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FAO Ms Sarah Westwood

11 February 2013

By email and post
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let.007.SW.SW.01920160

Dear Sir/Madam

**PP-02430934 – OUTLINE PLANNING APPLICATION - LAND EAST OF
CLITHEROE ROAD (LAWSONSTEADS), WHALLEY – DRAFT HEADS OF
TERMS**

Further to the submission of an outline planning application for the above site on behalf of Commercial Estates Group (CEG), please find enclosed Draft Heads of Terms.

This is submitted subject to contract, without prejudice to further discussions and negotiations.

We trust that the enclosed information is sufficient for you to register the application, however should you have any queries, please do not hesitate to contact us.

Yours faithfully



Sarah Wozencroft

Enc: Draft Heads of Terms dated 8 February 2013
cc: Commercial Estates Group

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Commercial Estates Group

Land east of Clitheroe Road, Whalley

Section 106 of the Town and Country Planning Act 1990

Draft Heads of Terms of Planning Obligations

8th February 2013

1. Introduction

- 1.1 This document sets out the draft Heads of Terms of potential planning obligations which may be entered into in connection with the proposed development pursuant to Section 106 of the Town and Country Planning Act 1990.
- 1.2 The Heads of Terms will inevitably be the subject of further discussions once the Council has had the opportunity to fully appraise the planning application. These Heads of Terms should therefore be viewed as a basis for those discussions and the negotiation and progression of a Section 106 Agreement, rather than a committed set of obligations. A first draft of a proposed Section 106 Agreement will be produced once the matters set out below have been finalised.
- 1.3 In addition, the Heads of Terms will need to take account of any decision by the Council to progress a Community Infrastructure Levy.
- 1.4 In the light of the above, the applicant reserves the right to amend the Heads of Terms as discussions progress during the course of determination of the planning application.
- 1.5 In order to comply with the requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010, each obligation will need to be directly related to the development and, necessary in order for the development to proceed and fairly and reasonably related in scale and kind to the development.

2. Interaction with Planning Conditions

- 2.1 It is important that any S106 Agreement sits alongside and is read in conjunction with the conditions attached to any planning permission granted. Therefore, the applicant will seek to discuss the schedule of draft planning conditions alongside the S106 negotiations and it may be that some of the matters addressed below can be dealt with (wholly or partly) via planning condition instead.

3. General

- 3.1 The S106 Agreement will contain standard provisions relating to conditionality (linked to the grant and implementation of planning permission).

- 3.2 The planning obligations will be specifically tied to any planning permission granted pursuant to the planning application.
- 3.3 Other standard provisions will be included in the S106 Agreement, including (but not limited to) provisions relating to release from obligations in the event of disposal of interests and consequences on the lapsing, revocation or modification of the planning permission, excluding third party rights to enforce etc.
- 3.4 Obligations will be placed upon both the Owner and the Council. For example, the Council will be obliged to ensure that all payments made will be applied towards their stated purpose. Repayment and accounting provisions will be included in order to address the circumstances in which this does not happen.
- 3.5 Obligations will be drafted so as to relate to various trigger points/timings within the carrying out of the development.

4. Affordable Housing

- 4.1 30% of the dwellings (calculated on a "round half up" basis) to be constructed on the Site shall be Affordable Housing.
- 4.2 60% of the Affordable Housing Units shall be 2-bedroom dwellings and 40% shall be 3-bedroom dwellings.
- 4.3 The tenure of the Affordable Housing Units shall be:
(a) one third Social Rented;
(b) one third Affordable Rented; and
(c) one third Intermediate
unless otherwise agreed in writing with the Council.

Note: the s106 Agreement will need to explain how each third will be converted into whole dwelling numbers which equate to the overall number of affordable dwellings to be provided.

- 4.4 An Affordable Housing Scheme will identify those dwellings which are to be affordable and other related matters, in line with the principles set out in paragraphs 4.1, 4.2 and 4.3 above.
- 4.5 Allowance should be made for the affordable dwellings to be delivered on a "phase by phase" basis as part of the phasing of the planning permission.
- 4.6 A Priority Order (i.e. a cascade of categories of persons in housing need who may occupy the affordable dwellings) will be agreed with the Council, if required.
- 4.7 The affordable dwellings will also be subject to usual restrictions guarding their affordability in perpetuity, subject to exceptions e.g. for staircasing, mortgagees in possession etc.

- 4.8 A 'fallback' mechanism addresses the circumstances in which, despite reasonable endeavours having been used by the Owners, the affordable dwellings in a phase have not been purchased by an Affordable Housing Provider. In those circumstances the Affordable Dwellings would (subject to the Council's prior approval) be sold on the open market free of restrictions.

5 School Land

- 5.1 Prior to the Commencement of Development¹ the developer shall agree with the Education Authority (EA) the location of a parcel of land within the Site comprising 1.2 hectares for the purposes of constructing and operating a Single Form Entry Primary School thereon ("the School Land").
- 5.2 From the date of Commencement of Development the School Land shall be reserved for the stated purpose for a "Reservation Period" (period to be agreed).
- 5.3 During the Reservation Period, a "Positive Determination"² (PD) may be made to establish a Single Form Entry Primary School on the School Land at any time.
- 5.4 If a PD is made then the Education Authority (EA) will be entitled to serve notice upon the developer informing them that this has happened.
- 5.5 If the EA does serve such a notice then the developer shall make an offer to transfer the School Land to the EA within an agreed period of time at existing use value on the terms set out below and, upon such offer being accepted by the EA, actually transfer the School Land to the EA within an agreed period of time.
- 5.6 The terms of any transfer of the School Land to the EA shall:
- (a) include all necessary rights etc. necessary to facilitate the construction and operation of the Single Form Entry Primary School by the EA.
 - (b) include a covenant to the effect that the School Land shall be used by the EA solely for the benevolent education and/or recreation of children who live in the vicinity of the Site
 - (c) include a requirement that in the event that the School Land ceases to be used for such purposes for a period in excess of 12 months (save for maintenance/repair works) then the School Land and any buildings or structures constructed on it or such part that is no longer used for such purposes shall be returned to the transferor or their legal estate within 3 months at no cost to the transferor;

¹ To be defined in the Section 106 Agreement

² i.e. a determination pursuant to Part 2 of the Education & Inspections Act 2006 and The School Organisation (Establishment and Discontinuance of Schools) (England) Regulations 2007. This is made by a "Determining Authority" which may be the EA or the Secretary of State.

(d) include the reservation of all necessary rights to ensure that the developer can secure the carrying out and use of the development or any part thereof and enable the developer to use any existing services passing in or under the School Land and the right to lay services in or under the School Land and to inspect (with or without vehicles, plant and/or machinery), repair, renew, cleanse and maintain the same.

5.7 The obligations cease if the Reservation Period has expired and the EA has not served notice or if the EA has served notice but failed to complete a transfer of the School Land.

5.8 The School Land is to be transferred back within 3 months if the EA has failed to commence construction of the Single Form Entry School before the expiry of the Reservation Period.

6 Travel Plan Sum

6.1 A sum (which is to be agreed) will be paid to the County Council to fund the provision of assistance with respect to Travel Plan support, promotion, monitoring and evaluation

6.2 It is proposed that the sum shall be payable in full prior to the occupation of any dwellings.

8. Highway Works

8.1 Arrangements will be agreed (via condition or section 106) for the provision of a signal controlled junction on the A671 in connection with the development.