09/1011

DATED 7th March 2012

RIBBLE VALLEY BOROUGH COUNCIL

- and –

DARWEN ESTATES LIMITED

SECTION 106 PLANNING AGREEMENT TOWN AND COUNTRY PLANNING ACT 1990

RELATING TO LAND KNOWN AS

LAND AT PETRE HOUSE FARM, WHALLEY ROAD, LANGHO

HEAD OF LEGAL & DEMOCRATIC SERVICES
RIBBLE VALLEY BOROUGH COUNCIL
CLITHEROE

THIS A G R E E M E N T is made the 7th day of March 2012

BETWEEN

1, **RIBBLE VALLEY BOROUGH COUNCIL** of Council Offices Church Walk Clitheroe Lancashire BB7 2RA (hereinafter called "the Council")
and

2. **DARWEN ESTATES LIMITED** (Company Registration Number 03670201) whose registered office is at c/o C T Jones & Co, Suite 108A Glenfield Park, Philips Road, Blackburn, Lancashire, BB1 5PF (hereinafter called "the Owner")

WHEREAS

(1) The Owner is the freehold owner of land at Petre House Farm, Whalley Road, Langho the title of which land is registered at HM Land Registry under number LAN22286 ("the Property") shown edged red on the Plan attached.

(2) 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 contained in this Agreement are enforceable

(3) The Owner on the 4th day of December Two thousand and nine applied to the Council for outline planning permission for a development comprising 24 (twenty four) residential units on the Property as detailed in the plans and particulars deposited with the Council under reference 3/2009/1011

(4) 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 Rented Housing

"Affordable Rented Housing " means the Residential Unit constructed pursuant to the Planning Permission and transferred to a Registered Provider for allocation as affordable rented housing where the lettings shall be made under a form of tenancy prescribed by the Homes and Communities Agency and at a rent equal to or less than the prevailing affordable rent (inclusive of applicable service charges) permitted by the Homes and Communities Agency which shall normally be 80% of the Open Market Rental Value (or the maximum amount of local housing allowance payable for the Dwelling if this is lower than the calculated 80% figure). The Affordable Rented Housing (as identified on Plan attached) shall comprise:

- 10 (ten) X 2 Bedroom Bungalows
- 2 (two) X 3 Bedroom Bungalows

The Open Market Rental Value shall be determined by an independent qualified valuer appointed by the Registered Provider to establish the Open Market Rent of the Affordable Rented Housing

Affordable Housing Unit

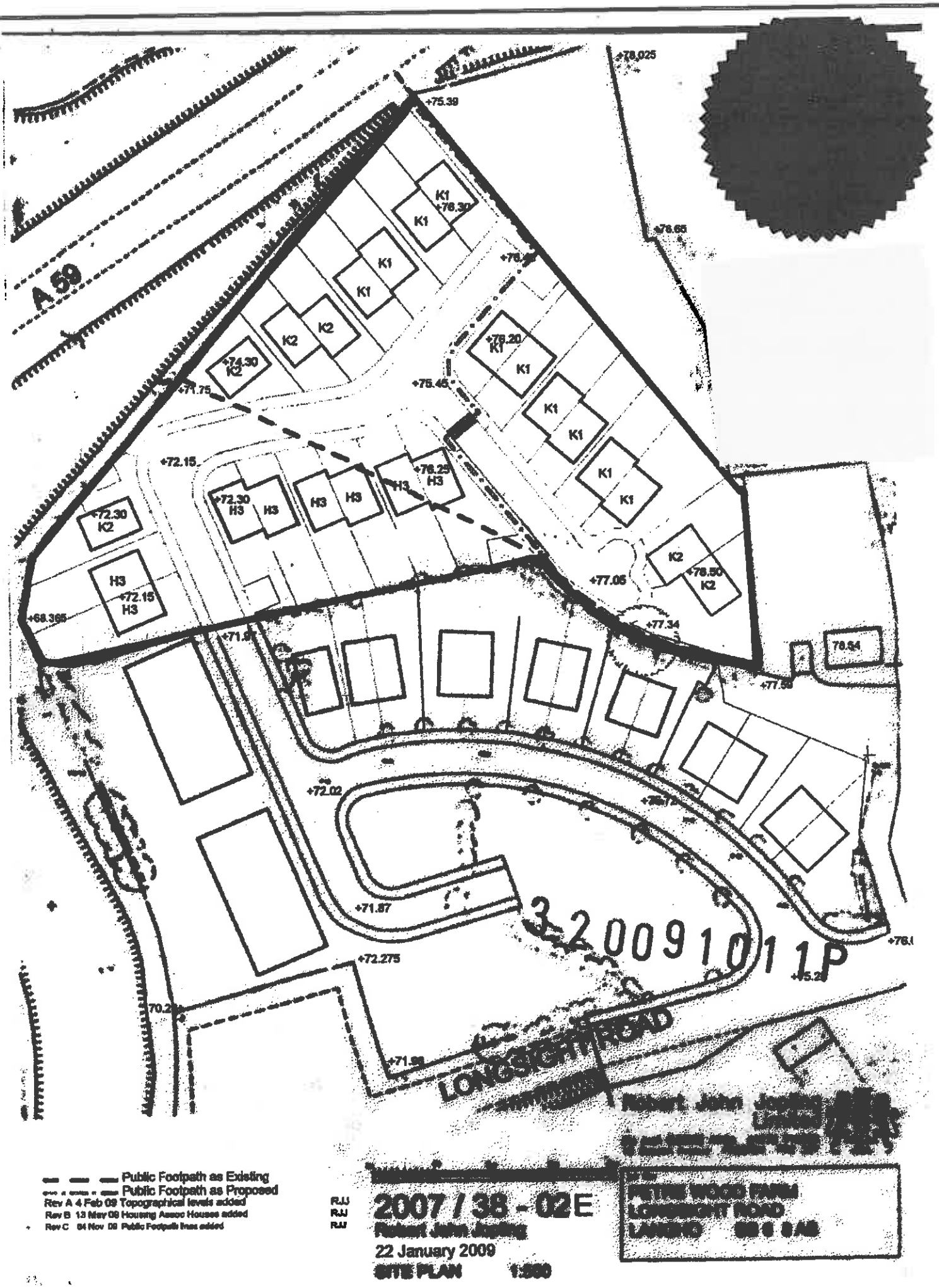
"Affordable Housing Unit" means each unit of Affordable Housing to be constructed on the property pursuant to the Planning Permission and which in total will comprise 12 (twelve) Affordable Rented Housing units and 12 (twelve) Shared Ownership Housing units.

Application

"Application" means the application for Planning Permission submitted to the Council reference number 3/2009/1011 for residential use and associated amenities on the Property

Development

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


A59
+75.39
+78.025
+78.65
+76.30
+76.20
+75.45
+71.75
+72.15
+76.25
+72.30
+68.365
+77.05
+77.34
+72.02
+71.87
+72.275
+70.25
+71.58
LONGSIGHT ROAD
K1
K2
H3
3200910/11P
Public Footpath as Existing
Public Footpath as Proposed
Rev A 4 Feb 09 Topographical levels added
Rev B 13 May 09 Housing Assoc Houses added
Rev C 04 Nov 09 Public Footpath lines added
RJJ
RJJ
RJJ
2007 / 38 - 02E
22 January 2009
SITE PLAN 1:500

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

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

"Plan" means the Property location plan annexed hereto.

Planning Permission

"Planning Permission" means the Planning Permission granted pursuant to the Application. A draft of which is set out in Schedule 5.

Registered Provider

"Registered Provider" means a Housing Association approved by the Council, such approval not to be unreasonably withheld, being a registered social landlord or other body recognised by the Homes and Communities Agency (which shall include any successor in title) as a registered provider of affordable housing in accordance with the provisions of the Housing and Regeneration Act 2008.

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 dwellings constructed in accordance with the 2010 Editions of the Building Regulations Approved Documents including an element for provision of renewable energy and to a specification to be agreed between the RP and the Developer.

Shared Ownership Housing

"Shared Ownership Housing" means the residential units constructed pursuant to the Planning Permission and transferred to a Registered Provider for allocation as Shared Ownership Housing. Each occupier may acquire an interest in the Dwelling of between 25% and 80% and may staircase up to 100% of the Open Market Value of the Dwelling in increments at times of his/her election the balance of the equity in the Dwelling being let to the occupier at a rent equal to or less than that permitted by the Homes and Communities Agency. The Affordable Shared Ownership Housing shall comprise:

- 8 (eight) X 3 Bedroom houses
- 4 (four) X 3 bedroom bungalows

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 statue 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 chargee 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 Owner hereby covenants with the Council 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 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

8.6 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 The Owner covenants with the Council that all 24 (twenty four) Dwellings to be constructed on the Property pursuant to the Planning Permission shall be Affordable Housing Units

1.2 The Owner covenants with the Council that the Affordable Housing Units shall be made available as 12 (twelve) Affordable Rented Housing units and 12 (twelve) Shared Ownership Housing units (or such other type or mix of tenure as the Council may approve in writing)

1.3 To construct the Affordable Housing in accordance with the approved planning permission and the Scheme Development Standards and to provide satisfactory evidence of the same to the Council

1.4 That not more than 25% of the Affordable Dwellings shall be constructed until the Owner has entered into a binding Contract with the Registered Provider for the transfer of the completed Affordable Housing Units

1.5 **Affordable Rent Housing Units**

1.5.1 that the Affordable Rent Units be available for rent

1.5.2 that on completion of the Affordable Rent 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

1.5.3 that subsequent lets will be on a 50% nomination arrangement to approved persons by the Registered Provider

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

1.5.5 that the 10 (ten) two bedroomed bungalows shall be offered to Approved Persons over the age of 55 years. If after six weeks marketing no persons over the age of 55 years have been found, the individual bungalow shall be rented to Approved Persons without age limit.

1.6 **Shared Ownership Affordable Housing Units**

1.6.1 that on completion of the Affordable Housing Units (for Shared Ownership) or as soon as possible thereafter the Registered Provider 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 Registered Provider

(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

1.6.2 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

1.6.3 The provisions of Clauses 1.5 to 1.6.3 of this Schedule 1 shall not be binding on a mortgagee in possession of the whole or any part of the Affordable Housing Units

1.7 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

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

1.8.1 First time buyers who can demonstrate a housing need for the type of an Affordable Housing Unit who are either:

a) currently living in the Borough of Ribble Valley for more than 10 years or

b) currently living in the Borough of Ribble Valley and have done so continually for between 5 to 10 years or

c) currently living in the Borough of Ribble Valley and have done so continually for a minimum of 12 months or

d) currently permanently employed in the Borough of Ribble Valley for a minimum of 12 months and work for a minimum of 18 hours per week paid or unpaid or

e) Persons who at least one of the adult applicants have next of kin who have lived in the Borough of Ribble Valley continually for a minimum of five years. Next of kin for the purposes of this clause shall be defined as mother, father, brother, sister or adult dependent children.

f) Persons who are former residents of the Borough of Ribble Valley who have moved from the Borough because of a lack of affordable housing in the Borough

g) Non first time buyers who can meet one of the qualification provisions set out in paragraphs a -g above

1.9 In the event that the Registered Provider is unable to find a Person who meets the Approved Person definitions then the Registered Provider shall use reasonable endeavours to market the Shared Ownership Affordable Housing Unit to a potential Approved Person for at least three months. If at the end of the period of three months in which the Unit has been marketed and no Approved Person has been identified then the Registered Provider may dispose the Unit to a person who does not meet the definition of Approved Person

2. The Registered Provider shall ensure that the Approved Persons demonstrate that they:

2.1 do not have sufficient income to purchase the same type of Unit on the open market

2.2 have satisfactory credit history containing no County Court Judgements or Insolvency proceedings within the past six years credit history report

2.3 have sufficient funds to cover the legal costs and disbursements involved in the purchase

2.4 impose upper income brackets per household for purchasers of each Unit in accordance with Homes and Communities Agency regulations and guidance

2.5 ensure income levels are verified via wage slips/P60's

2.6 if relevant verify local connection based on employment by way of references/ confirmation of employment history and confirmation of permanence of employment will be required from an employer

2.7 if relevant verify five out of the last ten years connection by placing the onus on the Approved Person to provide suitable supporting evidence eg council tax records, electoral roll records

2.8 If relevant ensure local connection is established by reference to the electoral roll at a specific date in time

3 **Wheeled Bin Contribution**

3.1 To pay the Council upon the first occupation of any dwelling the sum of £90 per Residential Unit constructed on the Property pursuant to the Planning Permission in respect of the administration and delivery of wheeled refuse bins.

SCHEDULE 2

1. The Council covenants with the Owner as follows:

   1.1 On completion of this Agreement forthwith to grant the planning permission

SCHEDULE 3

DRAFT PLANNING PERMISSION

RIBBLE VALLEY BOROUGH COUNCIL

Development Department

Council Offices, Church Walk, Clitheroe, Lancashire, BB7 2RA

Telephone: 01200 425111 Fax: 01200 414488 Planning Fax: 01200 414487

Town and Country Planning Act 1990

OUTLINE PLANNING PERMISSION

APPLICATION NO: 3/2009/1011
DECISION DATE: DRAFT
DATE RECEIVED: 02/12/2009

APPLICANT:

Darwen Estates Ltd
The Farmhouse
Pickering Fold
Rock Lane
Tockholes
Lancs
BB3 0LX

AGENT:

...uet Dixon T... Planners Ltd
1... Whalley R...
Clith...
Lancs
BB7 1AW

PARTICULARS OF DEVELOPMENT: ...application to build 10 x t...d semi-detached bungalows, 4 ... x semi-...hed and 2 detached t... bed dormer bungalows and 8 x ...hree bed semi-...hed houses and diversion of public footpath.

AT: land adjacent to Petre House Farm ...alley Road ...angho...

Ribble Valley Borough Council hereby give ...tice in pursuance of ...visions of the Town and Country Planning Act 1990 that **outline planning permission ha...** granted for ...e carrying out of the development referred to above in accordance ... application and plan... submitted subject to the following conditions:

1 Applic...n for appr...al of reserved ma...rs must be made not later than the expiration of three years begi...ng with the da... of this permission ... development must be begun not later than whichever is th...atter of the follow...g dates.

a) the ...piration o... years ...te of this permission; or

b) the expir...n of two years from the final approval of the reserved matters, or in the case of approval on different dates, ... final approval of the last such matter to be approved.

RE...ON: In order ... Local Planning Authority shall be satisfied as to the details and because the applic...on was mad... or outline permission only and to comply with Policy G1 of the Ribble Valley District ...e Local P...n.

2 This out...e permission shall relate to the proposal as shown on drawing Nos 2007/38/01A, 02E, 08A, 09 and 10.

RE...ON: For the avoidance of doubt and to ensure compliance with the submitted plans.

3 This outline planning permission should be read in conjunction with the Section 106 Agreement dated ....

REASON: For the avoidance of doubt as the permission is subject to an Agreement.

P.T.O.

DRAFT

4 Prior to the commencement of development a scheme identifying how a minimum of 10% of the energy requirements generated by the development will be achieved by renewable energy production methods shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall then be provided in accordance with the approved details prior to occupation of the development and thereafter retained.

REASON: In order to encourage renewable energy and to comply with Policy G1 of the Ribble Valley Districtwide Local Plan.

5 No development approved by this permission shall be commenced until a scheme for the provision and implementation of a surface water regulation system has been approved by the Local Planning Authority. The scheme shall be completed in accordance with the approved plans.

REASON: To reduce the risk of flooding in accordance with Policy G1 of the Ribble Valley Districtwide Local Plan.

6 Precise specifications or samples of walling and roofing materials and details of any surface materials to be used including their colour and texture shall have been submitted to and approved in writing by the Local Planning Authority before their use in the proposed works.

REASON: In order that the Local Planning Authority may ensure that the materials to be used are appropriate to the locality in accordance with Policy G1 of the Ribble Valley Districtwide Local Plan.

7 Prior to the commencement of any development site clearance, an arboricultural/tree protection/tree constraints report and plan shall be submitted for the written approval of the Local Planning Authority. The plan shall include details on all the dimensions of retained trees, including crown spread and root proteotion zones. Details shall also include the physical protection methods in accordance with the BS5837 (Trees in relation to construction) and a Tree Protection Monitoring Schedule.

REASON: In order to ensure that a tree within the site that is the subject of a Tree Preservation Order is provided maximum physical protection from any potential adverse effects of development, and to comply with Policies G1 and [illegible] of the Ribble Valley Districtwide Local Plan.

8 The landscaping details to be submitted in accordance with condition 1 of this outline permission shall include details of the boundary treatments for all dwellings. The boundary treatment shall then be implemented in accordance with the approved details prior to the first occupation of the dwelling to which they relate.

REASON: In the interests of visual amenity and the amenities of adjoining residents, and to comply with Policy G1 of the Ribble Valley Districtwide Local Plan.

9 Prior to the commencement of any construction works on the two storey houses on plots 1 and 2 and plots 9-14 inclusive, their precise siting and proposed finished floor slab levels shall be marked out/indicated on site to be viewed and agreed in writing by the Local Planning Authority.

REASON: To ensure compliance with the submitted plans and in the interest of visual amenity and the amenities/privacy of nearby residents, and to comply with Policy G1 of the Ribble Valley Districtwide Local Plan.

P.T.O.

RIBBLE VALLEY BOROUGH COUNCIL
OUTLINE PLANNING PERMISSION

APPLICATION NO: 3/2009/1011 **DECISION DATE: DRAFT**

Relevant Planning Policy

Policy G1 - Development Control.
Policy G5 - Settlement Strategy.
Policy H2 - Dwellings in the Open Countryside.
Policy H20 - Affordable Housing - Villages and Countryside.
Policy ENV3 - Development in Open Countryside.
Regional Spatial Strategy - Policy L5 Affordable Housing.
Affordable Housing Memorandum of Understanding.

SUMMARY OF REASONS FOR APPROVAL

The proposal will provide 24 affordable houses without any undue detriment to visual amenity, the amenities of nearby residents or highway safety.

Note(s)

1 For rights of appeal in respect of any condition(s)/or reason(s) attached to the consent see the attached notes.

2 The applicant is advised that should there be any deviation from the approved plan the Local Planning Authority must be informed. It is therefore vital that any future Building Regulation application must comply with the approved planning application.

3 The grant of planning permission does not entitle a developer to obstruct a right of way and any proposed stopping up or diversion of a right of way should be the subject of an Order under the appropriate Act.

4 In relation to condition No 7 of this permission, the applicant should note that the adequate protection of the oak tree that is covered by a Tree Preservation Order might involve alterations to the position and/or means of construction of the carriageway turning head and the parking spaces proposed for the dwelling on plot 18.

JOHN HEAP
DIRECTOR OF COMMUNITY SERVICES

DRAFT

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:)



1217

Mayor

Chief Executive

EXECUTED AND DELIVERED AS A DEED
BY DARWEN ESTATES LIMITED
Acting by two Directors or one Director and
The Company Secretary

Director

Director/Secretary