

09/0791

DATED

7th May

2010

NEWCLOSE PROPERTIES LIMITED

- and -

BARROW BROOK DEVELOPMENTS LLP

- and -

COUTTS & COMPANY

- and -

RIBBLE VALLEY BOROUGH COUNCIL

**SECTION 106 PLANNING AGREEMENT
TOWN AND COUNTRY PLANNING ACT 1990**

RELATING TO LAND KNOWN AS
LAND AT BARROW BROOK, BARROW, CLITHEROE

THIS AGREEMENT is made the Thursday of May 2010
BETWEEN

1. **NEWCLOSE PROPERTIES LIMITED** (Company Registration No. 04613933) of Helm Bank Natland Kendal Cumbria LA9 7PS (hereinafter called "the Company")
and
2. **BARROW BROOK DEVELOPMENTS LLP** (Company Registration No. OC346580) of Helm Bank Natland Kendal Cumbria LA9 7PS (hereinafter called "the Owner")
and
3. **COUTTS & COMPANY** (Company Registration No. 00036695) of 440 The Strand London WC2R 0QS (hereinafter called "the Mortgagee")
and
4. **RIBBLE VALLEY BOROUGH COUNCIL** of Council Offices Church Walk Clitheroe Lancashire BB7 2RA (hereinafter called "the Council")

WHEREAS

- (1) The Owner is the freehold owner of land at Barrow Brook, Barrow, Clitheroe the title of which land is registered at HM Land Registry under numbers LAN33017 and LAN49236 and shown edged red on Plan 1 attached hereto ("the Property")
- (2) The Property is subject to a Legal Charge dated the Eighth day of December Two thousand and nine made between the Owner and the Mortgagee
- (3) The Council is the Local Planning Authority for the purposes of the Town and Country Planning Act 1990 (as amended) for the area within which the Property is situated and by whom the obligations contain in this Agreement are enforceable

(4) The Company on the eleventh day of September Two thousand and nine applied to the Council for planning permission for a mixed use development comprising vocational learning centre children's nursery, commercial elements, 10 live/work units and 70 residential units on the Property as detailed in the plans and particulars deposited with Council under reference 3/2009/0791

(5) The Council is satisfied that the development is such as may be approved by it under the Act of 1990 (as amended) but subject to the Owner entering into this Planning Obligation Agreement in accordance with Section 106 of the Town and Country Planning Act 1990 ("the 1990 Act")

IT IS HEREBY AGREED as follows:

1. DEFINITIONS

1.1 In this Agreement unless the context otherwise requires:

Affordable Housing

"Affordable Housing" means housing that is affordable to local persons who cannot afford to rent or buy accommodation generally available on the open market on readily available terms who have need of local housing

Affordable Housing Scheme

"Affordable Housing Scheme" means a scheme submitted pursuant to Schedule 1 of this Agreement for the provision of Affordable Housing which secures the provision by a Registered Social Landlord of Affordable Housing in accordance with the provisions of Schedule 1 such scheme to identify:

- (a) by reference to a plan the location and layout of the Affordable Housing
- (b) the mix (of rented and shared ownership) of each of the Affordable Housing Units (rounded down to the nearest whole number) providing the type of Affordable Housing Units having regard to local need and to the types of Units to be provided as part of the Market Dwelling

- (c) the forecast date for commencement and completion of each phase of the housing element of the development
- (d) whether Social Housing Grant from the Housing Corporation or any other source of financial assistance is expected towards to the cost of providing Affordable Housing as part of the Development

Affordable Housing Unit

"Affordable Housing Unit" means each unit of Affordable Housing to be constructed on the property pursuant to the Planning Permission

Application

"Application" means the application for Planning Permission submitted to the Council reference number 3/2009/0791 for mixed residential commercial use and associated amenities on the Property

Development

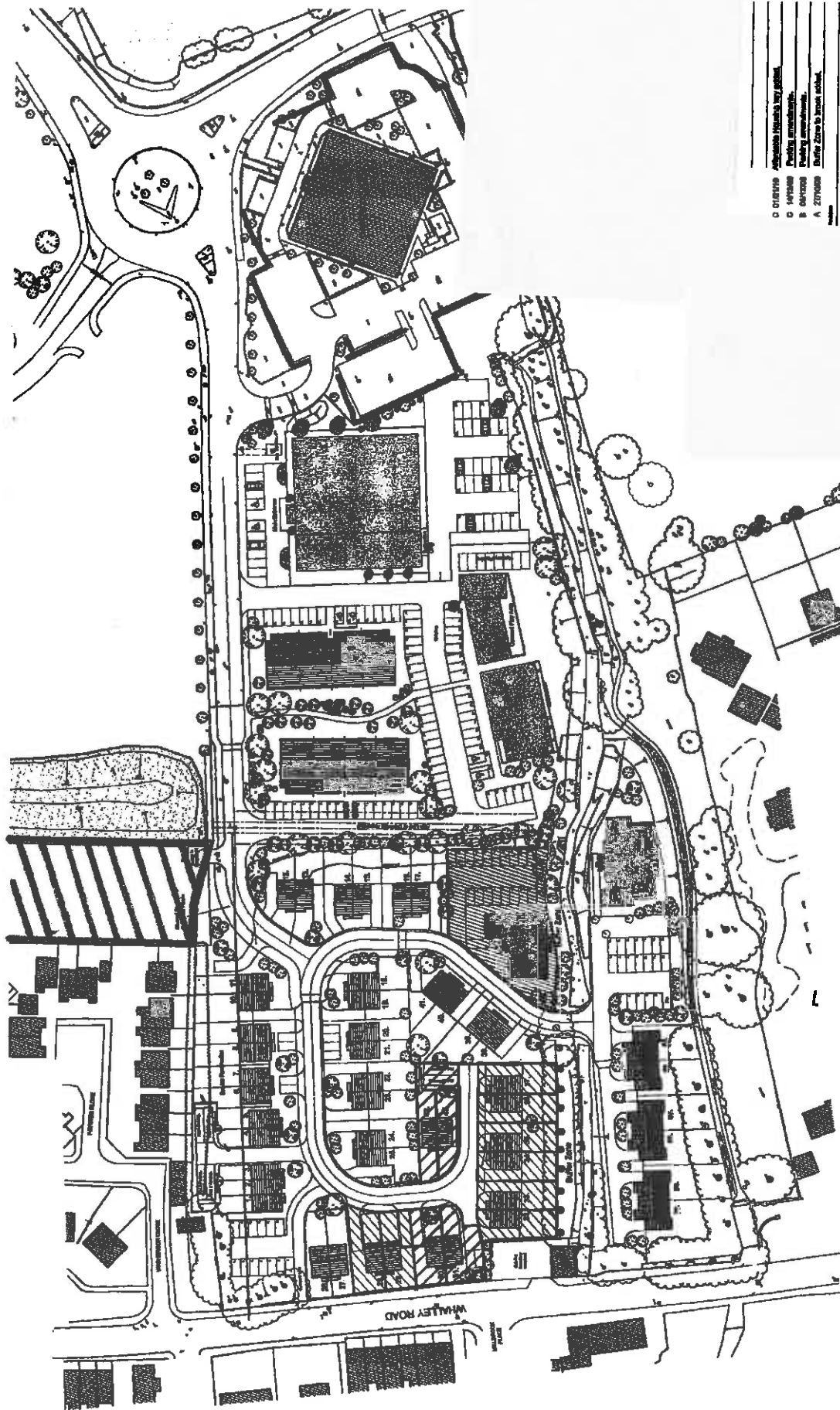
"Development" means such development as may be authorised by the Planning Permission

Dispose

"Dispose" means in relation to the transfer of an interest in property the transfer of a freehold interest or of a Leasehold interest of 99 years or more

Implementation

"Implementation" means the carrying out of any of the material operations listed in Section 56 of the 1990 Act pursuant to the Planning Permission provided that for the purposes of determining whether or not the material operation has been carried out there shall be disregarded property surveys and investigations and tests (including drilling bore holes, digging trial pits and taking soil samples) environmental assessments and similar studies (including geological, archaeological and ecological surveys and landscape assessments). Site investigations preparatory works including ground, modelling and contamination



AFFORDABLE HOUSING:

- Shaded- Flat Type A
Plots 44 to 52
- General Needs- Intermediate Rent- House Types G & H
Plots 30, 31, 42 & 43
- General Needs- New Build HomeBuy- House Types H3, J1 & J2
Plots 28, 29 & 32 to 37

RESIDENTIAL ACCOMMODATION SCHEDULE

- Type G = 4No 2 Bed Houses
- Type H = 18No 3 Bed Houses
- Type J = 20No 3 Bed Houses
- Type K = 6No 4 Bed Houses
- Flats Type A = 6No 2 Bed Flats
- Flats Type B = 12No 2 Bed Flats

TOTAL: 70Units (48 Houses +)

D 01/01/19	Approved Housing Key plan.
B 10/01/08	Planning Application.
B 08/01/08	Planning Application.
A 20/01/08	Planning Application.
PROPOSED SITE PLAN	
1600-300 D	1000-01
1000-01	1000-01

hpa
VICTORIA COUNTY
PLANNING
LAWYER
LAWYER
TELEPHONE 01273
01273 01273
01273 01273

remediation works and "implement" and "implemented" shall be construed accordingly

Intermediate Rent

"Intermediate Rent" means the Rent to Homebuy Scheme which allows for a potential shared ownership purchaser to rent a Affordable Housing Unit at 80% of the market rent for a maximum period of five years prior to purchasing the Unit under the New Build Homebuy scheme.

Market Dwellings

"Market Dwellings" means Residential Units excluding any Affordable Housing Units

Occupation

"Occupation" shall have the same meaning as defined in the Local Government Finance Act 1988 but for the avoidance of doubt shall not include occupation for the purposes of works carried out prior to or during construction, fitting out, commissioning, advertising, marketing, security or management of land for parking

Plan 1

"Plan 1" means the Property location plan annexed hereto

Planning Permission

"Planning Permission" means the Planning Permission granted pursuant to the Application

Registered Social Landlord

"Registered Social Landlord" or "RSL" means a Registered Social Landlord within the meaning of Part 1 of the Housing Act 1996

Residential Unit

"Residential Unit" means any unit including house, flat or maisonette to be constructed on the Property pursuant to the Planning Permission primarily for the purpose of residential occupation

Scheme Development Standard

"Scheme Development Standard" means the essential requirements of the Homes and Communities Agency for quality of housing, probity and procurement and procedural compliance current at the date of the contract with the Registered Social Landlord for the disposal of the Affordable Housing Units (or the equivalent replacement of such standards)

Social Housing Grant

"Social Housing Grant" means sources of grant or other funding as defined in Part 1, Section 1 of the Housing Act 1988 and Section 18 of the Housing Act 1985 or any other similar sources from time to time of grant of funding

Interpretation

- 1.2 The headings in this Agreement do not and will not by implication form any part of this Agreement and shall have no legal force whatsoever
- 1.3 Unless the context requires otherwise reference to this Agreement to a clause schedule or paragraph are references respectively to a clause schedule of paragraph of this Agreement
- 1.4 Where any part to this Agreement comprises two or more persons any obligation on the part of that party contained or implied in this Agreement shall be deemed to be joint and several obligations on the part of these persons and references to that party shall include reference to each or any of those persons
- 1.5 A reference to any statute or statutory section shall be taken to include a reference to any statutory, amendment, modification or re-enactment of it for the time being in force
- 1.6 Words denoting the singular shall include the plural and vice versa words denoting any gender shall include all genders and words denoting persons shall include bodies corporate and vice versa

2 Enforceability

- 2.1** This Agreement is a Planning Obligation with the intent to bind the Property and the Owner and Successors in Title to observe and perform the covenants herein
- 2.2** The obligations of this Agreement shall take effect on the implementation of the relevant part of the development pursuant to the Planning Permission
- 2.3** No persons shall be liable for a breach of covenant contained in this Agreement after he shall have parted with his interest in the Property or the part in respect of which such a breach occurs but without prejudice to liability for any existing breach of covenant prior to parting with such interest
- 2.4** This Agreement shall not be binding or enforceable against any mortgagee or charge (of any person deriving title from such mortgagee or charge) exercising a power of sale
- 2.5** The provisions of this Agreement are not intended to be enforceable by any third party (which for the avoidance of doubt shall exclude any statutory successor or authority to the Council or successors in the title to the Owner) pursuant to the Contract (Rights of Third Parties) Act 1999

3 Expiry Modification Variation or Amendments of Planning Permission

- 3.1** If the Planning Permission shall expire before implementation of Development or shall at any time be revoked this Agreement shall forthwith determine and cease to have effect
- 3.2** Nothing in this Agreement shall prohibit or limit the right to develop any part of the Property in accordance with any planning permission (other than the Planning Permission) granted (whether or not on appeal) after

the date of this Agreement and this Agreement shall not apply to development carried out under any planning permission other than the Planning Permission

4 Registration

This Agreement is a Local Land Charge and shall be registered as such by the Council

5 Service of Notices

Any notice or other written communication to be served by one party upon any other pursuant to the terms of this Agreement shall be deemed to have been validly served if delivered by hand or sent by pre-paid registered delivery post to the party to be delivered to the address herein specified or to such other address as may from time to time be notified for the purposes of notice in writing

6 Reasonableness

Where any agreement, certificate, consent, permission expression of satisfaction or other approval is to be given by any party or any person on behalf of any party hereto under this Agreement the same shall not be unreasonably withheld or delayed

7 Covenants

7.1 The Owners hereby covenants to perform the obligations as specified in Schedule 1

7.2 The Council hereby covenants to perform the obligations as specified in Schedule 2

8 Miscellaneous

8.1 Nothing in this Agreement shall affect, bind or be enforceable against any individual person in respect of any completed Residential Unit and its curtilage acquired or leased by them for residential occupation on the Property

- 8.2** Nothing in this Agreement is intended to restrict the exercise by the Council of any of its powers
- 8.3** If any provision in this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be deemed thereby to be affected or impaired
- 8.4** This Agreement is a Deed and is enforceable by the Council
- 8.5** The Council will upon written request of the Owner at any time after the obligations of the Owner under this Agreement have been fulfilled issue written confirmation thereof
- 8.6** Any dispute or difference arising between the parties with regard to their respective rights and obligations as to any matter or thing in anyway arising out or connected with this Agreement shall except as otherwise expressly provided be referred to the decision of a single arbitrator to be agreed by the parties or failing agreement between them to be nominated by the President for the time being of the Royal Institute of Chartered Surveyors as the case may be and any such reference shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 1996 or any statutory modification or enactment for the time being in force
- 8.7** The Owner shall pay the Council's legal fees incurred in relation to this Agreement on the date of this Agreement in the sum of £330 (three hundred and thirty pounds)

SCHEDULE 1

The Owner covenants with the Council as follows:

- 1. Affordable Housing**
- 1.1 To submit an Affordable Housing Scheme to the Council which provides for twenty one Affordable Housing Units which shall be delivered as nine – two bedroomed Rented sheltered apartments and eight – new build homebuy three bedroomed houses and two – Intermediate Rent two bedroomed houses and two - Intermediate Rent three bedroom houses as shown hatched black on Plan 1; or for an alternative mix of Affordable Housing Units to be agreed with the Council**
- 1.2.1 To provide the Council or its agents with such information concerning negotiation between the Owner and a Registered Social Landlord in respect of the Affordable Housing proposed to be transferred to a Registered Social Landlord as the Council or its agents may reasonably request**
- 1.2.2 Alternatively, if the interest of a Registered Social Landlord cannot be secured to provide details to the Council for the delivery of the Affordable Housing as housing discounted to open market value, the level of Affordable Housing, the level of discount and the eligibility criteria to be agreed with the Council following a Viability Assessment Report prepared by the Owner/Developer and to be audited and agreed by the District Valuer and/or by an independent commercial valuer at the Owners sole cost.**
- 1.2.3 Where a dispute or difference arises between the Owner and the Council in respect of the Viability Assessment Report at 1.2.2 above in relation to matters as between the Council and the Owner only either party to such dispute or difference shall be entitled to have the matter referred to the determination of an expert (" the Appointed Expert") having not less than**

ten years relevant experience in the field of the matter in dispute and being a member of the Royal Institution of Chartered Surveyors or if appropriate to the matter in dispute of another professional institution or body the identity of such person in default of agreement being an appointment made on the application of either party at anytime by or on behalf of the President for the time being of the Royal Institution of Chartered Surveyors provided that in the absence of a direction by the Appointed Expert in accordance with this clause as to how costs of the reference to the Appointed Expert should be borne as between the parties to the dispute the parties shall bear their own costs and shall share equally the costs and charges of the Appointed Expert.

1.2.4 The Appointed Expert shall:

Afford to each of the parties to the dispute an opportunity to make representations to him/her in writing and if he/she so directs submissions upon one another's representations;

Be entitled to stipulate the periods of time for the making of such representations as is reasonable in the circumstances;

Be bound to have regard to such representations;

Have the power of making directions as to the responsibility for the cost of his/her award (including both the costs of the relevant parties and the costs and charges of the Appointed Expert) to be met by any party behaving unreasonably;

In the making of his/her award not to be liable save to the extent in law as provided in relation to discussions of an Expert;

Make awards which are final and conclusive as between the parties to the dispute (except that such awards shall not remove the parties right of appeal on matters of law and any manifest material error); and

Be replaced by a fresh appointee in the event of his/her becoming at any time unable or unwilling for any reason to discharge his/her function such fresh appointee to be appointed in the manner prescribed in this clause

- 1.3 Notwithstanding the grant of the Planning Permission not to allow the use of any Affordable Housing Unit as a dwelling (other than as a show house or similar or a sales office) except by a person and his household determined by the Registered Social Landlord as both being in need of affordable housing at the time of determination because of financial circumstances of the person and their household and being a person who has met the criteria for Affordable Housing as agreed between the Council and the Registered Social Landlord
- 1.4 To construct the Affordable Housing in accordance with the approved Affordable Housing Scheme and the Scheme Development Standards and to provide satisfactory evidence of the same to the Council
- 1.5 That not more than 50% of the Market Dwellings shall be occupied until the Owner has entered into a binding Contract with a Registered Social Landlord to dispose of the completed Affordable Housing Units approved as part of the Affordable Housing Scheme, or the Council has approved provision of the Affordable Housing as housing discounted to open market value following the submission and agreement of a Viability Assessment Report in accordance with paragraph 1.2.2 above, provided that the Council will act reasonably (having regard to the agreed objective of ensuring that Affordable Housing is provided at the Property) and further in agreeing alterations to the number, according to the proposed phasing of the development (and proof of such agreed alterations shall be evidenced by a letter on headed note paper of the Council)

1.6 That from the date on which the Council approved the Affordable Housing Scheme that the land upon which the Affordable Housing is to be provided shall not be used for any other purpose other than Affordable Housing

1.7 Rented Affordable Housing Units

1.7.1 that the Rented Affordable Units be available for rent

1.7.2 that on completion of the Rented Affordable Housing Units they will be allocated by 100% nomination arrangements or first let to approved persons nominated by the Council in accordance with the Council's allocations policy

1.7.3 that subsequent lets will be on a 50% nomination arrangement to approved persons by the RSL

1.7.4 that rents to be charged on the Rented Affordable Housing Units will be in accordance with the Governments Guidance on Formulae rent as issued by the Homes and Communities Agency which governs the rents to be charged by all social landlords whether they be registered social landlords or local authorities.

1.8 Shared Ownership Affordable Housing Units

1.8.1 that on completion of the Affordable Housing Units (for Shared Ownership) or as soon as possible thereafter the RSL shall dispose of the Affordable Units intended for Shared Ownership

(a) at Open Market Value on a Shared Ownership basis with the rental element being discounted by the RSL

(b) to an Approved person who shall purchase the Affordable Housing Unit for occupation by the Approved person and in accordance with the requirements of this Agreement

(c) in consultation with the Council and having first obtained the Council's consent to the Disposal to the Approved person

1.8.2 the Approved person shall be required to purchase a minimum share of the Affordable Housing Unit which share shall be as follows:

2 bedroom houses -minimum 50%

3 bedroom houses -minimum 50%

1.8.3 the approved person shall be allowed to purchase additional shares in increments of no less than 10% up to a maximum of 100% provided that at the point of purchase of each additional share they continue to occupy the Affordable Unit in compliance with the requirements of this Agreement

1.8.4 The provisions of Clauses 1.7 to 1.8.3 of this Schedule 1 shall not be binding on a mortgagee in possession of the whole or any part of the Affordable Housing Units or a bona fide purchaser for value thereof from such a mortgagee in possession

1.9 That each and every Affordable Housing Unit shall not be occupied or purchased by any person except an Approved Person who shall be approved in writing by the Council

1.9.1 Approved Persons for the purposes of the Affordable Housing Scheme and in order of priority are detailed below:

1.9.2 First time buyers who can demonstrate a housing need requirement for the property type they are purchasing where none of the family own or have ever owned a property (whether residential or otherwise) and who were either

living in the Borough of Ribble Valley or

- working in the Borough of Ribble Valley or
- who have lived in the Borough of Ribble Valley for any five of the last ten years having left to find suitable accommodation elsewhere and who also have close family living in the Borough of Ribble Valley or
- persons moving to the Borough of Ribble Valley to offer support or receive support from a close family member who is living in Borough of Ribble Valley

1.9.3 Secondly people who are not first time buyers who can meet one or other of the local connections detailed in 1.9.2 above and can demonstrate a housing needs requirement for the property type they are purchasing

1.9.4 Eligibility criteria: financial

The RSL will ensure purchasers of all Affordable Housing Units demonstrate that they have

- sufficient income to purchase the property but that they could not afford to purchase on the open market
- a satisfactory credit history
- sufficient funds to cover the legal costs involved in purchase

1.9.5 Eligibility criteria: income

The RSL will ensure that the Affordable Housing Units are allocated to those who meet the requirements of this Agreement and will

- impose upper income brackets for purchasers of each Affordable Housing Unit type
- ensure income levels are verified via wage slips/P60s

- ensure local connection is established by reference to the electoral roll at a specific date in time. The onus will be on the approved person to provide proof of residence eg utility bills if they are not on the electoral roll

1.9.6 Eligibility criteria: local connection

- verify local connection based on employment by way of references/confirmation of employment history
confirmation of permanence of employment will be required from employer
- verify five out of last ten years connection by placing the onus on the approved person to provide suitable supporting evidence eg council tax records, electoral roll records

2 Live Work Units

- 2.1** Not to allow the occupation of any live work dwelling unit unless the related work unit is completed
- 2.2** Not to use any work unit for any use other than Class B1 of the Schedule of the Town and Country Planning (Use Classes) Order 1987
- 2.3** To permit occupiers of the live work units to sub-let the ancillary work unit provided it can be shown that the original commercial use has failed
- 2.4** The Occupier of each live work unit to make a declaration to the Council in January of each year of the planning use to which the related work unit was put during the previous calendar year

3 Public Open Space

- 3.1** To pay the Council a commuted sum of £50,000 in respect of the improvement and future maintenance of the Public Open Space shown hatched green on the Plan. The initial £10,000 of this commuted sum shall be paid within 2 months following the occupation of the 10th Market

Dwelling with the remaining balance of £40,000 to be paid within 2 months following the occupation of the 25th Market Dwelling

SCHEDULE 2

1. The Council covenants with the Owner as follows:
 - a) Forthwith to grant the planning permission
 - b) To apply the Public Open Space commuted sum towards the improvement and future maintenance of the Public Open Space shown hatched green on the Plan provided that if the Public Open Space commuted sum has not been utilised or committed for such purposes within five years of it being received by the Council to repay the Owner any part of the Public Open Space commuted sum not so used within 28 days of the end of the five year period

IN WITNESS whereof this Deed has been duly executed by the parties the day
and year first before written

THE COMMON SEAL OF)

RIBBLE VALLEY BOROUGH COUNCIL)

Was hereunto affixed to this Deed in)

the presence of:)



1047

Mayor

Chief Executive

EXECUTED AND DELIVERED AS A DEED

BY NEWCLOSE PROPERTIES LIMITED

Acting by two Directors or one Director and

The Company Secretary

Director

~~Director/Secretary~~

EXECUTED AND DELIVERED AS A DEED

BY BARROW BROOK DEVELOPMENTS LLP

Acting by two Members

Member

Member

~~EXECUTED AND DELIVERED AS A DEED~~
~~THE COMMON SEAL OF~~
~~BY COUTTS & COMPANY acting by~~

was hereto affixed
to this Deed
in the presence of

Sealing Officer
Authorised Signatory