

**Planning Obligation by Deed of Agreement under  
Section 106 of the Town and Country Planning Act  
1990**

relating to Land East of Woodfield Close Willingham  
St Mary Suffolk

Dated: 2nd July 2025

EAST SUFFOLK COUNCIL (1)

AND

SUFFOLK COUNTY COUNCIL (2)

AND

SHADINGFIELD PTY LIMITED (3)

REF DC/23/4868/FUL

DATE

2-2 July

2025

**PARTIES**

- (1) **EAST SUFFOLK COUNCIL** of East Suffolk House, Riduna Park, Station Road Melton Suffolk IP12 1RT ("the Council")
- (2) **SUFFOLK COUNTY COUNCIL** of Endeavour House, 8 Russell Road, Ipswich, IP7 2BX ("the County Council")
- (3) **SHADINGFIELD PTY LIMITED** incorporated and registered in Australia with company number 008531511 whose registered office is at Suite 202, 506 Miller Street, Cammeray, NSW, Australia, 2062 and Overseas Entity Company Number OE025410 and care of Estate Office, Lower Green Farm, Sotterley, Beccles, Suffolk NR24 7TY("the Owner")

**INTRODUCTION**

1. The Council is the local planning authority for the purposes of the Act for the area in which the Site is situated and by whom the obligations in this Deed are enforceable.
2. The County Council is a local planning authority for the purposes of the Act and the Education Authority for the area in which the Site is located and by whom the obligations in this Deed are enforceable.
3. The Application was submitted to the Council for the Development.
4. The Owner is the freehold owner of the Site which is registered at HM Land Registry under title number SK178944
5. The Site lies within the area to which the Local Plan applies. The Council, the County Council and the Owner (together the "Parties") acknowledge that the Development should not take place until certain restrictions regulating the use of the Site are imposed in the manner hereafter appearing and pursuant to section 106 of the Act the Parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed.
6. The Council in resolving to approve the Application is satisfied that the planning obligations sought under the provisions of this Deed meet the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended)

NOW THIS DEED WITNESSES AS FOLLOWS:

**OPERATIVE PART**

**1. DEFINITIONS**

For the purposes of this Deed the following expressions shall have the following meanings and shall be read in conjunction with the definitions set out in the Third Schedule:

**"Act"** the Town and Country Planning Act 1990 as amended;

<b>“Application”</b>	the application for full planning permission validated by the Council on 3 <sup>d</sup> January 2024 for the Development and allocated reference number DC/23/4868/FUL;
<b>“Commencement of Development”</b>	the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out on the Site other than (for the purposes of this Deed and for no other purpose) operations consisting of 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, site clearance, erection of any temporary means of enclosure, temporary access for construction works, the temporary display of site notices or advertisements and “Commence Development” shall be construed accordingly;
<b>“Development”</b>	the development of the Site for the Construction of 9 Dwellings on Allocated Site (Policy WLP.16). Served from Previously Consented Access DC/21/3216/FUL;
<b>“Dwelling”</b>	any dwelling (including a house bungalow flat or maisonette) to be constructed pursuant to the Planning Permission;
<b>“Habitats Regulations Mitigation Contribution”</b>	Means the sum of Three Thousand Eight Hundred and Forty Five Pounds and Ten Pence (£3,845.10) (Index Linked) calculated using the Habitat Regulations Mitigation Contribution Calculation to be paid by the Owner to the Council towards the cost of mitigating the impact of additional visitors upon European Protected Sites as a result of the Development pursuant to Council’s Local Plan Policies and the Appropriate Assessments of the Local Plans, and the Recreational Disturbance Avoidance and Mitigation Strategy Supplementary Planning Document
<b>“Habitats Regulations Mitigation Contribution Calculation”</b>	the sum of three hundred and eighty four pounds and fifty one pence (£384.51) multiplied by the total number of new Dwellings proposed pursuant to the Planning Permission to calculate the Habitat Regulations Mitigation Contribution

<b>"Index"</b>	All in Tender Price Index published by the Building Cost Information Service or any successor organisation or any subsequent indices of the same;
<b>"Index Linked"</b>	means the increase in any sum referred to in this Deed by an amount equivalent to the increase in the Index to be calculated in accordance with Clause 11 of this Deed;
<b>"Interest"</b>	interest at four per cent above the base lending rate of the Bank of England from time to time;
<b>"Local Plan"</b>	the East Suffolk Council – Waveney Local Plan adopted 20 March 2019;
<b>"Occupation" and "Occupied"</b>	occupation for the purposes permitted by the Planning Permission 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;
<b>"Plan"</b>	the plan labelled "Location Plan" attached to this Deed;
<b>"Planning Permission"</b>	The full planning permission subject to conditions to be granted by the Council pursuant to the Application substantially as set out in the draft annexed to the Second Schedule;
<b>"Primary School Transport Contribution"</b>	Means the sum of Twenty-Nine Thousand, Five Hundred and Five Pounds (£29,505) RPI Index Linked payable to the County Council to be used towards the provision of school transport for primary aged children from the Development;
<b>"RPI Index"</b>	the "All Items" index figure of the Index of Retail Prices published by the Office for National Statistics from time to time or any successor organisation or (if that index shall cease to be published or is otherwise unavailable) such alternative basis of indexation as may be reasonably agreed between the Council, the County Council and the Owner;
<b>"RPI Indexed"</b>	The increase in any sum referred to in this Deed as RPI Indexed by an amount equivalent to the increase in the RPI Index to be calculated in accordance with clause 11 of this Deed;
<b>"Section 73 Consent"</b>	means a planning permission granted pursuant to Section 73 of the TCPA 1990 which varies and./or

removes any condition(s) subject to which the Planning Permission and/or any subsequent planning permission pursuant to Section 73 of the TCPA 1990 was granted;

**“Section 106 Officer”**

the officer so designated by the Council and any notice required to be served on the Section 106 Officer must be sent or delivered to the Council at the address aforesaid marked for the attention of the Section 106 Officer;

**“Secondary School Transport Contribution”**

Means the sum of Fourteen Thousand and Fifty Pounds (£14,050) RPI Index Linked payable to the County Council to be used towards the provision of school transport for secondary aged children from the Development

**“Site”**

the land described in the First Schedule against which this Deed may be enforced as shown edged red for identification purposes only on the Plan;

**“Working Days”**

Monday to Friday (inclusive) except Good Friday, Christmas Day and public or bank holidays from time to time in England.

**2. CONSTRUCTION OF THIS DEED**

- 2.1 Where in this Deed reference is made to any clause, paragraph, schedule or recital such reference (unless the context otherwise requires) is a reference to a clause or paragraph of 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.
- 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 severally unless there is an express provision otherwise.
- 2.5 Any reference to an Act of Parliament or Directive of the European Union shall include any modification, extension or re-enactment of that Act or Directive for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that Act or Directive or deriving validity from it.
- 2.6 Any references to any party to this Deed shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the Council and the County Council the successors to their respective statutory function.
- 2.7 The headings are for reference only and shall not affect construction.

- 2.8 Where this Deed requires a plan or strategy or other document to be submitted to the Council or the County Council for approval or agreement then upon approval of the same it shall be deemed to have been incorporated into this Deed and the same shall apply to any provision requiring a review of any such plan or strategy or other document
- 2.9 Any notices required to be given under the terms of this Deed may (in addition to any other valid method of service) be given or served by sending the same by recorded delivery post addressed to the party as set out below:
- (i) Council: as given in this Deed; and
  - (ii) County Council: as given in this Deed and addressed for the attention of the Executive Director of Growth Highways and Infrastructure; and
  - (iii) Owner: as given in this Deed.
- 2.10 This agreement may be executed in any number of counterparts, each of which constitutes a duplicate original, but all the counterparts together constitute one agreement.

### **3. LEGAL BASIS**

- 3.1 This Deed is made pursuant to section 106 of the Act, Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011.
- 3.2 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 Council and the County Council as local planning authority against the Owner and its successors in title.
- 3.3 Insofar as any of the covenants contained in this Deed are not planning obligations within section 106 of the Act they are entered into pursuant to the powers contained in Section 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011 and all other enabling powers.
- 3.4 The covenants, restrictions and requirements contained in this Deed shall only be capable of being varied by a supplemental deed between the Parties hereto or their respective successors in title or assigns made under section 106A of the Act.

### **4. CONDITIONALITY**

- 4.1 The obligations set out within this Deed are conditional upon:
- (i) the grant of the Planning Permission; and
  - (ii) the Commencement of Development.
- 4.2 The provisions set out in clauses 8.14, 8.15 and 16 this Deed shall take effect immediately upon completion of this Deed.

### **5. THE OWNERS COVENANTS**

- 5.1 The Owner hereby covenants with the Council as set out in the Third Schedule so as to bind the Site and each and every part thereof.
- 5.2 The Owner hereby covenants with the County Council as set out in the Fourth Schedule so as to bind the Site and each and every part thereof.
- 5.3 The Owner covenants and warrants to the Council and the County Council it is the freehold owner of the Site and has the capacity to enter into this Deed.

**6. THE COUNCIL'S COVENANTS**

The Council hereby covenants with the Owner as set out in the Fifth Schedule.

**7. THE COUNTY COUNCIL COVENANTS**

7.1 The County Council hereby covenants with the Owner as set out in the Sixth Schedule

**8. MISCELLANEOUS**

8.1 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.

8.2 This Deed shall be registrable as a local land charge by the Council.

8.3 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Council or the County 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 Head of Planning Services (or the officer of the Council fulfilling such functions) or officer acting under his hand and given on behalf of the County Council by the Executive Director of Growth, Highways and Infrastructure and any notices 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.

8.4 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall forthwith on the written request of the Owner mark accordingly all entries made in the Register of Local Land Charges in respect of this Deed.

8.5 Insofar as any clause or paragraph of this Deed is 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.

8.6 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.

8.7 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 interest in the Site or that part of the Site in respect of which such breach occurs but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

8.8 This Deed shall not be enforceable against an individual purchaser or owner-occupier or tenant of a Dwelling constructed pursuant to the Planning Permission or any mortgagee or chargee of any individual purchaser, owner-occupier or tenant of a Dwelling or any person deriving title from any such person.

8.9 Nothing in this Deed shall be enforceable against any statutory undertaker or other person who acquires any part of the Site or an interest in it for the purposes of the supply of electricity gas water telecommunications or highways in connection with the Development of the Site.

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

- 8.11 Nothing contained or implied in this Deed shall prejudice or affect the rights, discretions, functions, powers, duties and obligations of the Council and the County Council under all statutes by-laws statutory instruments orders and regulations in the exercise of its function as a local authority.
- 8.12 The Owner covenants from the date that this Deed takes effect to allow the Council or the County Council and its respectively duly authorised officers or agents at all reasonable times to enter into and upon the Site for the purposes of monitoring compliance with the provisions of this Deed.
- 8.13 Save as otherwise provided in this Deed all works and activities to be carried out under the terms of this Deed (including for the avoidance of doubt such works as are of a preparatory ancillary or of a maintenance nature) are (save where expressly provided otherwise) to be at the sole expense of the Owner and at no cost to the Council or the County Council.
- 8.14 The Owner covenants to pay the Council's and the County Council's reasonable legal costs incurred in the preparation and negotiation of this Deed on completion of this Deed.
- 8.15 The Owner covenants to pay the Council's monitoring fee of £460 on completion of this Deed
- 8.16 The Owner covenants to pay the County Council's monitoring fee of £519 on completion of this Deed
- 8.17 Unless otherwise agreed between the Parties if a Section 73 Consent is granted by the Council (or the Secretary of State) in relation to the Development, then with effect from the date that each such Section 73 Consent is granted:
- (a) the obligations in this Deed shall (in addition to continuing to bind the Site in respect of the Planning Permission) relate to and bind all subsequent Section 73 Consents and the Site itself without any further act by the Parties;
  - (b) the definitions of Development, Application and Planning Permission in this Deed shall be constructed to include reference to any applications under Section 73 of the Act, the Section 73 Consent granted pursuant to any such application and the development permitted by such Section 73 Consents
- PROVIDED THAT
- (i) nothing in this clause shall fetter the discretion of the Council in determining any application(s) under Section 73 of the Act;
  - (ii) to the extent that any of the obligations in this Deed have already been discharged at the date that any Section 73 is granted they shall remain discharged for the purposes of the Section 73 Consent; and
  - (iii) if the Council considers that the obligations contained in this Deed shall be varied or amended it is agreed and acknowledged that the Council retain the right to refuse such application unless and until a deed of variation or alternative agreement has been entered into to secure the appropriate obligations.

**9. WAIVER**

No waiver (whether expressed or implied) by the Council or the County Council 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 County

Council from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

**10. CHANGE IN OWNERSHIP**

The Owner agrees with the Council and the County Council to give each of them independently written notice within fourteen days (14) of any change in ownership of any of its interests in the Site occurring before all the obligations under this Deed have been discharged such notice quoting the Council's reference DC/23/4868/FUL giving details of the transferee's full name and registered office (if a company) or usual address if not together with the area of the Site or unit of occupation purchased by reference to a plan and the title number or numbers thereof.

**11. INDEXATION**

Any sum referred to in the Third Schedule and the Fourth Schedule (unless the context reads otherwise) shall be increased by an amount equivalent to the increase in the Index or RPI Index (as the context dictates) from the date hereof until the date on which such sum is payable using the application of the formula  $A = B \times C/D$  where:

- 11.1 A is the sum payable under this Deed;
- 11.2 B is the original sum calculated as the sum payable;
- 11.3 C is the Index or RPI Index (as the context dictates) for the month two (2) months before the date on which the sum is payable;
- 11.4 D is the Index or RPI Index (as the context dictates) for the month two (2) months before the date of this Deed; and
- 11.5 C/D is equal to or greater than one.

**12. INTEREST**

If any payment due under this Deed is paid late, Interest will be payable from the date payment is due to the date of payment.

**13. VAT**

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

**14. DISPUTE PROVISIONS**

- 14.1 In the event of any dispute or difference arising between any of the Parties to this Deed in respect of any matter contained in this Deed such dispute or difference shall, if the dispute cannot be resolved amicably between the relevant Parties within 20 Working Days of written notification of the said dispute, 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 England 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.
- 14.2 In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to clause 14.1 or as to the appropriateness of the professional body then such question

may be referred by either party 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.

14.3 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.

14.4 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.

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

## 15. NOTICES

The Owner covenants to inform the County Council by way of written notice within fourteen (14) Working Days following:

- i. Commencement of Development
- ii. First Occupation of the first (1<sup>st</sup>) Dwelling
- iii. First Occupation of the final Dwelling

## 16. JURISDICTION

This Deed is governed by and interpreted in accordance with the law of England and the Parties submit to the non-exclusive jurisdiction of the courts of England

## 17. DELIVERY

The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

**FIRST SCHEDULE**

**Details of the Owner's Title, and Description of the Site**

The freehold land at Land East of Woodfield Close Willingham St Mary Suffolk within registered title number SK178944 shown edged red for indicative purposes only on the Plan and known as the Site.

**SECOND SCHEDULE**  
**Details of the Application**

Application Number	DC/23/4868/FUL
Application Type	Full
Date Validated	3 <sup>rd</sup> January 2024
Location	Land East of Woodfield Close Willingham St Mary Shadingfield Suffolk
Proposal	Full application for the Construction of 9 Dwellings on Allocated Site (Policy WLP7.16). Served from Previously Consented Access DC/21/3216/FUL

## Draft Planning Permission

**THIRD SCHEDULE**  
**The Owner Covenants with the Council**

**Habitats Regulations Mitigation Contribution**

- 0.1 The Owner covenants to provide written notification of Commencement of Development to the Section 106 Officer within 10 Working Days thereof
- 0.2 The Owner covenants to pay the Habitat Regulations Mitigation Contribution to the Council prior to Commencement of Development.
- 0.3 The Owner covenants not to Commence or permit the Commencement of Development until the Habitat Regulations Mitigation Contribution been paid to the Council.

**Fourth Schedule**  
**The Owner's Covenants with the County Council**

The Owner hereby covenants with the County Council as follows (unless otherwise agreed in writing by the Owner and the County Council):

1.     Primary School Transport Contribution
  - 1.1    To pay the Primary School Transport Contribution to the County Council in a single lump sum payment prior to the Occupation of the first Dwelling.
  - 1.2    Not to Occupy the first Dwelling on the Development or allow the Occupation of first Dwelling on the Development until the Primary School Transport Contribution has been paid to the County Council.
  
2.     Secondary School Transport Contribution
  - 2.1    To pay the Secondary School Transport Contribution to the County Council in a single lump sum payment prior to Occupation of the first Dwelling.
  - 2.2    Not to Occupy the first Dwelling on the Development or allow the Occupation of the first Dwelling on the Development until the Secondary School Transport Contribution has been paid to the County Council.

## FIFTH SCHEDULE

### COUNCIL COVENANTS

1. At the written request of the Owner the Council shall provide written confirmation of the discharge of the obligations contained in this Deed when satisfied that such obligations have been performed.
2. The Council shall use the Habitat Regulations Mitigation Contribution for the purposes set out in the Deed within ten (10) years from receipt PROVIDED THAT nothing shall prevent the Council from paying any part of the Habitat Regulations Mitigation Contribution to a person, body or company that may be responsible for the carrying out of the work as set out in this Deed
3. The Council shall if requested to do so in writing after the expiry of TEN (10) years of the date that the Habitat Regulations Mitigation Contribution was paid within ONE (1) year pay to any such person such amount of the Habitat Regulation Mitigation Contribution paid by that person in accordance with the provisions of this Deed which have not been committed or expended by the Council

## SIXTH SCHEDULE

### COUNTY COUNCIL COVENANTS

1. At the written request of the Owner the County Council shall provide written confirmation of the discharge of the obligations contained in this Deed when satisfied that such obligations have been performed.
2. The County Council shall use all sums received under the terms of this Deed for the purposes specified in this Deed within ten (10) years from the date the final Dwelling was first Occupied.
3. If requested to do so in writing after the expiry of 10 (ten) years from the date the final Dwelling is first Occupied within a further period of 1 (one) year to pay within one month of such request to the Owner such amount of the Primary School Transport Contribution and the Secondary School Transport Contribution paid by that person which has not been committed or expended by the County Council in accordance with the provisions of this Deed together with any interest accrued at the Bank of England Base Rate, compounding annually at financial year end.

THE COMMON SEAL of  
EAST SUFFOLK COUNCIL  
was affixed in the presence of:



..... [redacted] uthorised Officer

..... Authorised Officer

THE COMMON SEAL OF  
SUFFOLK COUNTY COUNCIL  
was affixed in the presence of:



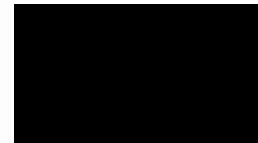
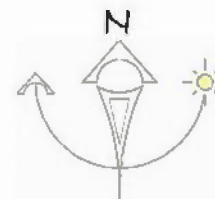
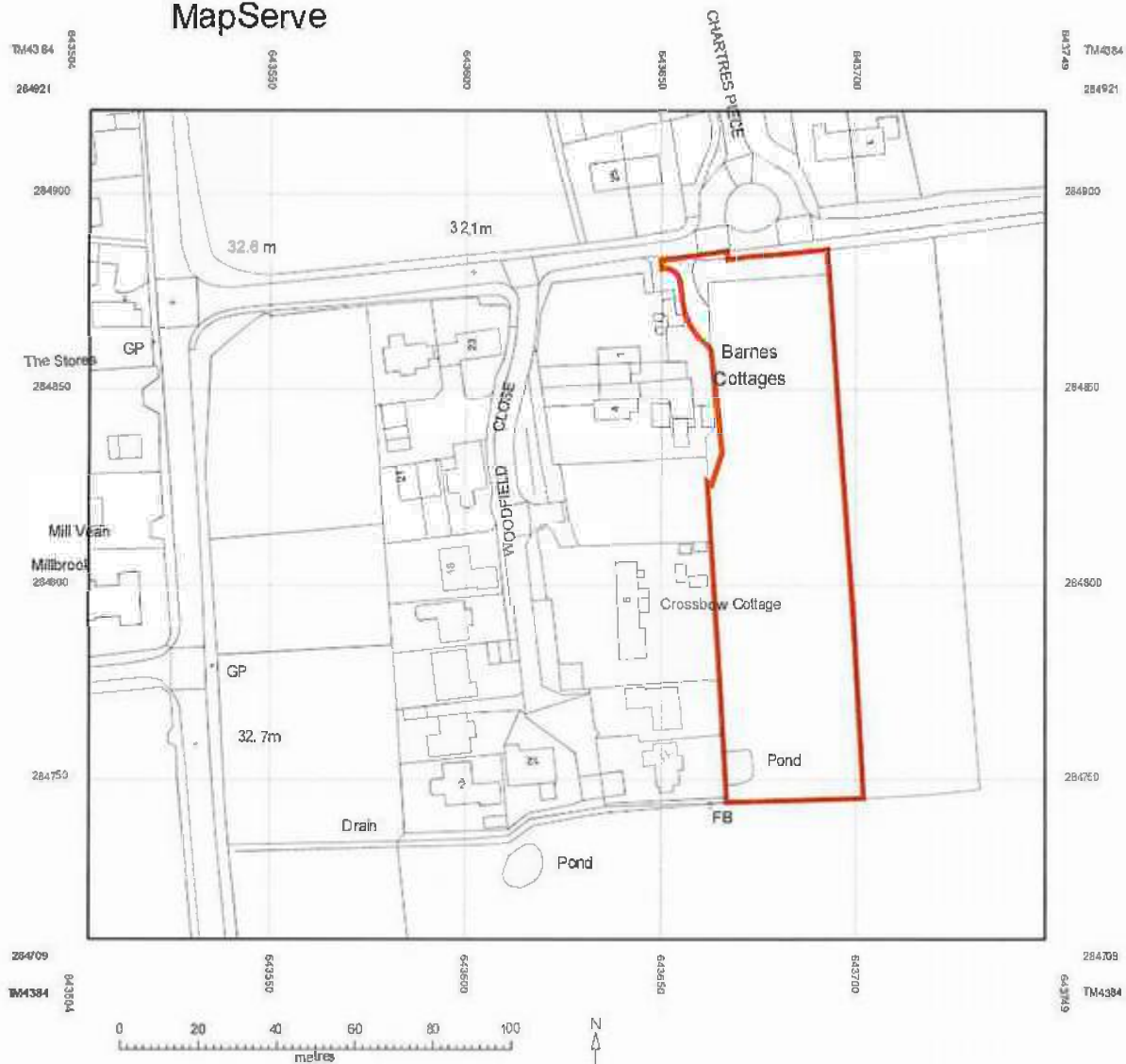
[redacted] ..... Authorised Officer

EXECUTED AS A DEED BY  
SHADINGFIELD PTY LIMITED

Director

Secretary/ Director

MapServe



Rev. | Date | Details | Drawn | Checked  
 Issued for:

**PLANNING**

Project/Client	Project No:	
Land South of Sotterley Rd Willingham St Mary	0577	
Bennett Homes	Dwg No:	Rev:
	1000	A
Drawing	Scale	
	1:1250 @ A3	
	North:	
	Drawn By:	Date:
	PJA	09/2023
	Checked By:	Date:
	PJA	09/2023

