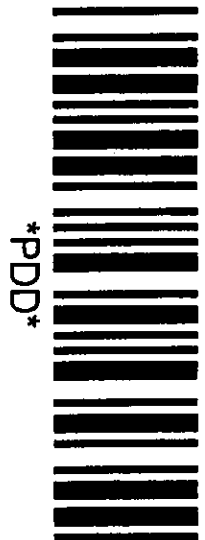


**ROYAL BOROUGH
OF
KENSINGTON & CHELSEA**

DOCUMENT SEPARATOR

DOCUMENT TYPE:

POST DECISION DOCUMENT SUBMITTED



PDD

24 January 2003
Page 2

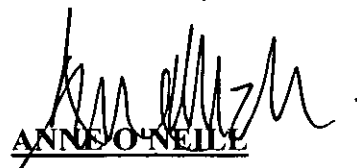
COUDERT BROTHERS

216

will proceed to have the undertaking completed by Notting Hill Home Ownership, as currently drafted.

I look forward to hearing from you.

Yours sincerely


ANNE O'NEILL

cc Eleanor Penn – S J Berwin
Nigel Lane – NHHO

PLANNING AND CONSERVATION

THE TOWN HALL HORNTON STREET LONDON W8 7NX

Executive Director M J FRENCH FRICS Dip TP MRTPI Cert TS

Coudert Brothers
60 Cannon Street
London
EC4N 6JP

Switchboard: 0207-937-5464
Extension: 2275
Direct Line: 0207-361-2275
Facsimile: 0207-361-3463
Email: Julie.Tritton@rbkc.gov.uk
Web: www.rbkc.gov.uk

27th January 2003



My reference:

Your reference: AON/100008.377 Please ask for: Julie Tritton

Dear Ms O'Neill

Town and Country Planning Act 1990
Re: 7 Swanscombe Road, Kensington. W11

I refer to your letter dated the 24th January 2003 addressed to Mr. Taylor.

Mr. Taylor is currently on leave until the 29th January 2003 but will your address your letter on his return. I can however advise you that the Council do wish to make comments on the draft Unilateral Undertaking attached to your letter of the 20th December 2002 which we will endeavour to do by the 6th February 2003. I would however be grateful if you could take this letter as a holding response until Mr. Taylor returns from leave.

Yours sincerely

M. J French
Executive Director, Planning and Conservation



2

MEMORANDUM

218

To: ~~Derek Taylor~~
 Planning and Conservation
 North Area

From: The Director of Law
 and Administration

cc:

| | | | | | | |
|--------------|-------------|-----|------|-----|----------|----------|
| EX DIR | HBC | TP | CAC | AD | CLU | AO AK |
| R.B. K.C. | 28 JAN 2003 | | | | PLANNING | |
| N/C | SW | SE | APP | IO | REC | |
| | | ARB | FPLN | DES | FEES | |

Your Ref:

My Ref: HS

Ext: 3370

Date: 27 January, 2003

16

7 SWANSCOMBE ROAD LONDON W11
PLANNING APPEAL – DRAFT UNILATERAL UNDERTAKING
- AFFORDABLE HOUSING

Thank you for providing me with a copy of the letter from Coudert Brothers dated 20th December 2002 together with the draft Unilateral Undertaking under Section 106 of the Act.

You asked me to consider whether or not the covenant on Page 3 of the Undertaking is sufficient. I would suggest that the following alternative is proposed:-

“the Developer hereby covenants not to occupy nor permit the occupation of any of the Affordable Housing Units other than by a tenant or tenants of a Registered Social Landlord”.

This is the standard covenant used in our Section 106 agreements and I would suggest that it is more clear than the clause currently drafted.

In addition I would also make some amendments to the Affordable Housing definitions also contained on Page 3, in particular;-

- (1) “ Affordable Housing” means residential accommodation which meets the objectives of a Registered Social Landlord
- (2) “Affordable Housing Flats” means eleven of the units of residential accommodation to be provided as Affordable Housing for rent on the Land as part of the Development.
- (3) “Registered Social Landlord” an organisation registered by the Housing Corporation in accordance with the Housing Act 1996 or if such bodies cease to exist or are superseded the nearest equivalent body whose objectives include the provision of Affordable Housing.

I note that Notting Hill Home Ownership Limited are quoted as being the only person with an interest in the land. This needs to be checked and therefore I have ordered the office copy entries before we make any further comments.

If you require any assistance in relation to this matter or would like me to correspond with the solicitors then please do not hesitate to contact me.

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Regards

A handwritten signature in black ink, consisting of a stylized initial 'H' followed by a long, wavy horizontal line.

Hazel Salisbury
for the Director of Law and Administration

DATED

200

220

THE DEVELOPER: NOTTING HILL HOME OWNERSHIP LIMITED

**UNILATERAL SECTION 106
UNDERTAKING**

relating to
the former Sheepshank Public House
now known as
7 Swanscombe Road
London W11

Coudert Brothers
60 Cannon Street
London
EC4N 6JP

Ref: AON/0100008/0377

| | | | | | | |
|--------------|-------------|----|-----|------|----------|----------|
| EX DIR | HDC | TP | CAC | AD | CLU | AO AK |
| R.B. K.C. | 23 DEC 2001 | | | | PLANNING | |
| N | C | SW | SE | APP | IO | REC |
| | | | ARB | FP.N | DES | FEE |

DEED dated

BY:

- (1) NOTTING HILL HOME OWNERSHIP LIMITED whose registered office is at Grove House 27 Hammersmith Grove London W6 0JL ("the Developer")

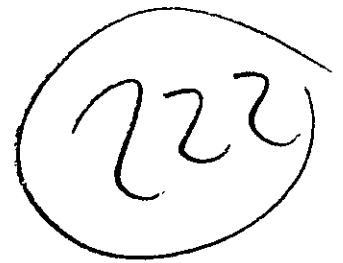
TO:

- (2) THE MAYOR AND BURGESSES OF THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA (the "First Council")

RECITALS:

- (A) The First Council is the local planning authority for the purposes of the Town and Country Planning Act 1990 ("the Act") for the majority of the area within which the Land is situated. The London Borough of Hammersmith and Fulham (the "Second Council") is the other local planning authority for the purposes of the Act for the remainder of the area within which the Land is situated.
- (B) The Developer owns the freehold interest in the piece or parcel of land registered at H M Land Registry under title number NGL378781 ("the Land") at the former Sheepshank Public House now known as 7 Swanscombe Road shown edged red on the annexed plan free from incumbrances. A copy of the title is annexed.
- (C) The Developer applied to the First Council by written application reference number PP/02/0901 dated 19 April 2002 and to the Second Council by written application reference 2002/1161/P dated 10 May 2002 for permission to develop the Land by the construction of a residential development of 17 units comprising 1, 2 and 3 bedroom units (including 11 units of Affordable Housing) and the provision of 11 off street parking spaces ("the Development").
- (D) At a meeting of the First Council's Planning sub-Committee on the 3 September 2002 the First Council resolved to refuse planning permission for the Development.
- (E) The Second Council has failed to determine the application for the Development within the statutory period for determination.
- (F) The Developer has appealed to the Secretary of State by two appeals against the refusal and the failure to determine respectively.
- (G) The Developer is willing to give this Unilateral Undertaking to the First Council to make provision for 11 affordable flats forming part of the Development in the event of the Secretary of State granting planning permission for the Development envisaged in the applications.

are one in two? in red?



NOW THIS DEED WITNESSES as follows:

- 1 In this Deed "the Act" means the Town and Country Planning Act 1990
- 2 This Deed is made pursuant to Section 106 of the Act (and is a planning obligation for the purposes of that Section) and the First Council is the local planning authority by which the provisions of this Deed are intended to be enforceable
- 3 No person shall be liable for any breach of the planning obligations contained in this Deed occurring after he has parted with his interest in the Land or the part in respect of which such breach occurs
- 4 This Deed shall come into effect only upon the date upon which the Secretary of State grants the planning permission for the Development PROVIDED ALSO THAT
 - 4.1 unless and until the Developer implements the planning permission by the carrying out of a material operation (as defined in Section 56(4) of the Act) nothing in this Deed shall oblige the Developer to comply with the undertaking on the Developer's part contained in clause 6 of this Deed and
 - 4.2 for the purpose of determining whether or not a material operation has been carried out there shall be disregarded such operations as demolition site clearance site preparation diversion and laying of services and construction of access or service roads
- 5 If the Permission is quashed or is revoked or otherwise withdrawn or (without the consent of the Developer) is modified by any statutory procedure or expires before the Development has been implemented this Deed shall cease to have effect
- 6 The Developer undertakes to observe and perform the restrictions and obligations set out in the Schedule hereto
- 7 This Deed is a Local Land Charge and shall be registered as such
- 8 Save where the context otherwise requires:
 - 8.1 references to any person shall include the successors in title of that party
 - 8.2 any person deriving title from the Developer shall only be bound by the Planning Obligations which are contained in this Deed to the extent that such person has a legal interest in the Land (or part of it) at the time when such obligations arise

EXECUTED AS A DEED and delivered on but not before the date of this Deed

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SCHEDULE

(Restrictions and Obligations)

1. INTERPRETATION

In this Deed:-

- "Affordable Housing" means residential accommodation provided by a Registered Social Landlord
- "Affordable Housing Flats" means eleven flats to be provided for-Affordable Housing-
- "Registered Social Landlord" means an organisation registered under the Housing Act 1996 (or if such bodies cease to exist or be superseded then the nearest equivalent body whose objectives include the provision of Affordable Housing)
- "Relevant Body" means a mortgagee chargee or receiver of a Registered Social Landlord

2. THE DEVELOPER'S COVENANTS

✓ The Developer hereby covenants that the Affordable Housing-Flats shall be occupied for Affordable Housing purposes only

3. EXCLUSIONS

3.1 The covenants in paragraph 2 of this Schedule shall not be binding in the circumstances set out below:-

3.1:1 (Subject to paragraph 3.2 of this Schedule) a Relevant Body who seeks to dispose of the Affordable Housing Flats or any part thereof (as to such part) pursuant to its power of sale exercised pursuant to default of the terms of a mortgage or charge or any person deriving title from any such Relevant Body

3.1:2 An occupant of an Affordable Housing Flat who has exercised a statutory right to acquire under the Housing Act 1996 or otherwise ("Occupant") or any person (other than a Registered Social Landlord) deriving title under that Occupant

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3.1:3 A person acquiring a shared ownership lease of an Affordable Housing Flat ("Lessee") or any person (other than a Registered Social Landlord) deriving title under that Lessee

3.2 In the event that a Relevant Body wishes to exercise its power of sale and/or dispose of the Affordable Housing Flats or any part thereof it shall first use reasonable endeavours to sell the Affordable Housing Flats to another Registered Social Landlord at a price to be agreed by the Relevant Body PROVIDED THAT if after a period of two months from the date of default (having used all reasonable endeavours as aforesaid) such person shall not have sold the Affordable Housing Flats to another Registered Social Landlord the Relevant Body shall thenceforth be under no obligation to sell the Affordable Housing Flats to a Registered Social Landlord and shall be entitled to exercise its powers of sale or make a disposition as the case may be free of any restrictions under this Deed which shall thereupon determine absolutely and be of no further effect

HM Land Registry

Title Number : **NGL378781**

Edition Date : 23 September 2002



A: Property Register

This register describes the land and estate comprised in the title.

HAMMERSMITH AND FULHAM

1. The **Freehold** land shown edged with red on the plan of the above Title filed at the Registry and being The Sheepshank Public House, Norland Road, Notting Hill, (W11 4SU).

B: Proprietorship Register

This register specifies the class of title and identifies the owner. It contains any entries that affect the right of disposal.

Title Absolute

1. (18 May 1999) **PROPRIETOR:** NOTTING HILL HOME OWNERSHIP LIMITED of Grove House, 27 Hammersmith Grove London W6 0JL.
2. (18 May 1999) **RESTRICTION:** Except under an order of the registrar no disposition by the proprietor of the land is to be registered and none shall take effect unless made with the consent of the Housing Corporation when such consent is required under the provisions of section 9 of the Housing Act 1996.
3. (18 May 1999) **RESTRICTION:** Except under an order of the registrar no charge by the proprietor of the land is to be registered unless a certificate signed by the secretary or solicitor thereto has been furnished that such charge does not contravene any of the provisions of the rules of the said proprietor.

C: Charges Register

This register contains any charges and other matters that affect the land

1. (23 September 2002) The land is subject to the rights granted by a Deed dated 18 September 2002 made between (1) Notting Hill Home Ownership Limited and (2) Thames Water Utilities Limited.

The said Deed also contains restrictive covenants by the grantor.

NOTE: Copy in Certificate. Copy filed.

END OF REGISTER

*NOTE A: A date at the beginning of an entry is the date on which the entry was made in the Register.
NOTE B: This is a copy of the register on 23 September 2002 at 14:59:57.*

NGL 378781

H.M. LAND REGISTRY

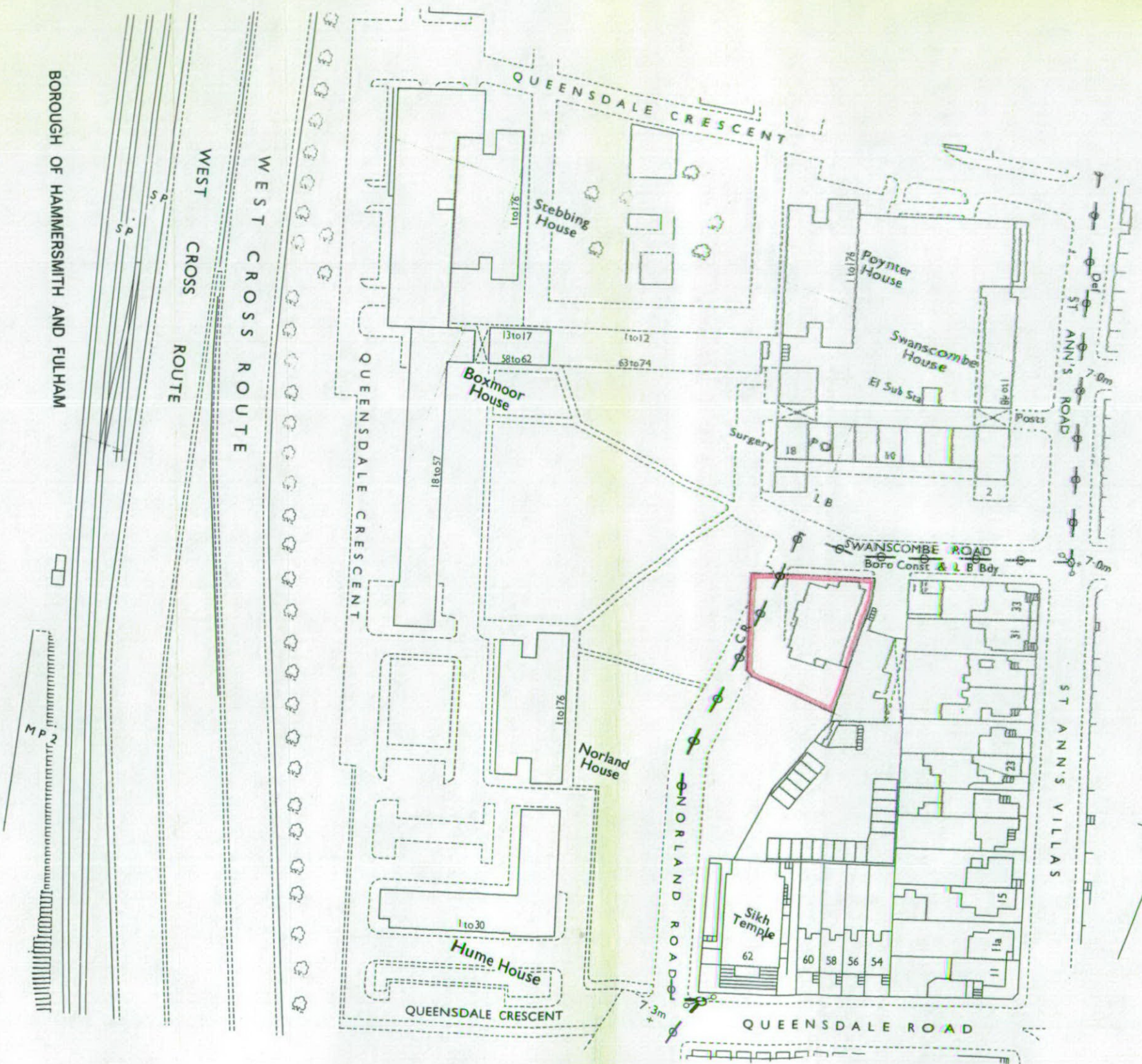
hat affect the land
 act to the rights granted by a Deed
 (1) Notting Hill Home Ownership
 is Limited.
 ve covenants by the grantor.
 GISTER
 date on which the entry was made in the Register.
 nber 2002 at 14:59:57.

TITLE NUMBER

NGL378781

| | | | |
|--|----------------|-------|---------------|
| H.M. LAND REGISTRY | | | |
| ORDNANCE SURVEY | COUNTY | SHEET | NATIONAL GRID |
| PLAN REFERENCE | GREATER LONDON | | TQ 2380 |
| | | | SECTION |
| | | | K |
| Scale: 1/1250 | | | |
| © Crown copyright 1975 Old Reference LN VI 76 E & F 77 G | | | |

BOROUGH OF KENSINGTON AND CHELSEA



BOROUGH OF HAMMERSMITH AND FULHAM



PLANNING AND CONSERVATION

THE TOWN HALL HORNTON STREET LONDON W8 7NX

Executive Director M J FRENCH FRICS Dip TP MRTPI Cert TS

Anne O'Neill
Coudert Brothers
60 Cannon Street
London
EC4N 6JP

Extension: 2701
Direct Line: 0207-361-2701
Facsimile: 0207-361-3463
Email: plndmt@rbkc.gov.uk
Web: www.rbkc.gov.uk
Mr.: D. Taylor

31st January 2003

THE ROYAL
BOROUGH OF



KENSINGTON
AND CHELSEA

My reference: DPS/DCN/PP/02/ Your reference: AON/100008.377 Please ask for: Mr D. Taylor
0901

Dear Madam,

Town and Country Planning Act 1990 7 Swanscombe Road W11

I write in reference to your letter of 20th December 2002 and enclosed draft Unilateral Undertaking under S.106 of the above Act. I note the deadline of 20th February 2003 for sending an agreed Undertaking to the Planning Inspectorate, and have several points that I would wish you to address in order to achieve an agreed document by that date.

Firstly, relating to page 3 of your draft, I am concerned that the existing wording of the covenant could be clearer. I would recommend the standard wording that this authority uses in these instances, which is:

✓ **"The developer hereby covenants not to occupy nor permit the occupation of any of the Affordable Housing Units other than by a tenant or tenants of a Registered Social Landlord".**

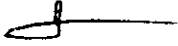
In addition, I would like to propose amendments to three of the Affordable Housing definitions also contained on page 3, as follows:

- ✓ 1. "Affordable Housing" means residential accommodation which meets the objectives of a Registered Social Landlord;
- ✗ 2. "Affordable Housing Flats" means eleven of the units of residential accommodation to be provided as Affordable Housing ~~for rent~~ on the Land as part of the Development;
3. "Registered Social Landlord" is an organisation registered by the Housing Corporation in accordance with the Housing Act 1996 or, if such bodies cease to exist or are superseded, the nearest equivalent body whose objectives include the provision of Affordable Housing.

I hope that these recommendations are clear, but please do not hesitate to contact me if there is anything that needs further elaboration. If time is getting tight then feel free to e-mail a further draft document to the address above.

R

Yours faithfully,



Derek Taylor,
Area Planning Officer
For
Executive Director, Planning & Conservation

