

F105/53397

EA5114

DATED

20th May

2005

EASTLEIGH BOROUGH COUNCIL

- and -

GEORGE WIMPEY SOUTHERN LIMITED

AGREEMENT

Pursuant to Section 106 of the Town and
Country Planning Act 1990 and Section 111
of the Local Government Act 1972 relating
to

Unigate Dairy Shakespeare Road, Eastleigh
in Hampshire

A R Ward
Head of Legal and Democratic Services
Civic Offices
Leigh Road
Eastleigh
Hampshire
SO50 9YN
MF/6/13/620

THIS AGREEMENT is made the 24th day of May

Two thousand and five BETWEEN EASTLEIGH BOROUGH COUNCIL of Civic Offices Leigh Road Eastleigh Hampshire SO50 9YN ("the Council") of the first part and GEORGE WIMPEY SOUTHERN LIMITED whose registered office is at St. David's Court Union Street Wolverhampton WV1 3JE ("the Owner") of the second part
WHEREAS :-

1. The Council is the Local Planning Authority for the purposes of the Town and Country Planning Act 1990 (as amended) ("the 1990 Act") for the Borough of Eastleigh within which is situate the land at Unigate Dairy Shakespeare Road Eastleigh in Hampshire shown edged red on the plan annexed hereto (hereinafter referred to as "the Site")
2. The Owner is the Registered Proprietor of the Site registered at H M Land Registry under Title Number HP657364
3. By written application dated the 24th day of February 2005 and numbered F/05/53397 the Owner applied to the Council for planning permission to develop the Site by the erection of 35 No. 2 bedroom apartments in a two three and four storey block with associated car parking landscaping bin and cycle storage with access from Byron Road (following demolition of Depot Building ("the Development"))
4. The Council is satisfied that the Development is such as may be approved under the 1990 Act subject however to conditions and has agreed to grant planning permission in the form of the draft planning permission annexed hereto and subject to the Owner entering into this Agreement

NOW THIS DEED WITNESSETH :-

1. THIS Agreement is made in pursuance of:-

- (1) Section 106 of the 1990 Act and for the purpose of the said Section:-
 - (a) The undertakings stipulations and covenants of the Owner herein contained are planning obligations
 - (b) The Council is the Local Planning Authority by whom the obligations are enforceable
 - (2) Section 111 of the Local Government Act 1972 and all other enabling powers
2. THE covenants of the Owner under this Agreement:-
- 2.1 shall (save for that contained in clause 6 which shall be of immediate effect) take effect only if and when the Planning Permission is implemented by the carrying out of a material operation within the meaning of section 56 of the 1990 Act ("commencement of development")
 - 2.2 shall not be binding upon any party after it has parted with its interest in the Site or the part thereof in respect of which a breach occurs but without prejudice to liability for any breach subsisting at the time such breach occurs
 - 2.3 shall cease to have effect if the Planning Permission is quashed or revoked or is modified or withdrawn by any statutory procedure or expires before the commencement of development
 - 2.4 In the case on the covenants contained in clause 3 hereof shall not be binding upon the Nominated Housing Association (as defined in clause 4.4) or upon the owners and occupiers of individual private residential dwellings comprised in the Development
3. THE Owner hereby covenants with the Council as follows:

3.1 To pay to the Council within six months of commencement of Development or prior to first occupation of the thirteenth private residential dwelling constructed on the Site whichever is the sooner

3.1.1 as a contribution to the provision of social and recreational facilities in respect of the Lawn Road Local Urban Park the sum of thirty five thousand four hundred and forty six pounds (£35,446.00) plus Index Linking as specified in clause 7 hereof ("the Index Linking")

3.1.2 as a contribution to the provision of Public Open Space in respect of the Lawn Road Local Urban Park the sum of Seventy four thousand three hundred and fourteen pounds (£74,000.00) plus the Index Linking

3.1.3 as a contribution in pursuance of integrated road transportation improvements to the Archers Road Bridge and/or Twyford Road improvements and/or other integrated transport measures within the Area of Eastleigh the sum of thirty five thousand seven hundred pounds (£35,700.00) plus the Index Linking

4.1 Subject always to the terms of this Clause to provide prior to occupation of the first dwelling on the Site the land for no less than 10 units of affordable housing ("the Affordable Housing Units") being 30% of the overall number of units constructed on the Site (being low cost housing for sale or rent) on the Site (and if the development proceeds in phases to ensure that each phase has land provided for a minimum of 30% Affordable Housing Units out of the total number of housing units constructed or to be constructed on the relevant phase).

4.2 The Affordable Housing Units provided will be a representative mix of those

housing units being provided on the open market on the Site and such mix as shall comprise of ten (10) flats each having two (2) bedrooms.. All Affordable Housing Units for rent funded either by the Council or with Social Housing Grant must be developed in accordance with the then current Housing Corporation Scheme Development Standards in addition to any specific requirements of the nominated Housing Association in order to satisfy Housing Corporation Funding Requirements in force at the date of the build contract for those units

- 4.3 That when constructed the Affordable Housing Units will be built at a cost to the Nominated Housing Association (as defined in clause 4.4 hereof) of 80% of total scheme costs based upon the Housing Corporation TCI levels for the year 2005/2006 (including the Association's own on-costs). provided that such cost shall be increased by multiplying the same by the figure shown in the Building Cost Information Service All-In Tender Price Index maintained by the Royal Institution of Chartered Surveyors (or any index maintained in substitution therefor) at the date upon which a legally binding agreement is entered into between the Owner and The Nominated Housing Association (or any registered social landlord or housing association pursuant to clause 5.5 hereof) for the construction of the Affordable Housing Units divided by the figure shown in that Index on the date of this Agreement
- 4.4 Subject to clause 4. 5 hereof the land that is to comprise the 30% Affordable Housing Units shall be transferred or leased to the Council's nominated Housing Association being Eastleigh Housing Association Limited ("the Nominated Housing Association")

- for an estate in fee simple in possession or on a long lease
- with full title guarantee but subject to modifications as the Owner reasonably requires
- subject to the matters specified in the Property and Charges Registers of Title Number HP657364 (other than entries securing monies) and the terms of this Agreement so far as the same relate to and affect the land to be transferred but otherwise free from encumbrances
- with all main services (which shall include gas, electric, water main drainage and telephone services) provided into the transferred land
- with vehicular and pedestrian access and all necessary rights of way to the boundary of the transferred land

together with and subject to such other rights covenants restrictions declarations agreements and other matters reasonably required by the Owner to be included in any transfer of the affordable housing land and which are reasonably necessary having regard to the Owner's development of the remainder of the Site.

- 4.5 That should it not prove possible for the Owner to reach agreement with the Nominated Housing Association referred to above with regard to construction costs of the Affordable Housing Units to transfer upon the terms set out in this clause 4 land upon which the Affordable Housing Units would have been

constructed to such registered social landlord or housing association as the Council nominates in writing within 20 working days of written request from the Owner requesting the Council to so nominate and failing any such nomination by the Council to such registered social landlord or housing association as the Owner shall in its absolute discretion determine but in either case at a price of no more than 40% of the open market value of the area of the land to be transferred and in default of agreement between parties as to the open market value that value will be set by an independent arbitrator appointed by agreement by the parties or in default of agreement by the President of the Royal Institution of Chartered Surveyors or his nominee on the application of either the Council or the Owner.

- 4.6 That when constructed to procure that the Affordable Housing Units are constructed in the location shown on the plan 1 annexed hereto as Plot Numbers 26 to 35 inclusive
- 4.7 That the Affordable Housing Units constructed on the Site will not be used for any purpose other than as affordable housing to rent and / or affordable housing subject to a shared ownership or shared equity scheme (save that such an obligation shall not apply to a mortgagee in possession or chargee of a registered social landlord or housing association (or any receiver appointed by such mortgagee or chargee) to which the freehold or leasehold of the land upon which the Affordable Housing Units have been constructed has been transferred or on a sale to a tenant exercising their right to acquire or purchase under a statutory power or to a shared ownership or shared equity owner acquiring such percentage that will take their ownership to 100% of a property subject to a shared ownership or shared equity lease or to any

successors in title from such mortgagee chargee receiver tenant or shared equity owner).

4.8 Not to occupy or permit occupation of any of the private residential dwellings constructed on the Site (being residential dwellings other than the dwellings comprising Affordable Housing Units) unless such occupation is in accordance with the following provisions of this paragraph 8:-

- A) For every 10 Affordable Housing Units constructed on the land transferred to a registered social landlord or housing association as hereinbefore provided up to 30 private residential dwellings constructed on the Site may be occupied;
- B) The calculation in sub clause (A) above shall be adjusted on a pro rata basis in the event of the transfer of Affordable Housing Units other than in multiples of 10;
- C) The owner shall have the right to apply to the Council to seek the Council's approval to a different method of calculation from that set out in sub-clause (A) above and on receipt of any such application the Council shall not unreasonably withhold or delay its approval to the same.

4.9 If the Owner constructs more than 35 dwellings on the Site, land for additional Affordable Housing Units (over and above 10) shall be provided on the basis of meeting the required 30% of Affordable Housing Units out of the total number of dwelling units to be constructed and the above provisions of this clause 4 shall so far as applicable apply to the additional Affordable Housing Units (if any) provided pursuant to this Clause 4.9

5. FOR the avoidance of doubt none of the provisions of the Contracts (Rights of Third Parties) Act 1999 shall apply to this Agreement

6. THE Owner hereby agrees to pay the Council's reasonable costs together with all disbursements incurred in connection with the preparation completion and registration of this Agreement

7. THE payments to be made by the Owner pursuant to Clause 3 hereof shall be increased by multiplying the same by the figure shown in the Retail Price Index excluding Mortgages maintained by the Department of Trade and Industry or any Index maintained by HM Government in substitution thereof at the date of payment of the said sum divided by the figure shown in that Index at the 1st April 2004

8. THE expressions the Council and the Owner shall include their respective successors in title and assigns and this Agreement shall (subject to the provisions of clause 2.2 hereof) operate so as to bind each and every part of the Site into whosoever hands the same shall come and shall enure for the benefit of the Council

10. IN this Agreement where the context so requires words of the masculine gender shall incorporate the feminine gender and words of the singular shall include the plural and vice versa and where a party includes more than one person any obligations of that party shall be joint and several

11. A reference in this Agreement to any Act of Parliament refers to the Act as it applies at the date of this Agreement and any later amendment or re-enactment of it

12. THE parties agree:-

12.1.1 nothing in this Agreement constitutes Planning Permission

12.1.2 nothing in this Agreement fetters or restricts the exercise by the

Colin Peters

Head of Development Control

Gl Hearn
3rd Floor
20 Soho Square
London
W1D3QW

My ref F/05/53397
Your ref J013838 Eastleigh
Date 20 May 2005
Please ask for Louise Cutts
Direct dial 023 8068 8259
e-mail louise.cutts@eastleigh.gov.uk

DRAFT

Town and Country Planning Act 1990 Town and Country Planning (General Development Procedure) Order 1995

Application No. F/05/53397

In pursuance of their powers under the above Act and in accordance with your application received on 24 February 2005, with subsequent amendments dated

15/04/2005, 12/05/2005, 17/05/2005

the Council, as Local Planning Authority hereby **PERMIT** the following:

Description: Construction of 35 two bed apartments in a two, three and four storey block with associated car parking, landscaping, bin and cycle storage with access from Byron Road following demolition of Deppt Building

Site: Unigate Dairy, Shakespeare Road, Eastleigh, SO504FP

Subject to due compliance with the following conditions:

- (1) The development hereby permitted must be begun within a period of five years beginning with the date on which this permission is granted. Reason: To comply with Section 91 of the Town and Country Planning Act 1990.
- (2) Plans and particulars showing the proposals for all the following aspects of the development must be submitted to and approved in writing by the Local Planning Authority before the development is commenced. The development must then accord with these approved details. Reason: In order that these matters may be considered by the Local Planning Authority.
 - a: The colour and texture of facing and roofing materials.
 - b: The layout of foul sewers and surface water drains.

PL_Draft Decision



Awarded for excellence

- c: The provision to be made for street lighting and/or external lighting.
- d: Proposed ground levels and relationship to existing levels both within the site and on immediately adjoining land.
- e: Hard surface details of the shared surface access road.
- (3) Details of Contractor's site hut location and any areas designated for the storage of building materials must be submitted to and approved in writing by the Local Planning Authority before development commences. The development must then accord with these approved details. Notwithstanding the provisions of the Town and Country Planning General Permitted Development Order 1995 site huts and building materials must not be stored elsewhere on the site without the prior written permission of the Local Planning Authority. Reason: To ensure that natural features are not damaged.
- (4) The access, including any footway crossing must be constructed in accordance with details to be approved by the Local Planning Authority. The permission does not authorise the undertaking of any works involving excavations in the carriageway, footway or verge. A road opening permit should be obtained from Hampshire County Council at Hampshire Highways, Eastleigh Civic Offices, Leigh Road, Eastleigh SO50 9YN. Reason: To provide satisfactory access.
- (5) The existing access arrangement to the site must be stopped up and abandoned and footway and verge crossings shall be reinstated in accordance with details to be approved by the Local Planning Authority, immediately after completion of the new access, or by such later date as may be determined by the Local Planning Authority. The permission does not authorise the undertaking of any works involving excavations in the carriageway, footway or verge. A road opening permit should be obtained from Hampshire County Council at Hampshire Highways, Eastleigh Civic Offices, Leigh Road, Eastleigh SO50 9YN. Reason: In the interests of highway safety.
- (6) The development hereby permitted must not be brought into use until the areas shown on the approved plan for the parking of vehicles shall have been made available, surfaced and marked out, and the areas must be retained in a condition to the satisfaction of the Local Planning Authority, and reserved for that purpose at all times. Reason: In the interests of highway safety.
- (7) The layout plan showing provision for a temporary car park within the site to accommodate operatives and construction vehicles during the construction and fitting-out period must be submitted to and approved in writing by the Local Planning Authority and shall indicate the eventual use of that area. The development must accord with these details. Reason: To avoid obstruction of the adjoining highway.
- (8) Measures to be submitted to and approved in writing by the Local Planning Authority, to prevent mud being deposited on the public highway by vehicles leaving the site must be implemented during the whole of the construction period. No vehicle



leave the site unless its wheels have been sufficiently cleaned to prevent mud being deposited on the public highway.

Reason: In the interests of highway safety.

- (9) Before development commences, a scheme of public art to be incorporated within the northern and eastern boundary walls/railings must be submitted and agreed in writing with the Local Planning Authority. The agreed scheme must be implemented before first occupation of the buildings hereby approved and maintained thereafter. Reason: In order to enhance the design quality of the development.
- (10) Details of external security lighting, lockable gates and all other crime prevention proposals must be submitted to and approved in writing by the Local Planning Authority before development commences. The development must then accord with these approved details. Reason: In the interests of crime prevention.
- (11) The amenity areas as defined on the approved plans must be retained for that use and shall not be incorporated into private garden land or other uses without the prior consent in writing of the Local Planning Authority. Reason: To ensure that these areas are not fragmented and remain to fulfil their original functions.
- (12) No trenches for services or drains shall be sited within the crown spread of any trees that are to be retained on or adjacent to the site. Reason: To protect the health and stability of these trees.
- (13) The landscape scheme must be completed within 12 months from the completion of the last building shell, or by such later date as the Local Planning Authority may determine. Any trees or plants which die, are removed or become seriously damaged or diseased during the first five years must be replaced during the next planting season with others of similar size and species unless the Local Planning Authority gives written consent to any variation. Reason: To ensure that the appearance of the development is satisfactory.
- (14) Before any development is commenced a scheme for protecting the proposed dwellings from noise from the electricity substation adjacent to the site must be submitted to and approved in writing by the Local Planning Authority. All works which form part of the scheme approved by the Local Planning Authority must be completed before any the permitted dwellings is occupied (unless otherwise agreed by the Local Planning Authority). Reason: To ensure that acceptable noise levels within the dwellings and the curtilages of the dwellings are not exceeded.
- (15) No construction or demolition work must take place except between the hours of 8am to 6pm Mondays to Fridays or 8.30am to 1pm on Saturdays and not at all on Sundays, Bank or other public holidays. Reason: To protect the amenities of the occupiers of nearby dwellings.
- (16) The burning of materials obtained by site clearance or from any other source must not take place on this site without the prior written consent of the Local Planning Authority. Reason: In the interests of amenity.
- (17) Developments shall not begin until a scheme of works to deal with noise and dust arising from the development of the site has been submitted to and approved.



the storage system for the future. No soakaway shall be constructed in contaminated ground. Reason: To prevent flooding and ensure future maintenance.

- (22) No development shall take place until the developer has carried out adequate investigation to assess the degree of contamination of the site and to determine its water pollution potential. The methods and extent of the investigation shall be agreed with the Planning Authority before any work commences. Details of appropriate measures to prevent pollution of groundwater and surface water, including provisions for monitoring shall then be submitted to and approved in writing by the Planning Authority. Reason: To prevent pollution of the water environment as the site may be contaminated due to the previous use.
- (23) Before development commences, details of communal infrastructure for the provision of communications technology must be submitted to and agreed in writing by the Local Planning Authority. The infrastructure must then be provided for use upon first occupation of the building hereby permitted and retained thereafter. Reason: To reduce the proliferation of individual masts, aerials, satellite dishes and wiring on flatted blocks in interests of visual amenity.

Note to Applicant: It is considered that, subject to compliance with the conditions and any obligations attached to this permission, the proposed development is acceptable because it will not materially harm the character of the area, the amenity of neighbours or highway safety, and will provide positive urban design merits on this locally important junction and therefore is in accordance with the policies and proposals of the development plan, as listed below, and after due regard to all other relevant material considerations, the local planning authority is of the opinion that permission should be granted.

The following development plan policies are relevant to this decision and the conditions attached to it:

Hampshire County Structure Plan 1996-2011: [UB1, UB3]

Eastleigh Borough Local Plan 1997: [25.BE, 27.BE, 28.BE, 68.T, 96.H, 108.E, 148.OS, 165.IN]

Eastleigh Borough Local Plan Review 2001-2011 Second Deposit [34.ES, 36.ES, 59.BE, 60.BE, 63.BE, 65.BE, 73.H, 75.H, 79.H, 80.H, 116.T, 134.E, 165.OS, 212.IN, 213.IN]

Should the required legal agreement not be completed by 26 May 2005, the recommendation is to **REFUSE PERMISSION** for the reason:

"No provision has been made for financial contributions towards off-site public open space, social and recreational facilities and integrated transport measures in the locality and on-site affordable housing. As such, the proposal is contrary to policies 148.OS, 165.IN and 65.T of the adopted Eastleigh Borough Local Plan and policies 110.T, 165.OS and 213.IN of the Eastleigh Borough Local Plan Review (2001-2011) Second Deposit."



Council of any of its power

12.1.3 this Agreement constitutes a Deed

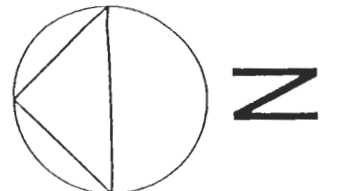
13 THIS Agreement shall be registered in the Council's Register of Local Land
Charges immediately on completion hereof

EXECUTED and delivered as a Deed by the parties on the date of this Agreement

THE COMMON SEAL of EASTLEIGH)
BOROUGH COUNCIL was hereunto)
affixed in the presence of:)

Head of Legal Services

THE COMMON SEAL of GEORGE WIMP
SOUTHERN LIMITED was)
hereunto affixed in the presence of:-)



EASTLEIGH BOROUGH COUNCIL
DEVELOPMENT CONTROL SERVICE

53397

Date / Rec'd 24 FEB 2005

Decision

DAIRY CREST
SHAKESPEARE ROAD
EASTLEIGH

Drawing Title: LOCATION PLAN

Client:

George Wimpey

SIMON COOPE
DESIGN

Simon Cooper Design
Hammonds Court 22 London Road Southampton
Telephone 02380 719400 Facsimile 02380 719401
info@simoncooper.net
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Scale: 1/1250

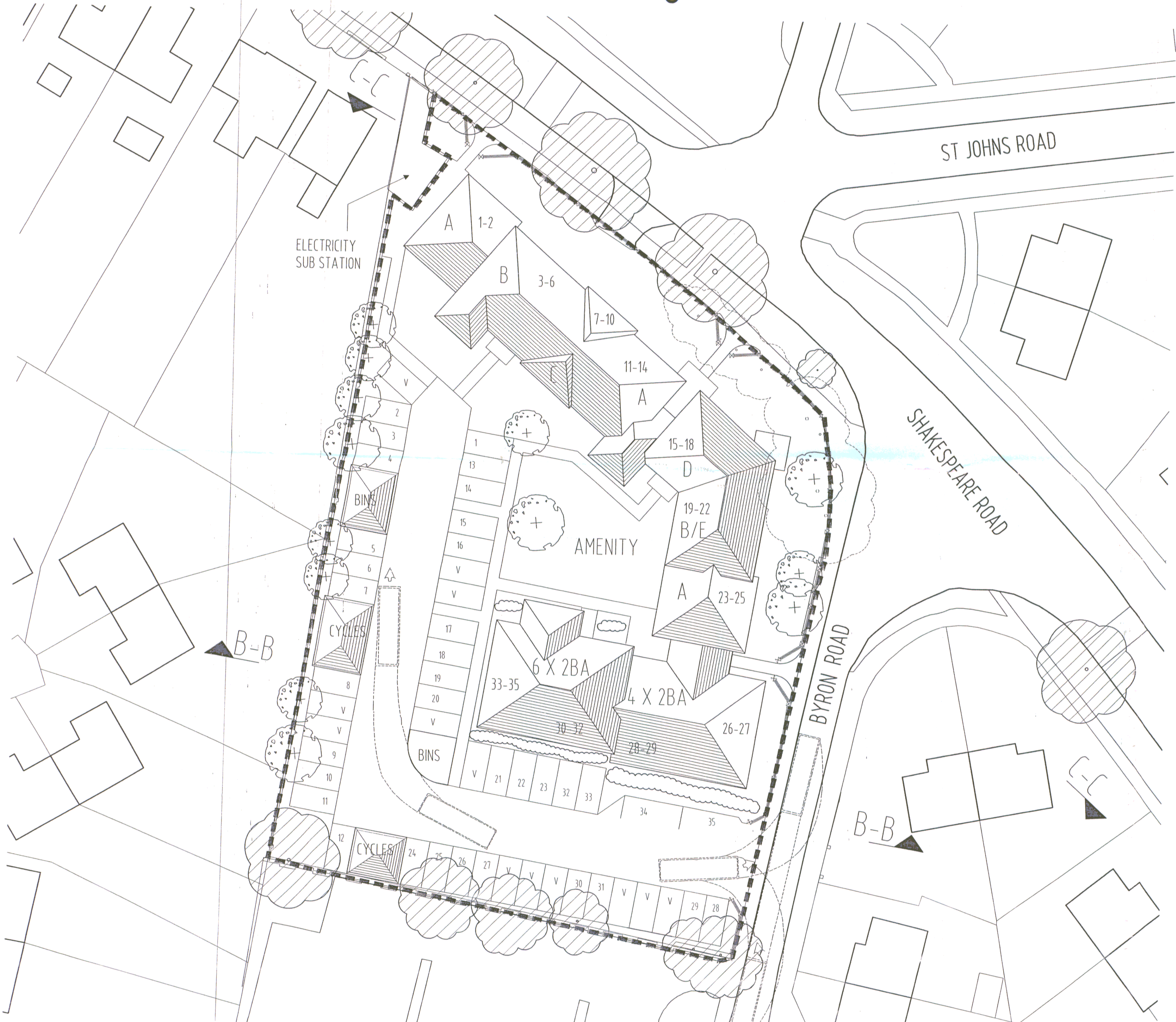
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Drawn by: JNW Checked by:
Date: 07/01/05

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Revisions
Rev Date Drawn

Dairy Crest Site, Shakespeare Road, Eastleigh.



Legend

- Site Boundary
- Existing Trees
- Existing Trees Removed
- Proposed New Trees
- Shrub Planting

SCHEDULE OF UNITS

TYPE	NAME	DESCRIPTION	No.	Sq/Ft	Tot. Sq/Ft
A	PRIVATE	2 BEDROOM APARTMENT	10	656	6560
B		2 BEDROOM APARTMENT	7	656	4592
C		2 BEDROOM APARTMENT	4	714	2856
D		2 BEDROOM APARTMENT	4	740	2960
AFFORDABLE			25		16968
2BA		2 BEDROOM APARTMENT	10	760	7600
TOTAL			10		7600
			35		24568
SITE AREA (HA) 0.34					
SITE AREA (A) 0.83					
NETT SITE AREA (HA) 0.34					
NETT SITE AREA (A) 0.83					
DENSITY 1 (SQ.FT/A) 29600					
DENSITY 2 (U/HA) 104					

Drawn by: JNW Checked by: JNW
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Revisions	Rev	Date	Drawn	Checked
	G	7/1/05	JNW	
	H	14/1/05	JNW	
	J	18/1/05	JNW	
	K	2/2/05	JNW	
	L	14/2/05	JNW	
	M	30/3/05	JNW	
	N	1/4/05	LMH	

Project: DAIRY CREST SITE
SHAKESPEARE ROAD
EASTLEIGH

Drawing Title: SITE LAYOUT
PLANNING DRAWING

Client: George Wimpey

SIMON COOPER
DESIGN
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Hammonds Court 22 London Road Southampton SO15 2AR