

**Planning Obligation by Deed of Agreement under Section
106 of the Town and Country Planning Act 1990
relating to the development of land at Pendle Street
East, Sabden, Clitheroe**

THIS AGREEMENT is made the 8th day of July 2014

BETWEEN

- (1) **RIBBLE VALLEY BOROUGH COUNCIL** of Council Offices, Church Walk, Clitheroe, BB7 2RA ('the Council')
- (2) **LANCASHIRE COUNTY COUNCIL** of P O Box 78, County Hall, Preston, PR1 8XJ ('the County Council')
- (3) **P & D DEVELOPMENTS LIMITED** (Co. Reg. No. 08404310) care of DLH Solicitors, Fern Court, Castlegate, Clitheroe BB7 1AZ (" the First Owner ")
- (4) **JEFFREY THOMAS CAPSTICK and CHRISTINE ANNE CAPSTICK** of 29 Pendle Street East, Sabden, Clitheroe, BB7 9EQ; ('the Second Owner')

RECITALS

- A** The Council is the local planning authority for the purposes of the 1990 Act for the area in which the Site is situated.
- B** Both the Council and the County Council are local planning authorities for the purposes of section 106 of the Act.
- C** The County Council is the local highway authority and the county planning authority and the education authority for the area in which the Site is situated.

- D The First Owner exchanged contracts with the Second Owner on 3rd April 2013 to purchase part of the Site conditional on planning.**
- E The Second Owner is the freehold owner of that part of the Site as is edged blue on the Plan.**
- F The First Owner is the freehold owner of that part of the Site as is edged green on the Plan.**
- G The First Owner has submitted the Application to the Council and the Parties have agreed to enter into it in order to secure the planning obligations contained in it.**
- H The Application has been submitted to the Council for the Development and the Parties have agreed to enter into this deed in order to secure the planning obligations contained in this deed.**
- I The Council resolved on the 10 April 2014 to grant the Planning Permission subject to the prior completion of this deed.**

NOW THIS DEED WITNESSES as follows:

1 Definitions and interpretation

1.1 Definitions

For the purposes of this deed the following expressions shall have the following meanings:

1.1.1 'the 1990 Act' means the Town and Country Planning Act 1990,

1.1.2 'Affordable Housing' has the meaning given to it in Annex 2 of the NPPF,

1.1.3 "Affordable Housing Contribution"

means a sum to facilitate the provision of off site affordable housing, such sum to be calculated on the basis that 30% of the dwellings on the site would be Affordable Housing and that the difference between the sum of the Open Market Value of the Market Housing Units and what a Registered Provider would offer to purchase the affordable dwellings on the site to be paid to the Council in lieu of Affordable Housing Units on the Land, for the purpose of addressing housing needs in Sabden or elsewhere within the Council's area of the Borough.

1.1.4 'the Application' means the application for outline planning permission for the Development dated the 2 May 2013 submitted to the Council and allocated reference number 3/2013/0440,

1.1.5 'BCIS' means the BCIS General Building Cost Index published by the Royal Institute of Chartered Surveyors or any successor body (or such other index replacing the same),

1.1.6 'BCIS Indexation Factor' means the recalculation of the amount of an instalment of the Primary Education Contribution payable pursuant to the Fourth Schedule in accordance with the following formula:

$$A \times B/C = D$$

Where:

A = the sum payable under this deed

B = the figure shown in BCIS for the period immediately prior to the date of payment under this agreement

C = the figure shown in BCIS for the period last published before the date of this deed

D = the recalculated sum payable under this deed

1.1.7 'Borough' means the Borough of Ribble Valley.

1.1.8 'the Commencement of Development' means for the purposes of this deed only the date on which any material operation (as defined in the 1990 Act section 56(4)) forming part of the Development begins to be carried out pursuant to the planning permission other than (for the purposes of this deed and for no other purpose) operations consisting of site clearance, site preparation including earthworks, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and 'Commence the Development' shall be construed accordingly,

1.1.9 'Contributions' means the Education Contribution,

1.1.10 'the Date of Practical Completion' means the date of issue of a certificate of practical completion by the First Owner's architect or, if the Development is constructed by a party other than the First Owner, by that other party's architect,

- 1.1.11 'the Development' means the development of the Site pursuant to the Planning Permission,**
- 1.1.12 'a Dwelling' means a dwelling (including a house, flat or maisonette) to be constructed pursuant to the Planning Permission and 'Dwellings' shall be construed accordingly,**
- 1.1.13 'the Education Contribution' means the sum set out in Schedule 4,**
- 1.1.14 'Homes and Communities Agency' means the Homes and Communities Agency or its statutory successors,**
- 1.1.15 'the Housing Corporation' means the Housing Corporation as defined in Section 56 of the Housing Act 1996 or its statutory successors,**
- 1.1.16 'Independent Valuer' means an independent chartered surveyor with not less than 10 years post-qualification experience in the valuation of land and developments for use as permitted by the Planning Permission who shall be appointed by the First Owner and the Council or in default of agreement within 7 working days of either party seeking the agreement of the other, to an appointment at the request of the First Owner or the Council by or on behalf of the President for the time being of the Royal Institution of Chartered Surveyors,**
- 1.1.17 'Interest' means interest at 1% above the base lending rate of The Royal Bank of Scotland plc from time to time,**
- 1.1.18 'the Market Housing Units' means that part of the Development which is general market housing for sale on the open market**
- 1.1.19 'NPPF' means the Department for Communities and Local Government document entitled "National Planning Policy Framework" (March 2012) or any replacement or modification thereof in force from time to time.**
- 1.1.20 'Nominated Officer' means the Council's Housing Strategy Officer or such other officer of the Council as may from time to time be nominated by the Council to act in his place,**
- 1.1.21 'Occupation' means occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, occupation for marketing or display or occupation in relation to security operations and 'Occupy' shall be construed accordingly.**

1.1.22 'Open Market Value' means the best price at which the sale of the freehold interest in the Market Housing Unit (together with any rights easements provisions covenants and other matters benefiting it but subject to any incumbrances restrictions stipulations or covenants which may affect it and which will still subsist and are capable of taking effect) would have been completed unconditionally for cash consideration by private treaty with vacant possession on completion of the sale assuming:

1.1.22.1 a willing seller; and

1.1.22.2 that there had been a reasonable period (having regard to the nature of the Market Housing Unit and the state of the market) for the proper marketing of the interest the agreement of price and terms and the completion of the sale; and

1.1.22.3 that no account is taken of any additional bid by a buyer with a special interest; and

1.1.22.4 that both parties to the transaction had acted knowledgeably prudently and without compulsion

1.1.22.5 "Party or Parties" means the parties to this Agreement

1.1.23 'the Plan' means the plan attached to this deed,

1.1.24 'the Planning Permission' means the planning permission issued by the Council.

1.1.25 'Practical Completion' means the issue of a certificate of practical completion by the First Owner's architect or in the event that the development is constructed by a party other than the First Owner the issue of a certificate of practical completion by that other party's architect and 'Practically Completed' shall be construed accordingly.

1.1.26 'Primary Education Contribution' means a sum calculated in accordance with the following formula:

$$A \times B = C$$

Where:

$$A = \text{£}11880.45$$

B = The number of primary school places yielded by the development as determined by applying the Standard Primary Yield to the mix of dwellings as confirmed by the relevant Reserved Matters Approval.

C = The Primary Education Contribution due in respect of the Development (£)

1.1.27 'Reserved Matter' means any one of appearance, landscaping, layout and as defined by Article 2(1) of the Town and Country Planning (Development Management Procedure) (England) Order 2010 and 'Reserved Matters' shall be construed accordingly.

1.1.28 'Reserved Matters Approval' means the approval or approvals pursuant to the Planning Permission of the Reserved Matters required for the carrying out of the Development.

1.1.29 'the Site' means the land against which this deed may be enforced shown edged red on the Plan and described in Schedule 1,

1.1.30 'Standard Primary Yield' means the yield of Primary School places per Dwelling as set out in the following table:

No of Bedrooms In Dwelling	Yield - Primary
1	0.01
2	0.07
3	0.16
4	0.38
5	0.44

1.2 Interpretation

1.2.1 Reference in this deed to any recital, clause, paragraph or schedule is, unless the context otherwise requires, a reference to the recital, clause, paragraph or schedule in this deed so numbered.

1.2.2 Words importing the singular meaning include the plural meaning and vice versa where the context so admits.

1.2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.

1.2.4 Wherever an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and

against each of them individually unless there is an express provision otherwise.

- 1.2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
- 1.2.6 References to any Party shall include the successors in title to that Party and any person deriving title through or under that Party and in the case of the Council and the County Council the successors to their respective statutory functions.
- 1.2.7 Headings where they are included are for convenience only and are not intended to influence the interpretation of the agreement.

2 Legal basis

- 2.1 This planning obligation is made pursuant to the 1990 Act Section 106.
- 2.2 The terms of this deed create planning obligations binding on the First Owner and the Second 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.

3 Conditions, duration and enforcement

3.1 Conditions precedent

This deed is conditional upon:

3.1.1 the grant of the Planning Permission, and

3.1.2 the Commencement of Development

save for the provisions of clause 6, Provisions of Immediate Effect, which shall come into effect immediately upon completion of this deed.

3.2 Duration

- 3.2.1 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 First Owner and/ or the Second Owner, it is modified by any statutory procedure or expires before the Commencement of Development.

3.2.2 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 Site on which the breach occurs, but without prejudice to liability for any subsisting breach arising before parting with that interest.

3.2.3 Nothing in this deed shall prevent compliance with any obligation pursuant to it before that obligation comes into effect under this clause 3, and no such early compliance shall amount to a waiver of the effect of this clause 3.

3.3 Other development

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

4 First Owner's and Second Owner's covenants

4.1 The First Owner and the Second Owner covenant with the Council as set out in Schedule 3.

4.2 The First Owner and the Second Owner covenants with the County Council as set out in Schedule 4.

5 Planning authority covenants

5.1 The Council covenants with the First Owner and Second Owner as set out in Schedule 5.

5.2 The County Council covenants with the First Owner and Second Owner as set out in Schedule 6.

6 Provisions of immediate effect

6.1 On completion of this deed the First Owner shall pay to the Council and the County Council the reasonable legal costs incurred in the negotiation, preparation and execution of this deed of no more than £330 and £250 respectively.

6.2 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 as 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 First Owner at DLH Solicitors Fern Court Castlegate Clitheroe BB7 1AZ.

7.3.2 On the Second Owner at Marsden Rawsthorn Solicitors Westmarch House 42 Eaton Avenue Chorley PR7 7NA (Ref 77847/0002)

7.3.3 on the Council at Church Walk, Clitheroe, Lancashire BB7 2RA or such other address as shall be notified in writing to the Parties from time to time, marked for the attention the Housing Strategy Officer, and

7.3.4 on the County Council at P O Box 78, County Hall, Preston, PR1 8XJ or such other address as shall be notified in writing to the Parties from time to time, marked for the attention of the Executive Director for Children and Young People

8 Local land charge

8.1 This deed shall be registered as a local land charge by the Council, and the Council shall immediately after the date of this deed register it as such.

8.2 Following the performance and satisfaction of all the obligations contained in this deed, the Council shall immediately effect the cancellation of all entries made in the Register of Local Land Charges in respect of this deed.

9 Jurisdiction and legal effect

- 9.1 This deed shall be governed by and interpreted in accordance with the law of England and Wales.**
- 9.2 The Courts of England and Wales are to have jurisdiction in relation to any disputes between the parties arising or related to this Undertaking.**
- 9.3 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.**
- 9.4 No waiver (whether expressed or implied) by the Council (or the County Council or Second Owner or First 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 Second Owner or First Owner) from enforcing any of the relevant terms or conditions or from acting upon any subsequent breach or default.**
- 9.5 Subject to clause 9.8, if any dispute arises relating to or arising out of the terms of this agreement, any party (which for the purposes of this clause 9.5 shall include the Council and the County Council) may serve written notice upon the other parties requiring the dispute to be determined under this clause 9.5. The notice is to propose an appropriate Specialist and specify the nature and substance of the dispute and the relief sought in relation to the dispute.**
- 9.5.1 For the purposes of this clause 9.5 a "Specialist" is a person qualified to act as an expert in relation to the dispute having not less than ten years' professional experience in relation to developments in the nature of the Development and property in the same locality as the Site.**
- 9.5.2 Any dispute over the type of specialist appropriate to resolve the dispute may be referred to at the request of either party to the President or next most senior available officer of the Law Society who will have the power, with the right to take such further advice as he may require, to determine the appropriate type of Specialist and to arrange his nomination under clause 9.5.3.**
- 9.5.3 Any dispute over the identity of the Specialist is to be referred to at the request of either party to the President or other most senior available officer of the organisation generally recognised as being responsible for the relevant type of Specialist who will have the power, with the right to take such further advice as he may require, to determine and nominate the appropriate Specialist or to arrange this nomination. If no such organisation exists, or the parties cannot agree the identity of the**

organisation, then the Specialist is to be nominated by the President or next most senior available officer of the Law Society.

9.6 The Specialist is to act as an independent expert and:

- 9.6.1** each party may make written representations within ten Working Days of his appointment and will copy the written representations to the other party;
- 9.6.2** each party is to have a further ten Working Days to make written comments on the other's representations and will copy the written comments to the other party;
- 9.6.3** the Specialist is to be at liberty to call for such written evidence from the parties and to seek such legal or other expert assistance as he or she may reasonably require;
- 9.6.4** the Specialist is not to take oral representations from the parties without giving both parties the opportunity to be present and to give evidence and to cross-examine each other;
- 9.6.5** the Specialist is to have regard to all representations and evidence before him when making his decision, which is to be in writing, and is to give reasons for his decision; and
- 9.6.6** the Specialist is to use all reasonable endeavours to publish his decision within 30 Working Days of his appointment.

9.7 Responsibility for the costs of referring a dispute to a Specialist under this clause 9, including costs connected with the appointment of the Specialist and the Specialist's own costs, and the legal and other professional costs of any party in relation to a dispute, will be decided by the Specialist.

9.8 This clause 9 does not apply to disputes in relation to matters of law or the construction or interpretation of this Agreement which will be subject to the jurisdiction of the courts.

10 Interest and VAT

10.1 If any payment due under this deed is paid late, Interest shall be payable from the date payment is due to the date of payment.

10.2 All consideration given in accordance with the terms of this deed shall be exclusive of any value added tax properly payable.

11 Contributions

- 11.1** In the event that any of the Contributions shall not have been expended or contractually committed to be spent then on expiry of a five year period (to be calculated from the date that each instalment of the Contributions is paid to the Council or the County Council) the Contributions or the balance thereof (if any) together with all interest accrued upon such balance (if any) as may have arisen thereon shall be promptly repaid to the First Owner identified in this document.

12. First Owner Indemnity

The First Owner shall indemnify the Second Owner against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Second Owner arising out of or in connection with:

- 12.1** any breach of any of the provisions in this agreement; and/or
- 12.2** the First Owner's breach or negligent performance or non-performance or failure or delay in performance of this agreement; and/or
- 12.3** the enforcement of this agreement.

If a payment due from the First Owner under this clause is subject to tax (whether by way of direct assessment or withholding at its source), the Second Owner shall be entitled to receive from the First Owner such amounts as shall ensure that the net receipt, after tax, to the Second Owner in respect of the payment is the same as it would have been were the payment not subject to tax.

13. Exclusion of Liability

No planning obligations contained in this agreement shall be binding on the owner of any freehold or leasehold owners or occupiers of individual dwellings constructed pursuant to the Planning Permission (or their respective mortgagees) or land held by any of the statutory utilities for their operational purposes.

IN WITNESS whereof the parties hereto have executed as a Deed and set their hands and/or seals the day and year first before written

SCHEDULE 1

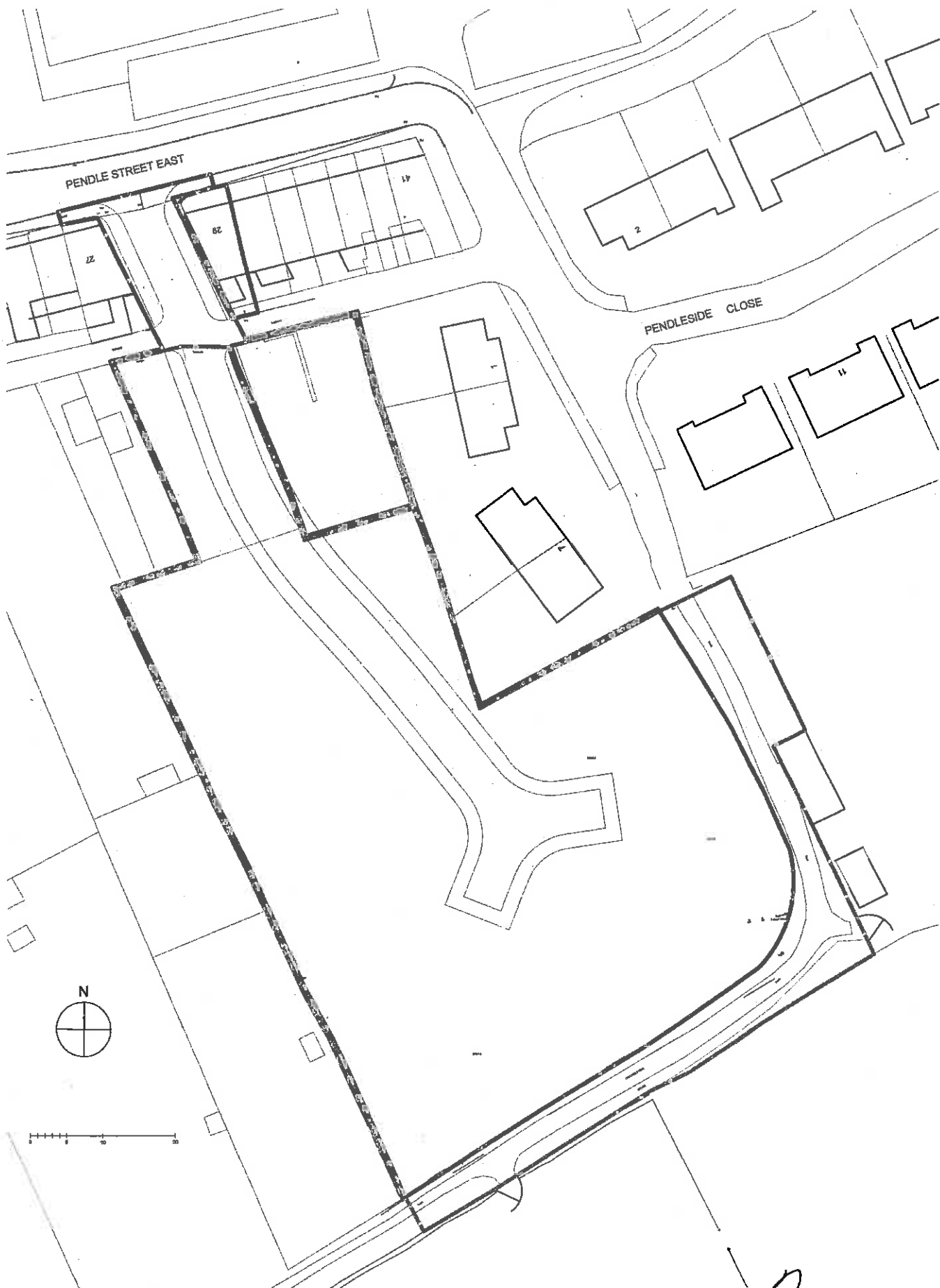
The Owner's Title and Site Description

All that freehold land registered to the First Owner at HM Land Registry under title numbers LA915195 & LAN78534 and part of that freehold land registered to the Second Owner at HM Land Registry under title numbers LAN138298 & LA840222 known as land at Pendle Street East, Sabden, and shown edged red on the Plan.

SCHEDULE 2

Draft Planning Permission

(where available insert details or attach a copy of the draft planning permission and any conservation area or listed building consent))



Land behind 27 & 29 Pendle Street East ,Sabden

scale 1:500 @ A3

M. H. Scott

SCHEDULE 3

The First Owner and Second Owner Covenants with the Council

The First Owner and the Second Owner hereby covenant and undertake to the Council and the County Council that in the event of the Planning Permission being granted and upon Commencement of Development it will comply with the following obligations:

1 Progress of development

The First Owner shall:

- 1.1 give written notice to the Council (via the Nominated Officer) within 15 Working Days of the Commencement of Development**
- 1.2 give written notice to the Council (via the Nominated Officer) within 15 Working Days of the first Occupation of a Dwelling**

2 Affordable Housing Contribution Calculation

The First Owner shall:

- 2.1 build the Market Housing Units in accordance with *the Planning Permission*; and**
- 2.2 pay the Affordable Housing Contribution to the Council prior to the Occupation of 50% of the Market Housing Units**
- 2.3 to enable the calculation of the Affordable Housing Contribution identify and agree in conjunction with the Council which dwellings built or to be built on the Site (which shall be not less than 30% of the total dwellings) would have been Affordable Housing**
- 2.4 agree with the Council the Open Market Value of each dwelling identified as an Affordable Housing dwelling**
- 2.5 agree with the Council the value that a Registered Provider would pay for each dwelling identified as a Affordable Housing dwelling**
- 2.6 in default of agreement between the First Owner and the Council of the Open Market Value under clause 2.5 and Registered Provider value under clause 2.6 above the matter shall be referred to the Specialist under clause 9.5 and 9.6 to resolve the matter**

- 2.7 Not dispose of: more than 50% of the Market Housing Units until the Affordable Housing Contribution has been paid to the Council**

SCHEDULE 4

The First Owner's Covenants with the County Council

The First Owner hereby covenants and undertakes to the Council and the County Council that in the event of the Planning Permission being granted and upon commencement of Development it will comply with the following obligations:

- 1. Primary Education Contribution**
- 1.1 Within 10 Working Days of the date of grant of a Reserved Matters Approval the First Owner shall serve written notice upon the County Council together with a copy of the Reserved Matters Approval, requesting confirmation from the County Council of the amount of the Primary Education Contribution which is payable in respect of the Development.**
- 1.2 Within 20 Working Days from the date of receipt of the First Owner's written notice pursuant to paragraph 1.1 of this Fourth Schedule the County Council shall confirm to the First Owner in writing the amount of the Primary Education Contribution which is payable in respect of the Development.**
- 1.3 The First Owner shall not cause or permit the Occupation of any Dwelling within the Development until 20% (twenty per cent) of the Primary Education Contribution due in respect of the Development has been paid to the County Council.**
- 1.4 The First Owner shall not cause or permit the Occupation of more than 25% (twenty five per cent) of the Dwellings until a further 20% (twenty per cent) of the Primary Education Contribution due in respect of the Development has been paid to the County Council.**
- 1.5 The First Owner shall not cause or permit the Occupation of more than 50% (fifty per cent) of the Dwellings within the Development until a further 30% (thirty per cent) of the Primary Education Contribution due in respect of the Development has been paid to the County Council.**

- 1.6 The First Owner shall not cause or permit the Occupation of more than 75% (seventy five per cent) of the Dwellings within the Development until a fourth and final payment of 30% (thirty per cent) of the Primary Education Contribution due in respect of the Development has been paid to the County Council.**
- 1.7 Each instalment of the Primary Education Contribution payable in accordance with paragraphs 1.4 to 1.7 of this Fourth Schedule shall be recalculated in accordance with the BCIS Indexation Factor immediately prior to payment and in each case the sum payable shall be the recalculated amount.**
- 1.8 The County Council shall use the Primary Education Contribution where possible for the provision of additional Primary School places at Primary Schools within a 3 (three) mile radius of the Site the need for which arises from the Development.**

SCHEDULE 5

Council's Covenants with the First Owner

The Council hereby covenants with the First Owner in the following terms:

General

- 1. The Council hereby covenants with the First Owner to use all sums received from the First Owner under the terms of this Deed for the purposes specified in this Deed for which they are to be paid or for such other purposes for the benefit of the Development as the First Owner and the Council shall agree in writing.**
- 2. The Council shall provide to the First Owner such evidence as the First Owner shall reasonably require in order to confirm the expenditure of the sums paid by the First Owner under this Deed within 20 Working Days of receipt of such request.**
- 3. At the written request of the Second Owner and/or First Owner the Council shall provide written confirmation of the discharge of the obligations contained in this Deed when satisfied that such obligations have been performed.**

Repayment of contributions

- 4. The Council covenants with the First Owner that it will pay to the First Owner such amount of any payment made by the First Owner to the Council under this Deed which has not been expended or committed for expenditure in accordance with the provisions of this deed within five years of the date of receipt by the Council of the final instalment of such payment together with all interest accrued thereon from the date of payment to the date of refund.**

SCHEDULE 6

County Council's Covenants with the First Owner

The County Council covenants with the First Owner in the following terms:

General

- 1. The County Council hereby covenants with the First Owner to use all sums received from the First Owner under the terms of this Deed for the purposes specified in this Deed for which they are to be paid or for such other purposes for the benefit of the Development as the First Owner and the County Council shall agree in writing.**
- 2. The County Council shall provide to the First Owner and/or Second Owner such evidence as the Second Owner and/or First Owner shall reasonably require in order to confirm the expenditure of the sums paid by the First Owner under this Deed within 20 Working Days of receipt of such request.**
- 3. At the written request of the Second Owner and/or First Owner the County Council shall provide written confirmation of the discharge of the obligations contained in this Deed when satisfied that such obligations have been performed.**
- 4. The County Council shall comply with its obligations in this Deed, including those obligations set out in the Fourth Schedule.**

Repayment of contributions

- 5. The County Council covenants with the First Owner that it will repay to the First Owner any payment made by the First Owner to the County Council under this Deed which has not been expended in accordance with the provisions of this deed within five years of the date of receipt by the County Council of the final instalment of such payment together with all interest accrued thereon from the date of payment to the date of refund.**