the Planning Permission but the obligations in clause 3 and within the Schedule shall become effective only on the Commencement of Development

14 The obligations contained in clause 3 of this deed are enforceable by the Council in accordance with section 106 of the TCPA 1990.

3. COVENANTS WITH THE COUNCIL

The Owner and the Association covenant with the Council:

3.1 to pay the Contribution to the Council on or before the Commencement Date.

3.2 to give at least 21 Working Days written notice to the Council of the Commencement Date.

3.3 To comply with the affordable housing requirement set out in the Schedule to this Unilateral Planning Obligation

4. INTEREST AND INDEXATION OF CONTRIBUTION

4.1 If any payment due under Clause 3.1 is paid late, Interest will be payable from the date payment is due to the date of payment

4.2 Any sum referred to in clause 3.1 shall be increased by an amount equivalent to the increase in the Index from the date hereof until the date on which such sum is payable

5. MORTGAGEE OF REGISTERED PROVIDER OF SOCIAL HOUSING

If at any time there shall be a mortgagee of the Registered Provider of Social Housing with an exercisable power to sell the Affordable Housing Units or any receiver or manager appointed by such mortgagee then:

5.1 Such mortgagee shall use all Reasonable Endeavours (including reasonable terms) to transfer the Affordable Housing Units to a Registered Provider of Social Housing at a reasonable price (being not less than the amount owing to the mortgagee and where the mortgage relates to more than one property the proportion of the amount owing apportioned to the Affordable Housing Units by the mortgagee) who shall take subject to the provisions of Clause 3.3

5.2 If such mortgagee is unable to contract to transfer the Affordable Housing Units in accordance with Clause 5.1 within four months of the mortgagee taking possession the mortgagee may thereafter transfer the Affordable Housing Units free from the provisions hereof which shall thereafter not be binding or

enforceable against the Affordable Housing units the said mortgagee or any receiver manager appointed by the mortgagee its successors in title to any of them

- 5.3 The mortgagee shall give the Council one month's notice of the intention to seek a Registered Provider of Social Housing to acquire the Affordable Housing Units under Clause 5.1

6. RELEASE

No person shall be liable for any breach of an obligation, restriction or covenant contained in this deed after parting with all of its interest in the Property, except in respect of any breach subsisting prior to parting with such interest.

7. DETERMINATION OF DEED

This deed shall be determined and have no further effect if the Planning Permission:

- (a) expires before the Commencement of Development;
- (b) is varied or revoked other than at the request of the Owner or Association;
or
- (c) is quashed following a successful legal challenge.

8. LOCAL LAND CHARGE

This deed is a local land charge and shall be registered as such by the Council.

9. COUNCIL'S COSTS

The Association shall pay to the Council on the date of this deed the Council's reasonable and proper legal costs together with all disbursements incurred in connection with the preparation, completion and registration of this deed in the sum of £500.00.

10. OWNERSHIP

- 10.1 The Owner warrants that no person other than the Owner, and the Association has any legal or equitable interest in the Property.

- 10.2 Until the obligations in clause 3 have been complied with the Owner will give to the Council within 10 Working Days, the following details of any conveyance, transfer, lease, assignment, mortgage or other disposition entered into in respect of all or any part of the Property:

- (d) the name and address of the person to whom the disposition was made; and

- (e) the nature and extent of the interest disposed of.

11. NOTICES

Any notice under this Agreement shall be in writing and shall be sufficient if sent as follows:

11.1 To the Council if addressed to the Legal Services Manager or such other proper officer as defined within the Local Government Act 1972 as amended for the time being at the address at the head of this Agreement

11.2 To the Owners if sent to their address at the head of this Agreement

11.3 To the Association if sent to its address at the head of this Agreement or its registered office for the time being

11.4 And in any case by registered or recorded delivery post or if left at the premises or such other address as may have been notified by one party to the other for this purpose

12. THIRD PARTY RIGHTS

No person other than a party to this undertaking, and their respective successors and permitted assigns, and the Council and the successors to its respective statutory functions shall have any rights to enforce any term of this deed.

13. SEVERANCE

13.1 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.

13.2 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.

14. 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.

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

SCHEDULE

Affordable Housing Provisions

- 1.1 In this Schedule references to full time employment shall not include temporary, short-term or seasonal employment
2. The Owners and the Association shall:
 - 2.1 construct the Affordable Housing Units in accordance with the Planning Permission
 - 2.2 if the Owners are not a Registered Provider of Social Housing, prior to occupation of any Affordable Housing Unit transfer the freehold interest in the Property and the Affordable Housing Units to a Registered Provider of Social Housing and provide a copy of the form of Transfer (duly executed by all parties and dated) to the Council within 10 working days of completion of the transfer
3. Once constructed the Owners shall:
 - 3.1 ensure that the Affordable Housing Units are occupied and managed in accordance with the objects and policies of a Registered Provider of Social Housing
 - 3.2 ensure that no occupant of an Affordable Housing Unit shall have a right to acquire that Affordable Housing Unit
 - 3.3 ensure that:-
 - 3.3.1 the Affordable Housing Units are let at a rent which accords with relevant Homes and Communities Agency Guidance prevailing at the time of letting;
 - 3.3.2 the rents are at a discount to the rents that could be achieved in the open rental market;
 - 3.3.3 the rents are lower than the Local Housing Allowance from time to time applicable to the Affordable Housing Units; and
 - 3.3.4 when reasonably required by the Council, provide the Council with a list of the approximate level of rents for the Affordable Housing Units
 - 3.4 ensure that the Affordable Housing Units are available for rental occupation and are rented in accordance with paragraph 4 and 5
 - 3.5 not permit the Affordable Housing Units to be occupied other than by persons whose income at the time of their first occupation does not enable them to afford or buy or rent housing appropriate for their needs on the open housing market and who the Council considers to be in need of such accommodation

- 3.6 not permit any Affordable Housing Unit to be occupied unless the procedures contained in paragraphs 4 and 5 have been followed
4. The Owners shall not permit any Affordable Housing Unit to be occupied unless the Affordable Housing Unit has been allocated to a person or persons pursuant to the following criteria:
- 4.1 The Owners shall not permit any Affordable Housing Unit to be occupied save by a person who is selected from the Housing Register held by the Council and who falls within one or more of the following categories:
- 4.1.1 lives in the Parish in accommodation unsuited to his or her circumstances through physical, medical or social reasons and which is incapable of being improved or rendered suitable at a reasonable cost
- AND
- can demonstrate continuous residence in the Parish for the previous three years; or
 - can demonstrate continuous residence in the Parish for a total of at least five years out of the previous ten years
- 4.1.2 has Immediate Family in the Parish who can demonstrate residence in the Parish for the previous three years and/or residence for a total of at least five years out of the previous ten years
- 4.1.3 has full time employment in the Parish or who will be taking up full time employment there or who provides an important service requiring that person to live locally
- 4.2 If there are no persons who qualify under sub-paragraph 4.1 above or there are insufficient persons who so qualify the Owners shall upon completion of the Affordable Housing Units allocate the Affordable Housing Units not allocated in accordance with sub paragraph 4.1 to a person who is selected from the Housing Register held by the Council and who
- 4.2.1 lives in one of the Neighbouring Parishes in accommodation unsuited to his or her circumstances through physical, medical or social reasons and which is incapable of being improved or rendered suitable at a reasonable costs AND
- can demonstrate continuous residence in one of the Neighbouring Parishes for the previous three years; or

can demonstrate continuous residence in one of the Neighbouring Parishes for a total of at least five years out of the previous ten years

4.2.2 has Immediate Family in one of the Neighbouring Parishes who can demonstrate residence in one of the Neighbouring Parishes for the previous three years and/or residence for a total of at least five years out of the previous ten years

4.2.3 has full time employment in one of the Neighbouring Parishes or who will be taking up full time employment there or who provides an important service requiring that person to live locally

4.3 For the avoidance of doubt the relevant time from which to calculate the 'previous years' mentioned above shall be the date the relevant unit became available for sale or letting being the later of practical completion of such unit or subsequent availability

4.4 If there are no persons who qualify under sub-paragraphs 4.1 and 4.2 above or there are insufficient persons who so qualify the Owner shall upon completion of the Affordable Housing Units and with the prior written consent of the Council's Head of Housing Services (such consent not to be unreasonably withheld allocate through the Choice Based Letting Scheme the Affordable Housing Units not allocated in accordance with sub paragraphs 4.1 and 4.2 to a person who is on the J Housing Register held by the Council

5. Unless otherwise agreed by the completion of a deed of variation the nomination procedure shall be as follows:

5.1 The Owners shall give to the Council written notice of the date upon which one of the Affordable Housing Units will be available for occupation. Where such occupation will be the first occupation following practical completion the said notice shall be given at least 21 days prior to the expected date of practical completion

5.2 The Owners will use its Reasonable Endeavours to upload the details of the Affordable Housing Units to the next available bidding cycle to be offered by the Choice Based Letting Scheme

5.3 The Owners will invite interest and prepare a shortlist of applications in accordance with the procedure in the Choice Based Letting Scheme from applicants registered on the Housing Register who meet the criteria in sub paragraph 4.1 and 4.2

5.4 The Owners will record in writing its reasons for rejecting any application and will copy this to the Council within 24 Hours of the decision to reject

...shall not make any offer to a person to occupy an Affordable Housing Unit without the prior written consent of the Council given by the Head of Housing and such consent not to be unreasonably withheld

Upon any Affordable Housing Unit becoming available for re-letting the Affordable Housing Unit shall be allocated in accordance with the criteria set out in paragraph 4 and in accordance with the procedure set out in this paragraph 5.

SIGNED AS A DEED by
GRAHAM BARRINGTON
PAUL MACINTOSH WILLIAMS
in the presence of:

Signature of witness
Name (in CAPITAL LETTERS)
Address

SIGNED AS A DEED by
PAUL MACINTOSH WILLIAMS in
the presence of:

Signature of witness
Name (in CAPITAL LETTERS)
Address

SIGNED AS A DEED by
MARTIN BLUE MACINTOSH
WILLIAMS
in the presence of:

Signature of witness
Name (in CAPITAL LETTERS)
Address

- — can demonstrate continuous residence in one of the Neighbouring Parishes for a total of at least five years out of the previous ten years

4.2.2 has Immediate Family in one of the Neighbouring Parishes who can demonstrate residence in one of the Neighbouring Parishes for the previous three years and/or residence for a total of at least five years out of the previous ten years

4.2.3 has full time employment in one of the Neighbouring Parishes or who will be taking up full time employment there or who provides an important service requiring that person to live locally

4.3 For the avoidance of doubt the relevant time from which to calculate the 'previous years' mentioned above shall be the date the relevant unit became available for sale or letting being the later of practical completion of such unit or subsequent availability

4.4 If there are no persons who qualify under sub-paragraphs 4.1 and 4.2 above or there are insufficient persons who so qualify the Owner shall upon completion of the Affordable Housing Units and with the prior written consent of the Council's Head of Housing Services (such consent not to be unreasonably withheld allocate through the Choice Based Letting Scheme the Affordable Housing Units not allocated in accordance with sub paragraphs 4.1 and 4.2 to a person who is on the J Housing Register held by the Council

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5.4 The Owners will record in writing its reasons for rejecting any application and will copy this to the Council within 24 Hours of the decision to reject —

Trust Deed for the Owners.

Executed first day of
COUNTY
affiliated

~~5.5 The Owners shall not make any offer to a person to occupy an Affordable Housing Unit without the prior written consent of the Council given by the Head of Housing such consent not to be unreasonably withheld~~

5.6 Upon any Affordable Housing Unit becoming available for re-letting the Affordable Housing Unit shall be allocated in accordance with the criteria set out in paragraph 4 and in accordance with the procedure set out in this paragraph 5.

SIGNED AS A DEED by
GERALD BARRINGTON
MACINTOSH WILLIAMS
in the presence of:

Signature of witness
Name (in CAPITAL LETTERS)
Address

*DAVID JOHN REYNOLDS,
HOMELEIGH, APPLIEDORE RD
TENTERDEN KENT TN30 7BE*

SIGNED AS A DEED by

PAUL MACINTOSH WILLIAMS in
the presence of:

Signature of witness
Name (in CAPITAL LETTERS)
Address

*COOPER BURNETT
NAPIER HOUSE, MOUNT SHERKIN RA
TUNSDRE WELLS TN1 1GG*

SIGNED AS A DEED by
MARTIN BLUE MACINTOSH
WILLIAMS
in the presence of:

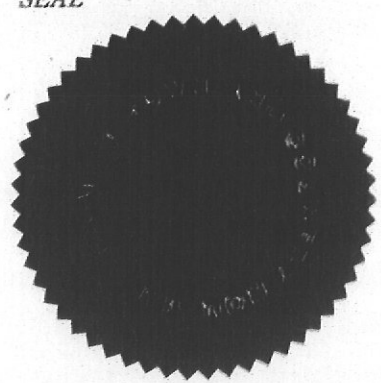
Signature of witness
Name (in CAPITAL LETTERS)
Address

*DIANA WHITE
CHERRY GARTH, SHOREHAM ROAD
OTFORD, KENT TN14 5TW.*

able Housing
Housing

Executed as a deed, but not delivered until the)
first date specified on page 1, by TOWN AND)
COUNTRY HOUSING GROUP by the)
affixing of its common seal in the presence of:)

SEAL



Signature [Redacted]

Name (block capitals)

Signature

Name (block capitals)
Director/Secretary