

DATED

15th October

2012

EDWARD HINE - LPA RECEIVER FOR PAPILLION PROPERTIES LTD

**UNILATERAL UNDERTAKING
PURSUANCE TO SECTION 106
TOWN AND COUNTRY PLANNING ACT 1990**

RELATING TO LAND KNOWN AS

SITE 2, BARROW BROOK BUSINESS VILLAGE, BARROW, CLITHEROE, LANCASHIRE

Prepared by:

Avalon Town Planning Ltd

2 Reedley Business Centre

Redman Road

BURNLEY

BB10 2TY

01282 834834

THIS UNILATERAL UNDERTAKING is given the 15th day of October two thousand and twelve

BY:

- (1) **EDWARD HINE LPA RECEIVER FOR PAPILLION PROPERTIES LTD** of

[REDACTED] at [REDACTED] [REDACTED], [REDACTED] [REDACTED], [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED]

TO:

- (2) **RIBBLE VALLEY BOROUGH COUNCIL** of Council Offices, Church Walk, Clitheroe, Lancashire BB7 2RA (hereinafter called "the Council") and
- (3) **LANCASHIRE COUNTY COUNCIL** of County Hall, Fishergate, Preston, Lancashire PR1 8XJ (hereinafter called "the County Council")

1. INTERPRETATION AND DEFINITIONS

- 1.1 In this Agreement the following expressions shall have the following meanings:

"the Act"

Means the Town & Country Planning Act 1990 (as amended)

"Affordable Housing"

Means housing affordable to those people who by reason of their limited income and/or resources or of some other circumstances cannot afford to rent or buy a suitable home generally available on the open market including the following types of scheme or any one or combination thereof (it being expressly agreed and declared that this definition is not intended to be exhaustive)

- (i) A dwelling let as an assured tenancy as defined by Section 1 of the Housing Act 1988 (or any statutory extension re-enactment or modification thereof) at a level of rent not above the Tenant Services Authority Rent Restructuring Regime prevailing at the time the Affordable Housing Site (or relevant part thereof) is transferred to a Social Landlord in accordance with paragraph 1 to Schedule 2 hereto or such other guidelines as may be approved by the Council ("Social Rented Housing");

- (ii) A dwelling for sale on a shared ownership basis whereby the occupier is required to purchase a minimum equity share in the dwelling and will then have the option to purchase additional equity to a maximum of eighty percent of the total equity in the dwelling (“Shared Ownership”);
- (iii) Rented housing provided by registered providers of social housing that has the same characteristics as social rented housing except that it is outside the national rent regime, but is subject to other rent controls that require it to be offered to eligible households at a rent of up to 80 percent of local market rents (“Affordable Rented Housing”); or
- (iv) Any other scheme approved by the Council which addresses its housing need and secures the provision of housing to be available in perpetuity (where legally permissible) for occupation by persons who have need of such housing

“Affordable Housing Provider”

Means a body whose function or aim is to provide and manage Affordable Housing (including Affordable Housing of the type and amount proposed within the Development) including a housing association or associations or housing company or companies or a trust or trusts registered as a registered social landlord (pursuant to the Housing Act 1996) with the Housing Corporation or an alternative affordable housing provider nominated by the Council

“Affordable Housing Scheme”

Means the scheme for the provision of Affordable Housing submitted in accordance with the Planning Permission which shall include details of:

- (i) The numbers, type, mix, tenure and location on the site of the Affordable Housing which shall consist of not less than 30% of the Residential Units and shall comprise:
 - (a) 31 Residential Units of Shared Ownership (which shall be made up of 24 x 2 bedroom apartments for the over 55 age group and 7 x 2 bedroom bungalows for the over 55 age group) to be occupied in accordance with the order of priority set out in the Shared Ownership Occupancy Criteria
- (ii) The timing of the construction of the Affordable Housing and its phasing in relation to the occupancy of the Market Dwellings
- (iii) The arrangements for the transfer of the Affordable Housing to a Social Landlord

- (iv) The arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the Affordable Housing
- (v) The occupancy criteria to be used for determining the identity of occupiers of the Affordable Housing and the means by which such occupancy criteria shall be enforced

“Affordable Housing Site(s)”

Means the part or parts of the Land sufficient for the provision of Affordable Housing Units in accordance with the approved Affordable Housing Scheme including (without prejudice to the generality of the foregoing): adequate curtilage and parking spaces and service areas and walkways and gardens and other normal domestic facilities

“Affordable Housing Unit”

Means a Residential Unit provided as Affordable Housing in accordance with the Affordable Housing Scheme

“Affordable Housing Site Terms”

Means the terms for the transfer of the Affordable Housing Site and the Affordable Housing Units constructed thereon as set out in paragraph 1.4 to Schedule 2 hereto

“Appeal”

Means the appeal lodged in respect of the refusal by the Council of the Application given the appeal reference APP/T2350/A/2176977

“the Application”

Means the outline planning application registered on 16 March 2012 under application number 3/2012/0158

“BCIS General Buildings Cost Index”

Means the Building Cost Information Service General Buildings Cost Index published by the Royal Institute of Chartered Surveyors

“Commence Development/Commencement of Development”

Means the implementation of the Planning Permission by the carrying out of a material operation as defined by section 56(4) of the Act Save That for the purposes of determining whether a material operation has been carried out there shall be disregarded:

- (i) Ground and archaeological investigations
- (ii) Surveys
- (iii) Site clearance and demolition

- (iv) Remediation
- (v) The erection of site fences and hoardings
- (vi) The creation of a site compound
- (vii) Temporary access and haul roads
- (viii) Diversion decommissioning and/or laying of the services for the supply or carriage of electricity gas water sewerage telecommunications or other utilities media or services
- (ix) Any operations permitted by the Town and Country Planning (General Permitted Development) Order 1995

“Land”

Means land situate at Barrow Brook Business Village, Barrow, Clitheroe, Lancashire comprising approximately 4.3 hectares and more particularly described in Schedule 1 hereto

“Market Dwelling(s)”

Means the Residential Units excluding any Affordable Housing Unit

“On Site Play Areas”

Means the provision on the Land of one children’s play area.

“Open Space”

Means structural landscaping and general amenity areas in accordance with the Planning Permission and paragraph 2 of Schedule 3 hereto which for the avoidance of doubt shall not be construed as meaning open space land within the meaning of the Open Spaces Act 1906

“Phase of Development”

Means a phase of development which shall be in accordance with the planning conditions to which the Planning Permission is subject

“Planning Obligations”

Means the planning obligations specified in schedule 2 and schedule 3 hereto

“Planning Permission”

Means outline planning permission for the Development granted pursuant to the Appeal

“Residential Unit”

Means any dwelling flat or other residential unit of accommodation within the Development

“Shared Ownership Occupancy Criteria”

Means person(s) who are in excess of 55 years of age who are:

- (i) First time buyers who can demonstrate a housing need requirement for the type of Affordable Housing Unit who are either:
 - (a) Living in Ribble Valley or
 - (b) Working in Ribble Valley or
 - (c) Who have lived in 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 Ribble Valley

- (ii) Persons moving to the Ribble Valley to offer support or receive support from a close family member who is living in the Ribble Valley
- (iii) First time buyers who are unable to meet one of the qualification provisions set out in paragraph (i) above
- (iv) Those living in overcrowded conditions
- (v) The elderly who require assistance to buy property more suited to their needs
- (vi) A homeowner needing to move after the death of a partner
- (vii) A homeowner needing to move due to relationship breakdown
- (viii) A homeowner needing to move because they cannot meet their current housing cost

“Social Landlord”

Means a registered social landlord within the meaning of Part 1 of the Housing Act 1996 or a house builder or contractor or provider who is approved by the Homes and Communities Agency and which is accredited under the Housing Management Accreditation Scheme and is able to receive housing subsidy to deliver the housing tenure requirements

“Specification”

Means the NPFA Six Acre Standard or such other similar specification reasonably required by the Council

- 1.2 The expressions “The Council” “the County Council” and “the Owner” shall include their successors in title and assigns
- 1.3 Wherever the expression “the Owner” includes more than one person then the covenants on the part of the Owner herein contained shall be deemed to be joint and several
- 1.4 In this Agreement:
 - 1.4.1 words importing the singular include the plural
 - 1.4.2 words importing the masculine include the feminine and neuter
 - 1.4.3 words importing persons include companies and corporations and vice versa

2. BACKGROUND

- 2.1 The Council and the County Council are Local Planning Authorities for the purposes of Section 106 of the Act for the area within which the Land is situated
- 2.2 The County Council is the education authority for the area within which the Land is situated
- 2.3 The Owner is the registered proprietor under title number LAN59727 of the Land and in its capacity as such owner is hereinafter referred to as “the Owner”
- 2.4 The Application has been submitted to the Council for Planning Permission for the development and the Council refused the Application on 25 May 2012
- 2.5 The Appeal has been lodged and the parties have agreed to enter into this deed in order to secure the Planning Obligations contained in it in the event that Planning Permission is granted pursuant to the Appeal

3. LEGAL BASIS

- 3.1 This deed is made pursuant to the 1990 Act section 106
- 3.2 The terms of this deed create planning obligations binding on the Owner pursuant to Section 106 of the 1990 Act and are enforceable as such by the council and the County Council as local planning authority

4. CONDITIONS, DURATION AND ENFORCEMENT

4.1 Conditions precedent

The Planning Obligations in this deed are conditional and shall not come into effect until the grant of the Planning Permission

4.2 Duration

- 4.2.1 This deed shall cease to have effect, in so far only as it has not already been complied with, if the Planning Permission is quashed, revoked or otherwise

withdrawn or, without the consent of the Owner, it is modified by any statutory procedure or expires before the Commencement of Development

- 4.2.2 No person shall be liable for any breach of any of the Planning Obligations or other provisions of this deed after parting with his interest in that part of the Land on which the breach occurs, but without prejudice to liability for any subsisting breach arising before parting with that interest

4.3 Other development

- 4.3.1 Nothing in this deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this deed.

4.4 Non-enforcement

The Planning Obligations contained in this deed shall not be binding upon or enforceable against:

- 4.4.1 any statutory undertaker or other person who acquires any part of the Land or any interest in it for the purposes of the supply of electricity, gas, water, drainage, telecommunication services or public transport services;
- 4.4.2 any bona fide purchaser and/or occupier of a Residential Unit erected on the Land or its or their mortgagee save in connection with the Affordable Housing provided as part of the Affordable Housing Scheme but subject to the provisions of paragraph 1.5 of Schedule 2 hereto;
- 4.4.3 the Owner after he has disposed of his interest in the Land, or in the event of a disposal of part, in the part disposed of, other than disposal of an interest in the nature of an easement or the benefit of a restriction or similar, but not so as to release the Owner from any antecedent breach, non-performance or non-observance of his obligations;
- 4.4.4 for the avoidance of doubt the liability to pay any of the financial contributions referred to in Schedule 2 and Schedule 3 hereto shall not be enforceable against the person or body that becomes the registered proprietor of the Affordable Housing Site or any part thereof pursuant to this Agreement

5. OWNER'S COVENANTS

- 5.1 The Owner covenants with the Council and the County Council to bind its interest in the Land as set out in Schedule 2 and Schedule 3 hereto

6. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT

- 6.1 Nothing in this deed shall create any rights in favour of any person pursuant to the Contracts (Rights of Third Parties) Act 1999

7. NOTICES

- 7.1 Any notice or other written communication to be served upon a party or given by one party to any other under the terms of this deed shall be deemed to have been validly served or given if delivered by hand or sent by recorded delivery post to the party upon whom it is to be served or to whom it is to be given or a otherwise notified for the purpose by notice in writing

- 7.2 The address for any notice or other written communication shall be within the United Kingdom

- 7.3 A notice or communication shall be served or given:

7.3.1 on the Owner at the addresses set out above, or such other address as shall be notified in writing to the Council and the County Council from time to time

7.3.2 on the Council at the address set out above or such other address as shall be notified in writing to the Owner from time to time, marked for the attention of the Housing Strategy Officer, and

7.3.3 on the County Council at the address set out above or such other address as shall be notified in writing to the Owner from time to time, marked for the attention of the County Secretary and Solicitor

- 7.4 Any notice or other written communication to be given by the Council or the County Council shall be deemed valid and effectual if on its face it is signed on behalf of the Council or the County Council by an officer or duly authorised signatory

8. JURISDICTION AND LEGAL EFFECT

- 8.1 This deed shall be governed by and interpreted in accordance with the law of England and Wales
- 8.2 In so far as any clause or clauses of this deed are found (for whatever reason) to be invalid, illegal or unenforceable, that invalidity, illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this deed
- 8.3 No waiver (whether expressed or implied) by the Council or the County Council or the Owner of any breach or default in performing or observing any of the covenants terms or conditions of this deed shall constitute a continuing waiver and no such waiver shall prevent the Council or the County Council or the Owner from enforcing any of the relevant terms or conditions or from acting upon any subsequent breach or default
- 8.4 The provisions of this deed (other than this clause 8.4 which shall be effective in any event) shall be of no effect until this deed has been dated

SCHEDULE 1

The Owner's Title and Site Description

The freehold Land at Barrow Brook Business Village, Barrow, Clitheroe, Lancashire registered at HM Land Registry under title number LAN59727 and shown edged red on the Plan

SCHEDULE 2

The Owner's Covenants with the Council

1. Affordable Housing

- 1.1 Not to occupy nor to permit occupation of the first Market Dwelling until the Affordable Housing Scheme has been submitted to and approved in writing by the Council
- 1.2 The Affordable Housing Units shall not be occupied other than in accordance with the approved Affordable Housing Scheme or such other scheme as may subsequently be approved by the Council PROVIDED THAT
 - 1.2.1 A mortgagee or charge of the Affordable Housing Site seeking to dispose of the Affordable Housing Site pursuant to its power of sale or other remedies under the terms of its mortgage or charge shall first seek to dispose of the said Affordable Housing Site to an Affordable Housing Provider or at the Council's written election the Homes and Communities Agency (who may exercise their statutory powers) (the Council being entitled to nominate an Affordable Housing provider or the Homes and Communities Agency for these purposes by service of notice in writing to such mortgagee or chargee within 56 (fifty six) days of such mortgagee or chargee notifying the Council in writing of its intention to exercise its power of sale Provided That for the avoidance of doubt such mortgagee or chargee shall not be under any obligation to dispose of any Affordable Housing Unit for any sum less than the monies outstanding pursuant to the said mortgage or charge;
 - 1.2.2 In the event of any sale not taking place in accordance with the foregoing paragraph within a period of three (3) months following the service of the Council's notice there under or in the absence of such notice any mortgagee or charge (or its or their receiver or manager of the whole or any part of the Affordable Housing Site) shall be entitled to sell such land or the relevant part thereof pursuant to its or their power of sale or other remedies under the mortgage or charge in question on the open market and from the date of actual completion the foregoing provisions of this paragraph 1 shall not apply to the

Affordable Housing Site as sold not shall any successor in title to or persons deriving title from such mortgagee or chargee be so bound

- 1.3 Not more than 50% of the Market Dwellings of any Phase of development shall be occupied until the Affordable Housing Units located at that Phase of Development have been completed ready for occupation and transferred to the Social Landlord on the Affordable Housing Site Terms
- 1.4 The Affordable Housing Site(s) and the Affordable Housing Units constructed thereon shall be transferred on the following terms:
 - 1.4.1 with good and marketable freehold or long leasehold (in the case of individual flats within a larger block) title
 - 1.4.2 the Affordable Housing Site(s) shall be provided up to a point immediately adjacent to the boundary of the Affordable Housing Site(s) with
 - 1.4.2.1 an adoptable road access subject to an Agreement under section 38 of the Highways Act 1980; and
 - 1.4.2.2 adoptable public sewers and drains subject to an Agreement under Section 104 of the Water Industry Act 1991; and
 - 1.4.2.3 access to electricity gas telephone and other common services with sufficient capacity to serve the Affordable Housing Site(s)

PROVIDED THAT if it has not been possible to complete such Agreement or Agreements as specified in paragraphs 1.4.2.1 and 1.4.2.2 above by the time of such transfer then the Owner covenants to use all reasonable endeavours to enter into such Agreements as soon as possible thereafter and will maintain the estate roads and foul and surface water sewers at its own expense until adoption
- 1.5 The Affordable Housing Units
 - 1.5.1 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

1.5.2 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 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

1.7 Approved Persons for the purposes of the Affordable Housing Scheme must comply with the terms of the shared occupancy criteria.

1.8 The obligations contained in this paragraph 1 of Schedule 2 shall:

- 1.8.1 not be binding upon a mortgagee or chargee of any shared ownership Affordable Housing Unit or any receiver appointed by any such mortgagee or chargee or any person or persons (including immediate and all subsequent successors in title to such persons) deriving title or an interest in the whole or any part of any such land from such mortgagee chargee or receiver to the intent that the provisions of this Agreement shall upon a disposal (of whatever nature) by a mortgagee chargee or receiver appointed by a mortgagee or chargee cease to apply and shall cease to apply and determine absolutely in respect of the land thereby disposed of
- 1.8.2 determine absolutely in respect of any Affordable Housing Unit in circumstances where a tenant acquires a freehold or leasehold interest in such dwelling pursuant to a statutory enfranchisement provision
- 1.8.3 be suspended in respect of each such assignment only on every occasion of the assignment of a shared ownership lease of any Affordable Housing Unit demised or to be demised by way of shared ownership lease where the lessee of the shared ownership lease wanting to transfer his shared ownership interest has complied with the nomination provisions (if any) of the shared ownership lease and has first offered to sell the lessee's shared ownership interest to a nominee of the Social Landlord and the Social Landlord has been made unable

or unwilling to provide a nominee within the time period specified in the shared ownership lease or such nominee has not exchanged contracts to acquire or not acquired the lessee's interest within the time period specified within such shared ownership lease

- 1.8.4 not bind any service supplier purchasing or leasing or taking a transfer of any part of the Affordable Housing Site solely for their operational requirements

2 Open Space

- 2.1 Not to commence Development until the details and proposed location of the Open Space have first been submitted to and approved in writing by the Council
- 2.2 Not more than 50% of the Market Dwellings on any Phase of Development shall be occupied until the Open Space in relation to that Phase of Development has been laid out and made available for use in accordance with the details approved under paragraph 2.1 above and in accordance with the relevant parts of the Specification to the reasonable satisfaction of the Council
- 2.3 After the Open Space has been laid out in accordance with paragraph 2.2 above it shall thereafter be maintained by the Owner to the reasonable satisfaction of the Council until a scheme for securing the long term maintenance of the Open Space has been submitted to and approved in writing by the Council and the approved scheme has been implemented to the satisfaction of the Council

3 On Site Play Area/Open Space

- 3.1 Not to commence Development until the details of the On Site Play Area/Open Space have first been submitted to and approved in writing by the Council
- 3.2 Not more than 50% of the Market Dwellings on any Phase of Development shall be occupied until the On Site Play Area/Open Space approved pursuant to paragraph 3.1 above in relation to that Phase of Development has been

provided to the satisfaction of the Council in accordance with the approved details

- 3.3 Following provision of the On Site Play Area/Open Space in accordance with paragraph 3.2 above the Owner shall at its own cost maintain the same to the satisfaction of the Council until a scheme for securing the long term repair maintenance and renewal of the On Site Play Area/Open Space has been submitted to and approved in writing by the council and the approved scheme has been implemented to the satisfaction of the Council

SCHEDULE 3

The Owner's Covenants with the County Council

1. Education Contribution

- 1.1 Prior to first occupation of the 1st Residential Unit to pay to the County Council the Education Contribution

IN WITNESS whereof the Owner has executed this Agreement as a deed the day and year
first before mentioned

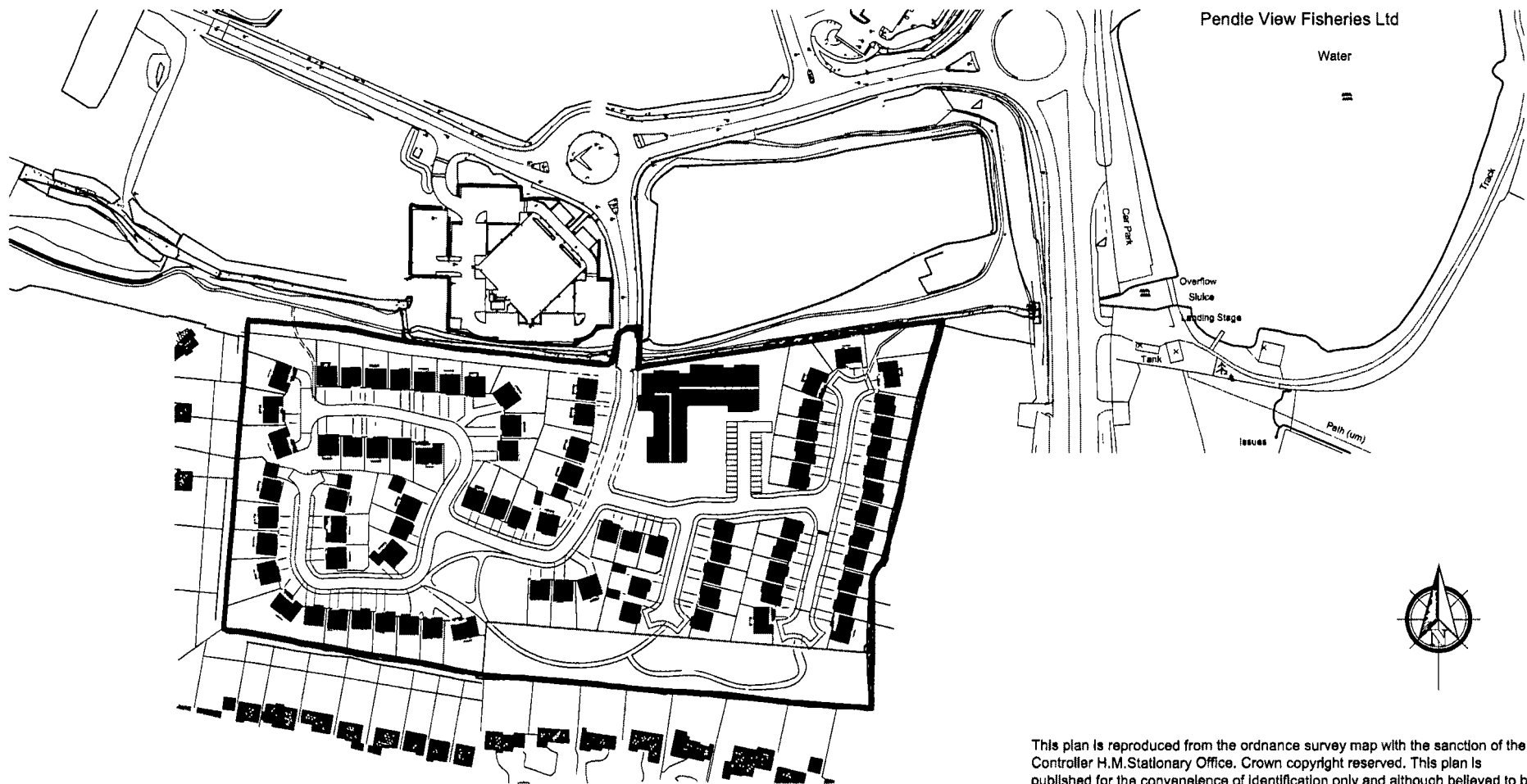
SIGNED as a Deed by
EDWARD HINE LPA RECEIVER FOR
PAPILLION PROPERTIES LTD

In the Presence of:

Witness Name

Witness Address

Occupation



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LOCATION PLAN

Site: Proposed Residential development
Barrow Brook Business Village
Clitheroe

Client: Edward Hine LPA

Drawn: RJ

Date: 01.03.12

Scale: 1:2500 @ A3

Project No: HINE01 / Dwg 01

Amendments:

Notes:

All work is to be carried out to the latest current British standards Codes of Practice and recognised working practices.
All work and materials should comply with Health and Safety legislation and to be approved by the Local Authority Planning / Building Control Officer.
All dimensions are in millimetres unless where explicitly shown otherwise. The contractor should check and clarify all dimensions as work proceeds and notify the design team of any discrepancies. Do not scale off the drawings, if in doubt ask.
Avalon Chartered Town Planning are not liable for work undertaken prior to Full Planning Consent and/or Building Regulations Approval.

Avalon

RTPI

Chartered Town Planning

Town Planning - Architectural Design - Building Regulations - Surveying

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Appeal Decision

Hearing held on 9 October 2012

Site visit made on 9 October 2012

by **Susan Heywood BSc(Hons) MCD MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 30 November 2012

Appeal Ref: APP/T2350/A/12/2176977

Site 2 Barrow Brook Business Village, Clitheroe, Lancashire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Edward Hine, LPA Receiver for Papillion Properties Ltd against the decision of Ribble Valley Borough Council.
 - The application Ref 3/2012/0158, dated 8 February 2012, was refused by notice dated 25 May 2012.
 - The development proposed is an outline application for the erection of 73 open market detached dwellings and 31 social housing properties.
-

Decision

1. The appeal is allowed and outline planning permission is granted for the erection of 73 open market detached dwellings and 31 social housing properties at Site 2 Barrow Brook Business Village, Clitheroe, Lancashire in accordance with the terms of the application, Ref 3/2012/0158, dated 8 February 2012, subject to the conditions set out in Annex 1 to this decision.

Preliminary Matters

2. A completed Unilateral Undertaking under S106 of the Town and Country Planning Act 1990 was submitted after the close of the hearing, together with the Council's response. The weight to be given to this is addressed later in this decision.
3. The appeal relates to an outline application with layout and access to be considered at this stage. The Design and Access Statement submitted with the application indicates that the development would comprise one and two storey properties. The single storey properties would have a ridge height of below 5m and an eaves height of 3m. The two storey properties would have an eaves height of 5.5m and a ridge height of 7.5m. The width, depth and layout of the properties are shown on the submitted plan no. HINE/01 Dwg 03A. The Council have no objections to the layout of the development as proposed or the access arrangements and I see no reason to take a different view.

Main Issue

4. The main issue in this case is whether residential development of the site would be acceptable having regard to local and national policies for both housing and employment land provision.

Reasons

Housing land

5. The development plan includes the North West of England Regional Spatial Strategy to 2021 (RSS)¹ and the saved policies of the Ribble Valley Districtwide Local Plan 1998 (RVDLP).
6. RSS policy L4 sets out the Regional housing provision from 2003 to 2021. For the Ribble Valley it sets a target of 2,900 dwellings which equates to 161 dwellings per annum (dpa).
7. In the RVDLP policies G4 and G5 set out the settlement hierarchy and H20 and H21 relate to affordable housing. The parties agree that these policies are out of date as they were drawn up having regard to the now superseded Structure Plan. The Council therefore accept that the National Planning Policy Framework (the Framework) and the recently submitted Core Strategy (CS) provide more up to date considerations in relation to the strategic elements of the Local Plan.
8. The CS was submitted for examination on 28 September 2012. CS Key Statement H1 sets out the requirement for 4,000 dwellings to be provided in the period 2008 to 2028, equating to at least 200 dpa. This figure was derived from a study carried out by Nathaniel Litchfield and Partners (NLP) in 2011, as background for the CS, into the housing requirement for the Ribble Valley. The NLP study concluded that housing provision of between 190 and 220 dpa would be realistic over the plan period. In February 2012 the Council resolved to adopt the mid-range figure of 200 dpa or 4,000 dwellings over the plan period. The Council argue that limited weight should be given to CS Key Statement H1 as it is subject to a number of unresolved objections. Accordingly, they have retained the RSS figure of 161 dpa for decision making purposes.
9. The Framework states that, in order to boost significantly the supply of housing, local planning authorities should use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing.
10. The RSS was adopted in 2008 and, as such, the housing requirement will have been based on evidence relating to the period before 2008. The Council agree that that evidence base is now out of date and the NLP report provides the most up to date assessment of housing need having regard to the current situation. The Council clearly agree with the mid-range level of need identified in the NLP report. Thus it is clear that the figure of 161 dpa set out in the RSS is now out of date. Whilst I agree that limited weight can be given to CS Key Statement H1 at this stage, I consider that considerable weight should be given to the up to date evidence which demonstrates the need for 4,000 dwellings to 2028. Accordingly, I consider that the figure of 200 dpa should be used in the assessment of this appeal.
11. In accordance with the Framework, the Council are required to identify a five year supply of specific deliverable sites for housing plus a buffer of 20%². On the basis of the CS figure of 4,000 dwellings, the Council's Housing Land Availability Survey demonstrates that, as at July 2012, the Council had a 4.97

¹ Although the Government has announced its intention to revoke Regional Strategies through the Localism Act they remain, for the time being, in force as part of the Development Plan.

² The Council accept that there has been a persistent under delivery of housing and has added a 20% buffer to its housing land figures.

year housing land supply (HLS). They argue that, having regard to the 20% buffer and a 10% allowance for slippage, they have an adequate supply of housing land.

12. The appellants raise concerns in relation to the deliverability of two of the sites included within the Council's HLS. They argue that the deliverability of the sites at Dale View, Billington and Henthorn Road, Clitheroe within the 5 year period is questionable. Consequently, they consider that 133 units should be removed from the identified 5 year supply.
13. The Framework requires the 5 year HLS to be made up of specific deliverable sites. In order to be considered deliverable, sites should be available now, offer a suitable location for development now, be achievable with a realistic prospect that housing will be delivered on the site within 5 years, and development on the site must be viable. The appellants' evidence in relation to the two sites identified above casts doubt over whether those two sites would meet these requirements.
14. The Council acknowledge that they have not looked in detail at the deliverability of the sites within the HLS and they do not dispute that there may be deliverability issues with the two sites identified by the appellants. They argue that the 10% allowance for slippage would take account of deliverability issues such as these. However, if it is accepted that the 10% allowance for slippage can take the place of a specific analysis of the deliverability of sites, it is clear that at least 10% would be necessary, having regard to the evidence on those two sites alone. In fact, 133 dwellings equates to more than 10% of the total HLS. Therefore, the 10% allowance for slippage cannot be used to compensate for the shortfall in the 5 year HLS.
15. The same can be said for the 20% buffer. The Framework states that this is required in order to provide a realistic prospect of achieving the planned supply and to ensure choice and competition in the market for land. The requirement is for Councils to have a 5 year HLS *plus* the 20% buffer (where there has been a persistent under delivery). The 20% buffer cannot therefore serve the dual purpose of making up the shortfall in HLS.
16. Accordingly, it has not been demonstrated that the Council has a 5 year supply of specific deliverable sites in order to meet the need for housing land identified in the up to date evidence base. The Framework states that relevant policies for the supply of housing should not be considered up to date if the Council cannot demonstrate a 5 year supply of deliverable housing sites. Where development plan policies are out of date planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole. Against this background, I will go on to consider the other aspects of this case.

Employment land

17. The appeal site is currently a field surrounded by trees and with a fishing lake adjoining part of its northern boundary. It forms part of the Barrow Enterprise Site. Office and industrial development lies to its north and residential development to its west and south. The site forms part of what was formerly the Barrow Print Works site. Outline planning permission was granted in 1990 (renewed in 1993) for a mixed use development of the former Print Works.

This was followed, in 2003, by the approval of a reserved matters application for office development on the appeal site (as part of a larger area). The parties agree that both of these permissions remain extant.

18. Although the site is not identified in the RVDLP as an allocated employment site, the Council have included it in their existing employment land supply as it has the benefit of an extant planning permission for office development. Furthermore, CS Key Statement DS1 identifies the Barrow Enterprise Site as a main location for employment. The site is well located for employment purposes, adjacent to the A59, and my attention has been drawn to a number of documents which highlight the importance of the Barrow Enterprise Site as part of the Borough's employment land strategy. What is also clear is that out-commuting is a problem within the Borough and there is therefore a need to encourage employment within the area in order to claw back this out-migration of workers.
19. Clearly therefore a balance needs to be struck between the need for housing land and the need for employment land. However, the Council accept that it would be possible for additional employment land to be allocated in the forthcoming Site Allocations Development Plan Document (DPD) in order to compensate for the loss of the appeal site. The Site Allocations DPD is at a very early stage in its process, making this course of action feasible at this stage.
20. Furthermore, the appellants have submitted a planning application for B1, B2 and B8 development on land to the north of the appeal site. Whilst that land falls outside of the settlement boundary for Barrow, the Council accept that the development limits identified in the RVDLP are out of date. They agree that this factor would not therefore prevent planning permission being granted on that site. The Council's Head of Regeneration and Housing has expressed reservations over the release of that site outside of the site allocations process. However, despite this misgiving he has confirmed that there are no policy objections to the granting of planning permission on that site. That application has not yet been determined and I cannot draw any conclusions in relation to it. However, it does add weight to the point that an alternative site could be found to offset the loss of the appeal site from the supply of employment sites. Accordingly, this factor significantly reduces the harm which would be caused by the loss of the appeal site from the employment land supply.
21. Furthermore, just under half of the site has a covenant restricting it to B1 use only because of its proximity to surrounding dwellings. I note that the 2008 *Ribble Valley Employment Land & Retail Study* concluded that there was a need for small, good quality office space. However, the up to date evidence for this appeal indicates that there is a large amount of office space now available in the Borough and the Council acknowledge that there is an excess of land for B1 purposes in the Borough and sub-regionally. This further reduces the weight to be given to the need to retain that part of the site covered by the covenant in the employment land supply.
22. The appellants have undertaken a marketing exercise which involved marketing the site over a number of years. The Council raise concerns in relation to this exercise, but they have put forward no evidence to substantiate their concerns that the site was not marketed at an attractive price, nor which would suggest that there would be potential purchasers available for the site. Neither is there any evidence of expressions of interest to the Council for a site such as this

over the last few years. The appellants' evidence demonstrates that they have had no firm interest in the site despite a long and comprehensive marketing exercise and despite there having been an extant planning permission since 2003. I note that the Council have undertaken to negotiate to purchase the appeal site. This does demonstrate the Council's commitment to retaining the land as part of its employment land supply. But, there is no evidence that the Council would be able to bring the land forward for employment purposes either. Given the restriction in the covenant to B1 uses and the excess of B1 land in the Borough, the Council may themselves find this difficult.

23. The Framework indicates that policies should avoid the long term protection of sites allocated for employment use where there is no reasonable prospect of a site being used for that purpose. In my view, the evidence outlined above demonstrates that there is no reasonable prospect in this case of the land being brought forward for employment use.
24. Policy W4 of the RSS indicates that there should be a presumption against the release of allocated employment sites for other uses (outside of a comprehensive review of commitments). Employment sites are allocated on the RVDLP proposals map. This identifies areas as 'industrial land allocations' or 'potential employment area'. The appeal site is not given either of these annotations on the proposals map. It is not therefore an 'allocated' employment site and I do not consider that RSS policy W4 is applicable in this instance.
25. In terms of the RVDLP, the appellants argue that, having regard to the Tesco judgement³, policy EMP11 does not apply to this proposal. The policy says: *"Proposals for the conversion or redevelopment of industrial or employment generating sites in the Plan area will be assessed with regard to the following criteria..."*. The appeal site may once have been part of an industrial site, but that has not been the case for a number of years. Whilst it clearly has the potential to be an 'employment generating site' it is not currently so. Thus, the wording of the policy leads me to agree that it does not apply to this site which is neither an industrial nor, at this point in time, an employment generating site.
26. CS Key Statement EC1 sets out the requirement for 9 ha of employment land over the plan period and aims to resist the loss of existing employment sites unless it can be demonstrated that there will be no adverse impact upon the local economy. In line with the weight which can be given to CS Key Statement H1, the parties agree that little weight should be given to Key Statement EC1 at this stage in its adoption process.
27. Even if I were to conclude that the development plan policies do apply to the appeal development, the factors outlined above lead me to the view that the loss of the appeal site from the Council's employment land supply would not lead to significant harm in this instance.

Other matters

28. United Utilities initially raised concern in relation to the drainage capacity in the area and this reflects concerns expressed by local residents. Following discussions between the appellants and United Utilities the latter have requested a number of conditions in order to resolve the drainage concerns.

³ *Tesco Stores Ltd v Dundee City Council* [2012] UKSC 13

The detailed conditions are addressed below. I am satisfied, on the basis of this information, that the drainage concerns can be overcome by the imposition of suitable conditions.

29. Concerns have been raised by local residents regarding the impact of the development on traffic levels, particularly at the A59 roundabout. The site is currently undeveloped and therefore the proposed development will undoubtedly increase traffic levels onto the A59 roundabout. However, this must be considered in the context of the potential alternative use of the site for employment purposes. The agreed statement on transport issues between the appellant and the County Council's highway engineer provides a comparison between the traffic generation of the proposed development and that for an industrial development. This indicates that, comparatively, traffic levels would be lower for a residential development of the site. Whilst the extant planning permission for the site relates to office use rather than industrial, this tends to result in still higher levels of traffic generation than an industrial use. The parties have agreed that conditions should be imposed to ensure that future residents are encouraged to consider non-car methods of travel, through the development of a travel plan. A number of off-site improvements to cycling, pedestrian and public transport facilities are also proposed. These improvements should encourage future residents to make sustainable transport choices. On the basis of the evidence, I am satisfied that the proposed development would not cause harm to the local transport network.

Unilateral Undertaking

30. A Unilateral Undertaking under S106 of the Town and Country Planning Act 1990 has been submitted relating to the provision of affordable housing, open space and play area and an education contribution. The Community Infrastructure Levy (CIL) Regulations require that any planning obligation must be necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development.
31. The need for affordable housing and the type and tenure of such housing is set out in the Council's document 'Addressing Housing Need in Ribble Valley' (Jan 2012). Having regard to this document I am satisfied that the need for affordable housing in this development has been justified. However, amendments made to the Unilateral Undertaking after the hearing seek to bind a Registered Provider to carry out certain actions. As there is no Registered Provider who is a party to this agreement, I am unable to give weight to this provision. Accordingly, the parties have agreed that the requirement for affordable housing should instead be provided for by the imposition of a suitable condition.
32. The Unilateral Undertaking also ensures that open space and a play area will be provided and maintained by the owner, until other provisions can be made. The requirement for open space provision is included in policy RT8 of the RVDLP and the provision within the site is appropriate for this type of development. I am satisfied that this provision would meet the tests of the CIL Regulations and can be given weight in favour of this appeal.
33. In terms of a contribution towards education, the Unilateral Undertaking includes a sum to be provided to the County Council to compensate for the shortfall in primary and secondary school places which would result from this

development. This is in accordance with the Lancashire County Council document 'Planning Obligations in Lancashire Policy Contributions towards education places' (Nov 2011). Specific information has also been provided in relation to the impact of this development on local schools. The contribution will provide the County Council with the means to mitigate the impact locally. I am therefore satisfied that this contribution would meet the tests of the CIL Regulations and can be given weight in favour of the appeal. It also addresses the concerns raised by local residents in relation to the impact on local schools.

Conditions

34. The parties have suggested a number of conditions and I have assessed and where necessary amended these in the light of Circular 11/95 *'The Use of Conditions in Planning Permissions'*. Standard conditions are imposed relating to the submission of the remaining reserved matters. Conditions are required to ensure that the development is constructed in accordance with the submitted plans and Design and Access Statement, for the avoidance of doubt and in the interests of proper planning. In order to ensure that the development meets the Council's housing needs and in line with the calculation for the education contribution, a condition is required restricting the occupancy of some of the units to persons over 55 years of age. A condition is required to secure a travel plan in order to promote sustainable transport. A scheme for construction of the site access is also required in the interests of highway safety and the amenity of future residents of the site. A condition is imposed to require the submission of an affordable housing scheme, as set out above. To secure sustainable development principles, conditions are required to ensure that the dwellings incorporate sustainable energy use, in accordance with RSS policy EM 18, and to achieve Level 3 of the Code for Sustainable Homes. A scheme for dealing with any contamination of the site is needed in the interests of public health. A construction method statement is required to ensure that disruption to nearby occupiers from construction activities is minimised. Conditions are required to ensure the protection of trees and for the submission of details of boundary treatments, in the interests of the character and appearance of the surroundings.
35. United Utilities have suggested a number of conditions in order to overcome their concerns. Other drainage conditions have also been suggested by the Environment Agency. I have re-worded and amalgamated these conditions to aid clarity. Whilst some detail suggested by United Utilities has been excluded from the conditions, the conditions give the Council the option of securing the scheme which best overcomes the concerns of United Utilities at the time of considering the drainage details.
36. A suggested condition relating to the legal agreement is unnecessary. Suggested condition 4 (in the Council's list of conditions) requires details of site contours, slab and road levels. However, as there are no significant level changes across the site, this detail is not necessary. Landscaping will be provided as part of the reserved matters, therefore no separate condition is necessary. Suggested condition 18 repeats matters included in the S106 agreement. The appellants cannot be required by condition to enter into a legal agreement as set out in the Council's suggested condition 19. A condition has, however, been included to secure the off site highway works in accordance with the highways agreed statement.

Overall conclusion

37. According to the Framework, housing applications should be considered in the context of the presumption in favour of sustainable development. The appeal development would contribute to the supply of housing in an area where the Council are not able to demonstrate a 5 year supply of land for housing. This would be a significant benefit in this appeal. The loss of the site from the Council's employment land supply would not cause significant harm and there are no other factors which weigh against the proposal. I therefore conclude that residential development of the site would be acceptable having regard to local and national policies for both housing and employment land provision. For the reasons given above I conclude that the appeal should be allowed.

Susan Heywood

INSPECTOR

ANNEX 1 CONDITIONS

- 1) Details of appearance, landscaping and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the Local Planning Authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the Local Planning Authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The access and layout shall be carried out in accordance with the following approved plans: HINE/01 Dwg 02 (Existing Site Plan); HINE/01 Dwg 03A (Proposed Site Plan); BTC268-TIP (Tree Impact Plan).
- 5) In accordance with the Design and Access Statement (DAS) submitted with the application, the development shall be for 104 properties (as detailed in section 4.2.1 of the DAS); the bungalows shall have an eaves height of less than 3 metres and a ridge height of under 5 metres; the two-storey properties shall have an eaves height of 5.5 metres and a ridge height of no greater than 7.5 metres; and the apartment block shall have an eaves height of no greater than 5.5 metres and a ridge height of no greater than 7.5 metres as stated in Section 4.4.1 of the DAS.
- 6) The thirty nine units on plots 1-24, 79-83 and 87-96 hereby permitted shall only be occupied by:
 - i. persons over 55 years of age;
 - ii. persons living as part of a single household with such a person or persons;
 - iii. persons who were living as part of a single household with such a person or persons who have since died.
- 7) The development shall not begin until a scheme for the provision of affordable housing as part of the development has been submitted to and approved in writing by the Local Planning Authority. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing in Annex 2 of the National Planning Policy Framework or any future guidance that replaces it. The scheme shall include:
 - i. the numbers, type, tenure and location on the site of the affordable housing provision to be made which shall consist of not less than 30% of housing units;
 - ii. the timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing;
 - iii. the arrangements for the transfer of the affordable housing to an affordable housing provider;
 - iv. the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing; and

- v. the occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced.
- 8) Development shall not begin until a scheme (including a timetable for implementation) for the construction of the site access and the off-site works of highway improvements has been submitted to and approved in writing by the Local Planning Authority in consultation with the Highway Authority. The scheme for off-site works shall be in accordance with the details agreed in Section 5 of the Statement of Common Ground for transport matters prepared by DTPC and agreed on 31 August 2012. The scheme shall be implemented in accordance with the approved details and timetable.
- 9) Before development begins a travel plan shall be submitted to and approved in writing by the Local Planning Authority. The travel plan shall include:
- i. SMART targets for non-car modes of travel;
 - ii. measures for the ongoing maintenance of the travel plan;
 - iii. a commitment to delivering the plan objectives for a period of 5 years from first occupation of any dwelling;
 - iv. appointment of a named travel plan co-ordinator;
 - v. action plan of measures to be introduced including a timetable;
- The travel plan shall be implemented and maintained in accordance with the agreed details and timetable.
- 10) Before the development begins a scheme (including a timetable for implementation) to secure at least 10% of the energy supply of the development from renewable or low carbon energy sources shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented and retained as operational thereafter.
- 11) The dwellings shall achieve Level 3 of the Code for Sustainable Homes. No dwelling shall be occupied until a final Code Certificate has been issued for it certifying that Code Level 3 has been achieved.
- 12) Development shall not begin until:
- i. a site investigation has been designed for the site using the information obtained from the Phase 1 Land Quality Assessment for site 2 Ribble Valley Enterprise Park, Barrow Brook, Clitheroe by PSA Design (dated 5 January 2012 ref D1530-2-R-01). This should be submitted to and approved in writing by the Local Planning Authority prior to the investigation being carried out on site.
 - ii. the site investigation and associated risk assessment have been undertaken in accordance with details approved in writing by the Local Planning Authority.
 - iii. a method statement and remediation strategy (including a timetable for implementation) based on the information obtained from (ii) above has been submitted to and approved in writing by the Local Planning Authority.

- 13) The development shall be carried out in accordance with the measures approved in condition 12(i) to (iii) above. Work shall be carried out and completed in accordance with the approved method statement and remediation strategy and the approved timetable.
- 14) If during development contamination not previously identified is found to be present on the site, no further development shall be carried out until measures for the remediation of this contamination have been submitted to and approved in writing by the Local Planning Authority. Such additional measures to be carried out as approved.
- 15) Upon completion of the remediation a report shall be submitted to the Local Planning Authority that provides verification that the required works regarding contamination have been carried out in accordance with the approved remediation strategy. Post remediation sampling and monitoring results shall be included in the report to demonstrate that the required remediation has been fully met. Future monitoring proposals and reporting shall also be detailed in the report, agreed in writing with the Local Planning Authority and shall be implemented in accordance with the approved details.
- 16) Development shall not begin until a Construction Method Statement has been submitted to and approved in writing by the Local Planning Authority. The approved Construction Method Statement shall be adhered to throughout the construction period. The Construction Method Statement shall provide for:
 - i. the parking of vehicles of site operatives and visitors;
 - ii. loading and unloading of plant and materials;
 - iii. storage of plant and materials used in constructing the development;
 - iv. the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - v. wheel washing facilities;
 - vi. measures to control the emission of dust and dirt during construction;
 - vii. a scheme for recycling/disposing of waste resulting from construction works.
- 17) In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars; and paragraphs (iv) and (v) below shall have effect until the expiration of 5 years from completion of the final phase of development.
 - i. Before the development begins, including any site preparation works, the delivery of materials or any excavations, all trees identified for retention in the Tree Survey/ Arboricultural Impact Assessment dated February 2012 by Bowland Tree Consultancy Ltd. shall be protected in accordance with British Standard 5837 2012 (Trees in Relation to Demolition, Construction and Design) the details of which shall be agreed in writing by the Local Planning

Authority and implemented in full. A tree protection monitoring schedule shall also be agreed and the tree protection measures shall be inspected by the Local Planning Authority before any site works are begun.

- ii. The root protection zone shall be agreed in writing by the Local Planning Authority before the development begins and the agreed tree protection measures shall remain in place until all the approved works have been completed and all excess materials have been removed from site including soil/spoil and rubble.
 - iii. During the building works no excavations or changes in ground levels shall take place and no building materials/spoil/soil/rubble shall be stored or redistributed within the protection zone, in addition no impermeable surfacing shall be constructed within the protection zone.
 - iv. No retained tree shall be cut down, uprooted or destroyed, nor shall any retained tree be topped or lopped other than in accordance with the approved plans and particulars, without the written approval of the Local Planning Authority. Any topping or lopping approved shall be carried out in accordance with British Standard 3998 (Tree Work).
 - v. If any retained tree is removed, uprooted or destroyed or dies, another tree shall be planted at the same place and that tree shall be of such size and species, and shall be planted at such time, as may be specified in writing by the Local Planning Authority.
 - vi. The development shall be carried out in full compliance with the Tree Survey/Arboricultural Impact Assessment unless the Local Planning Authority agrees in writing to any variations to the requirements of the Assessment.
- 18) Before development begins details of all boundary treatments shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
- 19) Before development begins a strategy outlining the general system of drainage for foul and surface water flows arising from the entire site, including any necessary infrastructure, shall be submitted to and approved in writing by the Local Planning Authority. The strategy shall include:
- i. a Load and Flow Impact Assessment and a programme of works showing build rates;
 - ii. details of how foul and surface water shall be drained on separate systems;
 - iii. details of how sustainable drainage principles are to be incorporated into the surface water drainage system;
 - iv. details of the connection to the foul sewer network;
 - v. details of a surface water regulation system;
 - vi. a construction, maintenance and management plan.

- 20) Before development begins on any phase of the development details of the foul and surface water drainage scheme for that phase shall be submitted to and approved in writing by the Local Planning Authority. These details shall be in accordance with the strategy for the entire site submitted in accordance with condition 19.
- 21) No housing shall be occupied for any phase of the development until the approved foul and surface water drainage scheme for that phase has been completed in accordance with the approved details. The approved details shall thereafter be maintained and managed in accordance with the approved maintenance and management plan.

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Regeneration Officer

Senior Planning Officer

INTERESTED PERSONS:

Duncan Chadwick

David Birtwhistle

David Lock Associates

Local resident

DOCUMENTS

- 1 Council's letter of notification of hearing and circulation list
- 2 Update document, submitted by appellants
- 3 Local Plan policy G1, submitted by Council
- 4 RSS policy EM 18, submitted by Council
- 5 Covenant, submitted by appellants
- 6 Ribble Valley Employment Land & Retail Study 2008, submitted by Council
- 7 Nearby housing application forms and location plans, submitted by Council
- 8 Local Plan proposals map, submitted by Council
- 9 List of suggested conditions, submitted by Council
- 10 United Utilities correspondence, submitted by Council
- 11 Planning Obligations in Lancashire Policy: Contributions towards education places, submitted by Council
- 12 Updated Unilateral Undertaking, submitted by appellants

PLANS

- A Revised Application Plans: HINE/01 Dwg 02 (Existing Site Plan); HINE/01 Dwg 03A (Proposed Site Plan); BTC268-TIP (Tree Impact Plan)