

3/2009/0791

DATED

2009

BETWEEN

(1) NEWCLOSE PROPERTIES LIMITED

and

(2) BRIERY HOMES LIMITED

and

(3) BANK OF SCOTLAND PLC

and

(4) 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

day of

2009

BETWEEN

1 NEWCLOSE PROPERTIES LIMITED

and

2 BRIERY HOMES LIMITED

and

3 BANK OF SCOTLAND PLC

and

4 RIBBLE VALLEY BOROUGH COUNCIL

RECITALS

WHEREAS

- (1) The Owner is the freehold owner of land at Barrow Brook, Barrow forming part of title registered at the Land Registry under numbers LAN33017 and LAN 49236 and shown for the purposes of identification only edged red on Plan 1 ("the Property")
- (2) The site within title number LAN33017 is subject to a legal charge dated the thirty-first day of March two thousand and six made between the owner and the mortgagee
- (3) The Council is the Local Planning Authority for the purposes of this Agreement for the areas within which the Property is situation and by whom the obligations contained in this Agreement are enforceable
- (4) The Owner has applied for planning permission to develop the Property for the Proposed Development (as hereinafter defined) by the Application (as hereinafter defined)
- (5) The Owner offers this Agreement pursuant to Section 106 of the Town and Country Planning Act 1990 ("the 1990 Act") and Section 111 of the Local Government Act 1972 ("the 1972 Act")

IT IS HEREBY AGREED as follows:

1. DEFINITIONS

1.1 In this Agreement unless the context otherwise requires:

DRAFT

Affordable Housing

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

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 or commuted payment in lieu of on-site provision) 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
- (d) whether Social Housing Grant from the Housing Corporation or any other source of financial assistance is expected towards 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 [] 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 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 remediation works and “implement” and “implemented” shall be construed accordingly



Kickstart

"Kickstart" means the Kickstart Housing Delivery programme administered by the Homes and Communities Agency.

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" 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 Housing Corporation 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 or funding

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 in 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 references 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 The obligations of this Agreement shall take effect on the implementation of the relevant part of the development pursuant to the Planning Permission as referred to in Schedule 1 Clause 5 below

2.2 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.

2.3 This Agreement shall not be binding or enforceable against any mortgagee or charge (or any person deriving title from such mortgagee or charge) exercising a power of sale

2.4 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 Contracts (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

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 purpose of notice in writing.

DRAFT

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

The Owner hereby covenants to perform the obligations as specified in the Schedule

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 if 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 constitutes a Deed

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 of 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 Institution 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.

SCHEDULE 1

The Owner covenants with the Council as follows:

1. Affordable Housing

1.1 Not to implement (or allow to be implemented) the Planning Permission beyond the relevant point to be agreed by the interested parties unless the Affordable Housing

Scheme has been submitted to and approved in writing by the Council and the Affordable Housing Scheme shall incorporate not more than 30% (rounded down to the nearest whole number) of the total number of Residential Units permitted by the Planning Permission, or a lesser proportion of the total number of Residential Units permitted by the Planning Permission combined with a commuted sum payment in lieu of on-site provision equivalent to the element not to be provided on site.

- 1.2 (i) 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 or to provide the Council or its agents with such information concerning negotiation between the Owner and the Homes and Communities Agency in respect of the Affordable Housing proposed to be delivered via 'Kickstart' funding
- (ii) 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 discount to be agreed with the Council
- 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 no 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 Affordable Housing Units approved as part of the Affordable Housing Scheme 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 approves the Affordable Housing Scheme then the land on which the Affordable Housing is to be provided shall only be used for Affordable Housing
2. Live Work Units
- 2.1 Not to allow the occupation of any live work dwelling unit unless the related work 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.

4. Covenants by the Council

- 4.1 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 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 this date and year first before written.

**EXECUTED AS A DEED BY
RIBBLE VALLEY BOROUGH COUNCIL**

Director

Director/Secretary