

DATED

15th September

2017

**LANCASHIRE COUNTY COUNCIL**

- and -

**RIBBLE VALLEY BOROUGH COUNCIL**

- and -

**WILLIAM MONKS, MICHAEL MONKS, KATHLEEN KINGHORN**

**AND DIANE MCDONALD**

- and -

**NEIL ANTHONY FORSHAW AND STEPHEN EDWARD JOSEPH FORSHAW**

- and -

**WILLIAM MONKS (LONGRIDGE) LIMITED**

## **SECTION 106 AGREEMENT**

## **TOWN AND COUNTRY PLANNING ACT 1990**

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RELATING TO LAND KNOWN AS

LAND LYING TO THE WEST OF PRESTON ROAD, LONGRIDGE

**THIS AGREEMENT AND DEED** is made the 15th day of September 2017

**BETWEEN**

1. **LANCASHIRE COUNTY COUNCIL** of PO Box 78, County Hall, Fishergate, Preston, Lancashire, PR1 8XJ (hereinafter called "the County Council")  
and
2. **RIBBLE VALLEY BOROUGH COUNCIL** of Council Offices Church Walk Clitheroe Lancashire BB7 2RA (hereinafter called "the Council")  
and
3. **WILLIAM MONKS** of 62 Preston Road, Longridge, Preston, PR3 3BD and **MICHAEL MONKS** of 66 Preston Road, Longridge, Preston, PR3 3BD and **KATHLEEN KINGHORN** of 1 Hacking Drive, Longridge, Preston, PR3 3GP and **DIANE MCDONALD** of 43 Coniston Close, Longridge, Preston, PR3 3AU (herein after called "the First Owner")  
and
4. **NEIL ANTONY FORSHAW** and **STEPHEN EDWARD JOSEPH FORSHAW** of Bolton Fold Farm, Alston, Longridge, Preston (herein after called "the Second Owner") and
5. **WILLIAM MONKS (LONGRIDGE) LIMITED** of Charter House, Pitman Way, Fulwood, Preston, PR2 9ZD (herein after called "the Third Owner" and together with the First Owner and the Second Owner herein called "the Owners")

**WHEREAS**

- (1) The First Owner is the freehold owner of land on the west side of Preston Road, Longridge, Preston the title of which land is registered at HM Land Registry under number LAN129486 and the Second Owner is the freehold owner of land on the north west side of Preston Road, Alston the title of which is registered at HM Land Registry under number LA682571 and the Third Owner is the freehold owner of land lying to the west of Preston Road,

Longridge the title to which is registered at HM Land Registry under Title Number LA611688 all of which land is shown edged red on the Plan attached hereto ("the Property")

- (2) The Council is the Local Planning Authority for the purposes of the Town and Country Planning Act 1990 (as amended) for the area within which the Property is situated and by whom the obligations contain in this Deed are enforceable
- (3) The County Council is the County Planning Authority and the local highway authority for the area in which the Property is situated by whom the obligations in Schedule 1 are enforceable
- (4) The County Council is the County Planning Authority and education authority for the area within which the Property is situated by whom the obligations contained in Schedule 3 are enforceable
- 5) The Owner on the day of 2016 applied to the Council for planning permission for a residential development including the erection of 275 residential units a local neighbourhood centre, access arrangements and associated landscaping/wildlife infrastructure on the Property as detailed in the plans and particulars deposited with Council under reference 3/2016/0974.
- (6) The Council resolved on the that the application be approved by it under the Act of 1990 (as amended) subject to the Owners entering into this Planning Obligation Deed in accordance with Section 106 of the Town and Country Planning Act 1990 ("the 1990 Act")

**NOW THIS DEED WITNESSETH** as follows:

**1. DEFINITIONS**

- 1.1 In this Deed unless the context otherwise requires:

### **Affordable Housing**

"Affordable Housing" has the meaning given to it in Annex 2 of the NPPF.

### **Affordable Housing Provider**

"Affordable Housing Provider" means a registered provider of social housing as defined by the Housing and Regeneration Act 2008 (or as redefined by any amendment, replacement or re-enactment of such Acts) and registered with the Homes and Communities Agency or any company or other body approved by the Home and Communities Agency for receipt of social housing grant.

### **Affordable Housing Scheme**

"Affordable Housing Scheme" means the scheme for the provision of the Affordable Housing Units to be submitted to and approved by the Council pursuant to paragraph 1.2 of the Schedule 2.

### **Affordable Rent**

"Affordable Rent" means such rent (inclusive of service charges where applicable) as is set by the Affordable Housing Provider in line with such standard recommendations and guidelines as may from time to time be published by the Regulator in relation to affordable costs being at the date hereof an initial maximum rental level of a maximum of the Local Housing Allowance rate calculated by the Department of Work and Pensions.

### **Affordable Rented Housing**

"Affordable Rented Housing " means the Residential Unit constructed pursuant to the Planning Permission and transferred to a Registered Provider for allocation as affordable rented housing where the lettings shall be made under a form of tenancy prescribed by the Homes and Communities Agency and at a rent equal to or less than the prevailing affordable rent (inclusive of applicable service charges) permitted by the Homes and Communities Agency which shall normally be 80% of the open market rental value (or the maximum amount of local housing allowance payable for the Dwelling if this is lower than the calculated 80% figure). The Affordable Rented Housing shall comprise not more than 50% of the Affordable Housing Units.

### **Affordable Housing Units**

"Affordable Housing Units" means those Dwellings which are to be provided as Affordable Housing which shall be 30% of the total number of Dwellings to be provided on the Site (such number to be rounded up or down to the nearest whole number) and which units shall constitute 50% Affordable Home Ownership and 50% Affordable Rented Housing and "Affordable Housing Unit" shall be construed accordingly.

## **Affordable Ownership Housing**

"Affordable Ownership Housing" means shared ownership housing where an occupier may acquire an interest in an Affordable Housing Unit of between [25% and 80%] and may be up to 100% ownership of the Open Market Value of the Dwelling at his or her election.

## **Application**

"Application" means the application for Planning Permission submitted to the Council reference number 3/2016/0974 for residential development including residential use and associated amenities on the Property.

## **Bungalow**

"Bungalow" means a unit of accommodation that provides a principle bedroom and bathroom at ground floor, in addition to and without compromising kitchen/dining and living room provision, all of which shall be designed to meet national space standards. All internal and external arrangements of the unit of accommodation / dwelling shall also accord with specifications and requirements of category 2 housing as defined in M4(2) of Approved Document M (volume 1 2015) of The Building regulations 2010 (or any subsequent revisions). For the avoidance of doubt the ground floor accommodation shall possess the ability to be habitable without necessitating the need for access to upper floor accommodation by the user.

## **Bungalow (Over 55 Occupation only)**

For the purposes of this agreement the following definition is to apply in any discussions between the parties as to what the Affordable Housing Scheme is to be comprised of where there is an agreed number of bungalows which are for those aged 55 or over:

A unit of accommodation/dwelling that shall not be occupied by a person under the age of 55 years except that in circumstances of a married couple or civil partnership at least one person in the married couple or civil partnership is not less than 55 years of age.

The unit of accommodation/dwelling shall provide a principle bedroom and bathroom at ground floor, in addition to and without compromising kitchen/dining and living room provision , all of which shall be designed to meet national space standards. The internal and external arrangements of the unit of accommodation shall accord with the specifications and requirements of category 2 housing as defined in M4(2) of Approved Document M (volume 1 2015) of The Building regulations 201 (or any subsequent revisions).

For the avoidance of doubt the ground floor accommodation shall possess the ability to be habitable without necessitating the need for access to upper floor accommodation by the user.

## **BCIS All-in Tender Price Index**

"BCIS All-in Tender Price Index" means the BCIS All-in Tender Price Index published by the Royal Institute of Chartered Surveyors or any successor body (or such other index replacing the same) for the quarter in which the contribution (or any part of it) is paid.

### **Commencement of Development**

"Commencement of Development" means the carrying out as part of the Development of a material operation (within the meaning ascribed in Section 56 of the Act) other than an operation in connection with:

- (a) site clearance;
- (b) demolition;
- (c) archaeological investigation;
- (d) advanced habitat creation;
- (e) investigation for the purposes of assessing contamination and minor or temporary general maintenance works or works of repair;
- (f) remedial action in respect of contamination;
- (g) diversion and provision of services and drainage;
- (h) the erection of means of enclosure for the purpose of site security and/or the display of advertisements;
- (i) tree works;
- (j) construction of temporary access.

### **Contractual Commitment**

"Contractual Commitment" means a legally binding obligation under which the Council or County Council (as the case may be) is or will at some future date be obliged to expend money from a Commuted Sum.

### **Contribution**

"Contribution" means all or any of the Education Contribution, the Public Transport Contribution, the Pedestrian and Cycle Measures Contribution, the Public Realm Improvements Contribution, the Travel Plan Contribution and the Longridge Loop Contribution.

### **Development**

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

### **Discount Sale Unit**

**"Discount Sale Unit"** means a dwelling sold at a maximum sale price of 70% of Open Market Value

### **Dispose**

"Dispose" means in relation to the transfer of an interest in property the transfer of a freehold interest or of a Leasehold interest of 99 years or more.

### **Dwelling**

"Dwelling" means a dwelling (including a house, bungalow, flat or maisonette) which is to be constructed as part of the Development pursuant to the Planning Permission.

### **Education Acts**

"Education Acts" has the meaning given in section 578 of the Education Act 1996

### **Education Contribution**

"Education Contribution" means the Primary Education Contribution as determined under this Agreement.

### **Education Indexation**

"Education Indexation" means the recalculation of a financial contribution to be made under this Deed applying the following formula:

$$\begin{array}{l} \text{Education Contribution} \end{array} \times \begin{array}{l} \text{BCIS All in} \\ \text{Tender Price} \\ \text{Index for the} \\ \text{period} \\ \text{immediately} \\ \text{prior to the} \\ \text{date of} \\ \text{payment} \\ \text{under the} \end{array} \div \begin{array}{l} \text{BCIS All in} \\ \text{Tender Price} \\ \text{Index for the} \\ \text{period last} \\ \text{published} \\ \text{before the date} \\ \text{of agreement} \end{array}$$

### **Homes and Communities Agency**

"Homes and Communities Agency" means the Homes and Communities Agency or any successor government agency that funds and is responsible for the delivery of new Affordable Housing and the regulation of the Affordable Housing Providers in England.

### **Implementation**

"Implementation" means the carrying out of any of the material operations listed in Section 56 of the 1990 Act pursuant to the Planning Permission provided that for the purposes of determining whether or not the material operation has been carried out there shall be disregarded property surveys and investigations and tests (including drilling bore holes, digging trial pits and taking soil samples) environmental assessments and similar studies (including geological, archaeological and ecological surveys and landscape assessments). Site investigations preparatory works including ground, modelling and contamination remediation works and "implement" and "implemented" shall be construed accordingly.

### **Local Housing Allowance**

"Local Housing Allowance" means the maximum housing benefit amount that can be paid and maximum rent that can be charged. The Local Housing Allowance is set by the Department of Work and Pensions for the East Lancashire area

### **Longridge Loop Contribution**

"Longridge Loop Contribution" means a sum of thirty thousand pounds (£30,000.00)

### **Market Dwelling**

"Market Dwelling" means those Dwellings which comprise general market housing for sale on the open market and which are not Affordable Housing.



## **Market Rent**

"Market Rent" means the estimated amount for which a Dwelling should lease (let) on the open market on the date of valuation between a willing lessor and a willing lessee, in an arm's length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion and assuming that any restrictions imposed on the Dwelling by reason of this Deed are disregarded on appropriate lease terms.

## **Mortgagee**

"Mortgagee" means any mortgagee or charge of the Affordable Housing Provider or any administrator, fixed charge receiver (including an administrative receiver appointed pursuant to the Law of Property Act 1925) administrative receiver or any other person appointed under any security documentation to enable such mortgagee to realise its security or their successors in title or persons deriving title therefrom exercising a power of sale in respect of the Affordable Housing Units.

## **NPPF**

"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.

## **Occupation**

"Occupation" shall have the same meaning as defined in the Local Government Finance Act 1988 but for the avoidance of doubt shall not include occupation for the purposes of works carried out prior to or during construction, fitting out, commissioning, advertising, marketing, security or management of land for parking.

## **Occupation and Occupied**

"Occupation" and "Occupied" 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.

## **Open Market Value**

"Open Market Value" means the estimated amount for which a Dwelling should sell on the open market for cash consideration on the date of valuation assuming:-

- a willing buyer and a willing seller in an arm's length transaction
- that prior to the date of valuation there had been a reasonable period

(having regard to the nature of the Dwelling and the state of the market) for the proper marketing of the Dwelling for the agreement of price and terms and for the completion of the same;

- that the state of the market level of values and other circumstances were on any other earlier assumed date of exchange of contracts the same as on the date of valuation;
- that no account is taken of any additional bid by a purchaser with a special interest; and
- that each party had acted knowingly prudently and without compulsion

#### **Over 55 Accommodation**

**For the purposes of this agreement the definition of over 55's Housing provision is as follows:**

**A unit of accommodation/dwelling that shall not be occupied by a person under the age of 55 years except that in circumstances of a married couple or civil partnership at least one person in the married couple or civil partnership is not less than 55 years of age.**

**The internal arrangements of the unit of accommodation/dwelling shall accord with the specifications and requirements of category 2 housing as defined in M4(2) of Approved Document M (volume 1 2015) of The Building regulations 201 (or any subsequent revisions).**

#### **Plan**

"Plan " means the Property location plan annexed hereto.

#### **Planning Permission**

"Planning Permission" means the Planning Permission to be granted pursuant to the Application. A draft of which is set out in Schedule 7.

#### **Practical Completion**

"Practical Completion" means the issue of a certificate of practical completion by the

Owners architect or in the event that the Development is constructed by a party other than the Owners the issue of a certificate of practical completion by that other party's architect and "Practically Completed" shall be construed accordingly.

### **Priority Order**

"Priority Order" means the following cascading order of persons to whom an Affordable Housing Unit must be offered in accordance with paragraph 1.10 of the Schedule 2]:

- In the first instance where at least one ordinarily resident member of a household is a person who in the reasonable opinion of the Affordable Housing Provider is in housing need and who:
  - were born in the Borough of Ribble Valley;
  - currently live within the Borough of Ribble Valley and have done so for at least the past 12 months (proof of residence for the relevant period must be provided in the form of the electoral roll or (if such persons are not on the electoral roll) utility and council tax bills);
  - used to live in the Borough of Ribble Valley for not less than three years but was forced to move away because of the lack of Affordable Housing;
  - currently work in the Borough of Ribble Valley and have done so for at least the past 12 months for more than 18 hours per week;
  - currently has a close family member (mother, father, brother, sister, son, daughter) living in the Borough of Ribble Valley and who have done so for not less than three years.
- is the wife, husband or civil partner (as defined in the Civil Partnership Act 2004) or is the resident dependent (such as a child) of such a person specified in (i) to (vi) above.

### **Primary Cost Per Place**

$\pounds 12,257 \times 0.9 \times 272/240 = \pounds 13,474.53$

### **Primary Education Contribution**

**"Primary Education Contribution"** means the sum equating to the number of Primary Pupil Places Required x Primary Cost Per Place to be paid to the County Council in accordance with the terms of this Deed for the provision of additional primary school places at Longridge CE Primary School or any subsequent name by which it is known or if it becomes an Academy;

### **Public Realm Improvements Contribution**

**"Public Realm Improvements Contribution"** means the sum of sixty thousand pounds (£60,000.00) towards the rates to Longridge Town Funding/works to provide public rights of way upgrades, widened footpaths along Preston Road, upgrade to uncontrolled crossings to improve linkage and accessibility to schools/work/services to encouraged sustainable modes of travel.

### **Pedestrian and Cycle Measures Contribution**

**"Pedestrian and Cycle Measures Contribution"** means the sum of one hundred and seventy five thousand pounds (£175,000.00) to be applied for pedestrian/cycle infrastructure to improve connectivity from Longridge to Preston (and into/within Longridge) to encourage sustainable modes of travel (Preston to Longridge Railway Cycle Route) or if the Preston-Longridge railway route cannot be delivered alternative provision on Preston Road

### **Public Transport Contribution**

**"Public Transport Contribution"** means the sum of one hundred and eighty thousand pounds (£180,000.00) being the agreed contribution by way of a subsidy to costs of traffic management solutions and other measures to improve the operation of junctions and link capacity to improve bus service provision and reliability of the Longridge-Grimsargh-Ribbleton-Preston City Centre public transport priority.

### **Pupils Expected to be Resident**

The sum of the number of Dwellings less elderly person units with a given number of bedrooms x corresponding Pupil Yield Figure for primary education (rounded to the nearest whole number)

### **Pupil Places Required**

The number of primary Pupils Expected to be Resident in the Development less any Spare Places expected to be available to cater for the Development

**"Pupil Yield Figure"** means

	Total Number of Bedrooms in Dwelling – Pupil Yield per Dwelling				
	One	two	three	Four	five
<i>Primary</i>	0.01	0.07	0.16	0.38	0.44

### **Reserved Matters Consent**

Means any reserved matters approval granted pursuant to the Planning Permission and in relation to any part of the Property which permits residential development and specifies the number of Residential Units and number of bedrooms permitted on that part of the Property

### **Spare Places**

The number of primary places expected to be available to meet the needs of the Development calculated in accordance with the principles set out in Schedule 3 hereto

### **Travel Plan Contribution**

**"Travel Plan Contribution"** means the sum of twenty four thousand pounds

£24,000.00 for the purpose of providing support to the Developer to produce a travel plan for the Development, such support to be in the form of promotion, monitoring and evaluation.

## **Interpretation**

- 1.2 The headings in this Deed do not and will not by implication form any part of this Deed and shall have no legal force whatsoever
- 1.3 Unless the context requires otherwise reference to this Deed to a clause schedule or paragraph are references respectively to a clause schedule of paragraph of this Deed
- 1.4 Where any part to this Deed comprises two or more persons any obligation on the part of that party contained or implied in this Deed shall be deemed to be joint and several obligations on the part of these persons and references to that party shall include reference to each or any of those persons
- 1.5 A reference to any statute or statutory section shall be taken to include a reference to any statutory, amendment, modification or re-enactment of it for the time being in force
- 1.6 Words denoting the singular shall include the plural and vice versa words denoting any gender shall include all genders and words denoting persons shall include bodies corporate and vice versa

## **2 Enforceability**

- 2.1 This Deed is a Planning Obligation with the intent to bind the Property and the Owners and successors in title to observe and perform the covenants herein
- 2.2 The obligations of this Deed are conditional on the grant of the Planning Permission and the Commencement of the Development by the Implementation of the relevant part of the Development pursuant to the Planning Permission

- 2.3 No persons shall be liable for a breach of covenant contained in this Deed after he shall have parted with his interest in the Property or the part in respect of which any liability has arisen which is the subject of a breach but without prejudice to liability for any existing breach of covenant prior to parting with such interest. Neither the reservation of any rights or the inclusion of any covenants or restrictions over the Property in any transfer of the Property will constitute an interest for the purposes of this clause 2.3.
- 2.4 This Deed shall not be binding or enforceable against any mortgagee or chargee exercising a power of sale but shall be binding on a purchaser from a mortgage in possession
- 2.5 The provisions of this Deed are not intended to be enforceable by any third party (which for the avoidance of doubt shall exclude any statutory successor or authority to the Council or the County Council or successors in the title to the Owners) pursuant to the Contract (Rights of Third Parties) Act 1999
- 2.6 Nothing in this Deed shall prohibit or limit the right to develop any part of the Property in accordance with a Planning Permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.
- 3 Expiry Modification Variation or Amendments of Planning Permission**
- 3.1 If the Planning Permission shall expire before implementation of Development or shall at any time be revoked this Deed shall forthwith determine and cease to have effect
- 3.2 Nothing in this Deed shall prohibit or limit the right to develop any part of the Property in accordance with any planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed and this Deed shall not apply to development carried out under any planning permission other than the Planning Permission
- 4 Registration**

This Deed is a Local Land Charge and shall be registered as such by the Council

**5 Service of Notices**

Any notice or other written communication to be served by one party upon any other pursuant to the terms of this Deed shall be deemed to have been validly served if delivered by hand or sent by pre-paid registered delivery post to the party to be delivered to the address herein specified or to such other address as may from time to time be notified for the purposes of notice in writing

**6 Reasonableness**

Where any agreement, certificate, consent, permission expression of satisfaction or other approval is to be given by any party or any person on behalf of any party hereto under this Deed the same shall not be unreasonably withheld or delayed

**7 Covenants**

- 7.1 The Owners hereby covenant with the Council to perform the obligations as specified in paragraphs 1 and 2 of Schedule 1 and Schedule 2
- 7.2 The Owners hereby covenant with the County Council to perform the obligations as specified in paragraphs 1, 2, 3, 4 and 5 of Schedule 1 and Schedule 3
- 7.3 The Council covenants with the Owners in the terms set out in Schedule 4
- 7.4 The County Council covenants with the Owners in the terms set out in Schedule 6

**8 Miscellaneous**



- 8.1 Nothing in this Deed shall affect, bind or be enforceable against any individual person in respect of any completed Dwelling and its curtilage acquired or leased by them for residential occupation on the Property.
- 8.2 Nothing in this Deed is intended to restrict the exercise by the Council or County Council of any of their powers, statutory rights, discretions and responsibilities
- 8.3 If any provision in this Deed shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be deemed thereby to be affected or impaired
- 8.4 This Deed is a Deed and is enforceable by the Council and the County Council in relation to the obligations respectively entered into with each of them.
- 8.5 The Council and the County Council will upon written request of the Owners at any time after the obligations of the Owners under this Deed have been fulfilled issue written confirmation thereof
- 8.6 Any dispute or difference arising between the parties with regard to their respective rights and obligations as to any matter or thing in anyway arising out or connected with this Deed shall except as otherwise expressly provided be referred to the decision of a single arbitrator to be agreed by the parties or failing Deed between them to be nominated by the President for the time being of the Royal Institute of Chartered Surveyors as the case may be and any such reference shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 1996 or any statutory modification or enactment for the time being in force
- 8.7 The Owners shall pay the Council's legal fees incurred in relation to this Deed the sum of [£512.20] (five hundred and fifteen pounds twenty pence) and the County Council's legal fees of [£250] (two hundred and fifty pounds).
- 8.8 Any Contribution under this Deed shall be subject to Education Indexation

## **9 Limitation of Trustees Liability**

9.1 The First Owner has entered into this Deed solely in its capacity as trustees of the Grimbaldston Farm Trust Settlement ("the Trust") and accordingly the parties hereby agree the liability of the First Owner is not a personal liability on their part and the liability of the First Owner shall be limited to the value of the assets of the Settlement vested in the First Owner from time to time and the First Owner or anyone of them shall have no such liability after he ceases to be trustee of the Trust.

9.2 The Second Owner has entered into this Deed solely in its capacity as trustees of the Trust and accordingly the parties hereby agree the liability of the Second Owner is not a personal liability on their part and the liability of the Second Owner shall be limited to the value of the assets of the Trust vested in the Second Owner from time to time and the Second Owner or anyone of them shall have no such liability after he ceases to be trustee of the Trust.

## **10 Affordable Housing Mortgagee Protection**

10.1 In respect only of the Affordable Housing provided pursuant to this Agreement nothing contained within this Agreement shall bind any Mortgagee exercising a power of sale in respect of the Affordable Housing Units provided that:

- a.) It shall have given not less than two (2) months' prior written notice to the Council of its intention to exercise such power of sale;
- b.) If the Council responds within one (1) month from receipt of the notice indicating that arrangements for the transfer of the Affordable Housing Units can be made in such a way as to safeguard them as Affordable Housing the Mortgagee shall co-operate with such arrangements and use reasonable endeavours to secure such transfer PROVIDED THAT such Mortgagee shall not be under any obligation to dispose of the Affordable Housing Units for a sum less than the monies outstanding pursuant to the legal charge or mortgage; and
- c.) If the Council or any other person cannot complete a transfer of the Affordable Housing Units within two (2) months of the date of service of its

response under paragraph 12.1(b) above then provided that the Mortgagee shall have complied with its obligations under paragraph 12.1(a) above the Mortgagee shall be entitled to dispose free of the restrictions set out in Paragraph 1 of Schedule 2 for that sale only future sales revert to all affordable housing restrictions

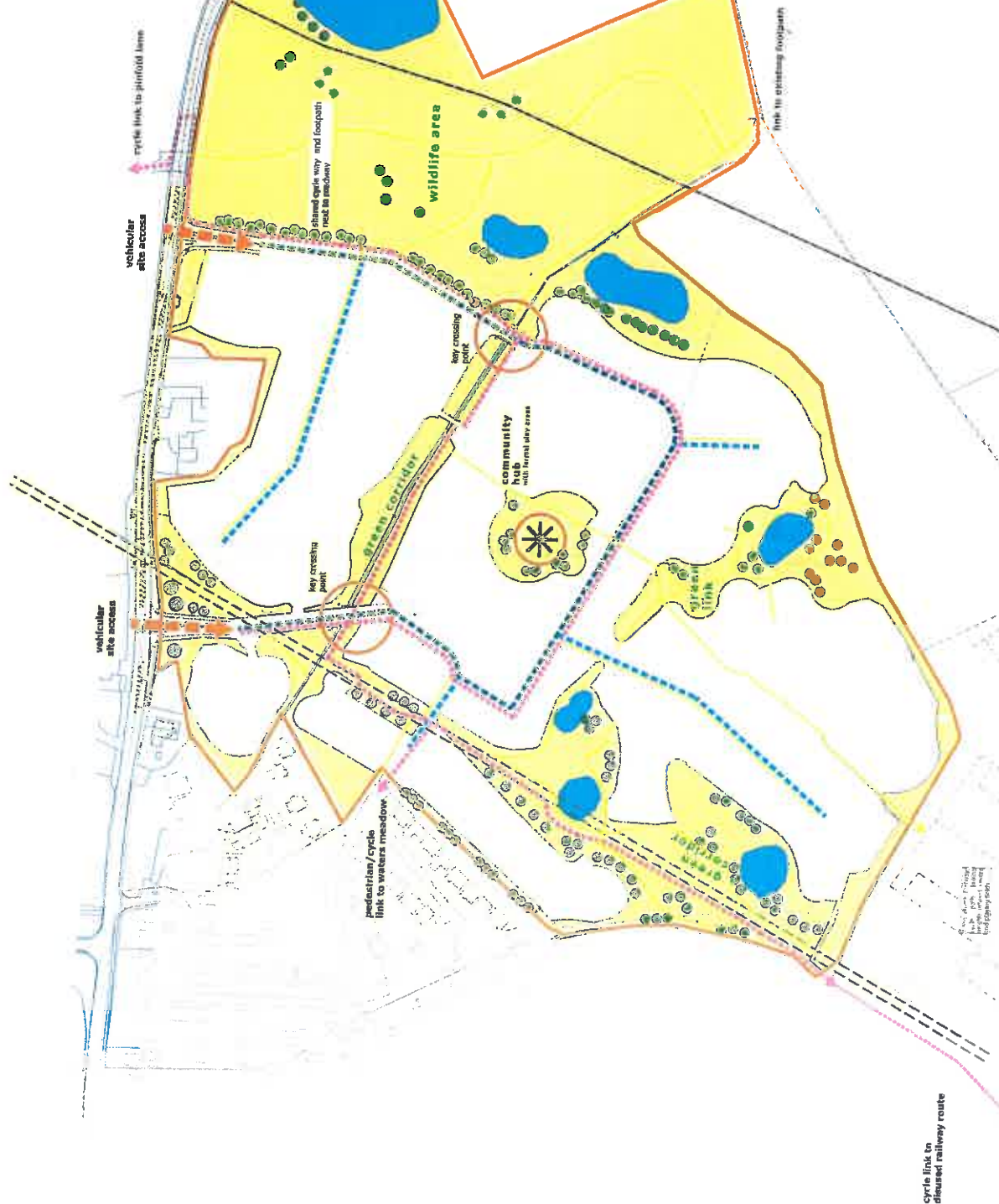
PROVIDED THAT at all times the rights and obligations in this paragraph shall not require the Mortgagee to act contrary to its duties under the charge or mortgage and that the Council must give full consideration to protecting the interest of the Mortgagee in respect of any monies outstanding under the charge or mortgage.

10.2 The provisions of this Agreement shall:

- a.) cease to apply to any completed Affordable Housing Units where a Registered Provider shall be required to dispose of the same pursuant to a right to buy under Part V of the Housing Act 1985 as amended by the Housing (Preservation of Right to Buy) Regulations 1993 or pursuant to a right to acquire under s.180 of the Housing and Regeneration Act 2008 or substitute right applicable;
- b.) cease to apply any completed Affordable Housing Units where a Registered Provider sells to a Tenant through Social Homebuy funded pursuant to Section 19(3) of Housing and Regeneration Act 2008 or any amendment or replacement thereof.

movement:  
 100m scale bar  
 0 10 20 30 40 50 60 70 80 90 100m  
 scale 1:1250

- development parcels
- proposed green/grey network
- primary vehicular route
- secondary vehicular route
- 3.5m wide cycle/hodway
- 1.5m wide cycle/hodway
- existing gas main with 80mm diameter
- existing over head electricity cables
- site boundary
- vehicular site entrance
- primary vehicular route
- secondary vehicular route
- 3.5m wide cycle/hodway
- 1.5m wide cycle/hodway
- existing gas main with 80mm diameter
- existing over head electricity cables
- site boundary
- community centre



# movement framework 1:1250

campbell dunn partnership  
 architects 0 1234 567890  
 SURVEYORS

grimbaldston farm trustees/H. Fincham  
 residential development  
 preston road longridge

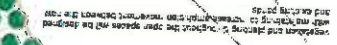
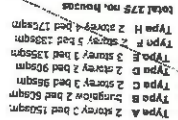
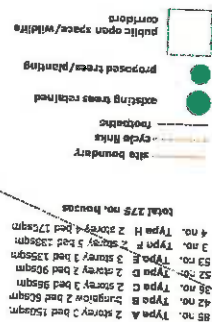
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date	10.10.192
scale	1:1250
drawn	14
checked	C
date	11.10.192
drawn	14
checked	C
date	12.10.192
drawn	14
checked	C
date	13.10.192
drawn	14
checked	C
date	14.10.192
drawn	14
checked	C



10 20 30 40 50 60 70 80 90 100m  
 scale 1:1250

cycle link to  
 woodland railway route





**SCHEDULE 1**  
**Owners' obligations**

**1. Notice of Commencement**

To give written notice to the Council (via the Nominated Officer) and the County Council within 15 Working Days of the Commencement of Development confirming that the Development has begun.

**2. Notice of Occupations**

Within 15 Working Days of each date to give written notice to the Council (via the Nominated Officer) and the County Council of the following:

- 2.1 the completion of the first Affordable Unit
- 2.2 the date of First Occupation of a Dwelling
- 2.3 the date of each other Occupation that triggers a payment or other obligation or which is otherwise referred to under the terms of this Agreement

**3. Public Transport Contribution**

- 3.1 To pay in accordance with paragraph 3.2 below the Public Transport Contribution to the County Council.
- 3.2 The Public Transport Contribution shall be paid on the occupation of the 30th Dwelling.

**4. Public Realm Contribution**

To pay to the County Council the Public Realm Contribution on the occupation of the 60th Dwelling.

**5. Travel Plan Contribution**

To pay to the County Council the Travel Plan Contribution on the Occupation of the 90th Dwelling.

6. **Pedestrian and Cycle Measures Contribution**

To pay to the County Council the Pedestrian and Cycle Measures Contribution in the following manner:

One hundred and seventy five thousand pounds (£175,000.00) for improved connectivity from Longridge to Preston on the Preston-Longridge railway cycle route or alternative provision on the occupation of the 60th Dwelling

## **SCHEDULE 2**

**The Owner's Covenants with the Council** The Owners covenant with the Council in the following terms:-

### **1. Affordable Housing**

- 1.1. The Owners shall provide Affordable Housing as part of the Development in accordance with the provisions of this Schedule 2.
- 1.2. The Owners shall not Commence Development until the Owner has submitted and the Council has approved in writing an Affordable Housing Scheme.
  - 1.3.1 An Affordable Housing Scheme submitted shall provide 30% (thirty per cent) of the total number of Dwellings to be constructed within the Development (rounded up or down to the nearest Dwelling on a "round half up" basis) as Affordable Housing Units of which 50 % (fifty per cent) of the Affordable Housing Units shall be Affordable Rented Housing and 50 % (fifty per cent) of the Affordable Housing Units shall be Affordable Home Ownership .
  - 1.3.2 To meet the identified need for Over 55 Accommodation as part of the 30% Affordable Housing Units of the Development 7.5% of the Development (up to 20) shall be of a Bungalow construction and 22.5% (up to 62) shall be of an Affordable Housing Unit none Bungalow construction.
  - 1.3.3 Of the remainder of the Development the Property shall constitute 7.5% of the total Development of a Bungalow Market Dwelling and 62.5% of the total Development is none Bungalow Market Dwelling. The Over 55s Accommodation shall be 15% of the total number of Affordable Housing Units and Market Dwellings on the Property.
- 1.4. The Council shall give notice of approval or rejection of each Affordable Housing Scheme submitted pursuant to paragraph 1.2 of this Schedule 2 not later than 20 Working Days from the date of receipt by the Council of the Affordable Housing Scheme and in the event of its rejection shall (acting reasonably) set out its full reasons for rejection and specify the measures required to produce an acceptable Affordable Housing Scheme.



- 1.5. In the event that the Council rejects an Affordable Housing Scheme submitted pursuant to paragraph 1.2 of this Schedule 2 then the Owners may submit a revised Affordable Housing Scheme to the Council for approval whereupon the Council will again issue its decision in respect of such Affordable Housing Scheme in accordance with paragraph 1.4 above. In the alternative the Owners may seek to refer any dispute or disagreement for independent determination in accordance with Clause 8.6 of this Deed.
- 1.6. The Owners shall be entitled to invoke paragraph 1.5 of this Schedule 2 as many times as is necessary in order to secure an approval in respect of an Affordable Housing Scheme submitted to the Council pursuant to paragraph 1.2 of this Schedule 2.
- 1.7. No more than 75% (seventy five per cent) of the Market Dwellings within a the Development shall be Occupied before the Owners have offered the Affordable Housing Units within Development to an Affordable Housing Provider in accordance with the approved Affordable Housing Scheme and the terms of this Deed.
- 1.8. From the date the Affordable Housing Units within the Development are first offered to an Affordable Housing Provider pursuant to paragraph 1.7 of this Schedule 2 (above) the Owner shall use reasonable endeavours in seeking to transfer the relevant Affordable Housing Units to the Affordable Housing Provider in accordance with the terms of this Deed PROVIDED THAT for the avoidance of doubt there shall be no obligation on the Owners to have commenced construction of the relevant Affordable Housing Units at the point when the said Affordable Housing Units are offered in accordance with this paragraph 1.8.
- 1.9. No more than 75% (seventy five per cent) of the Market Dwellings within the Development shall be Occupied before 100% (one hundred per cent) of the Affordable Housing Units within the Phase of Residential Development have been Practically Completed in accordance with the approved Affordable Housing Scheme for that Phase of Residential Development, subject to such variations as may be agreed between the Council and the Owners from time to time.
- 1.10. From the date of Practical Completion each Affordable Housing Unit shall be used only as Affordable Housing and shall (unless otherwise agreed in writing with the Council) only be offered for Occupation in accordance with the Priority Order unless otherwise agreed in writing with the Council save that this obligation shall not be binding upon:

1.10.1. any Chargee;

1.11. any mortgagee of an individual Affordable Housing Unit exercising its power of sale in respect of any such Affordable Housing Unit and any purchaser of an Affordable Housing Unit or any person deriving title from such a person or any successor in title thereto and their respective mortgagees and chargees from such mortgagee PROVIDED THAT:

1.11.1. any such mortgagee shall prior to seeking to dispose of the Affordable Housing Unit pursuant to any default under the terms of its mortgage or charge shall give not less than 2 months' prior notice to the Council of its intention to dispose and:

1.11.2. in the event that the Council responds within 1 months from receipt of the notice indicating that arrangements for the transfer of the Affordable Housing Unit can be made in such a way as to safeguard them as Affordable Housing whilst redeeming the outstanding sum of the mortgage plus the mortgagee's costs then the Mortgagee shall co-operate with such arrangements and use its best endeavours to secure such transfer

1.11.3. if the Council does not serve its response to the notice served under paragraph 1.11.1 within the 1 month then the Mortgagee shall be entitled to dispose free of the restrictions set out in this paragraph 1.11 of this Schedule 2

1.11.4. if the Council or any other person cannot within 2 months of the date of service of its response under paragraph 1.11.2 secure such transfer then provided that the mortgagee shall have complied with its obligations under paragraph 1.11.1 the mortgagee shall be entitled to dispose free of the restrictions set out in this paragraph 1.11 of this Schedule 2

BUT FURTHER PROVIDED THAT at all times the rights and obligations of the mortgagee in this 1.11 shall not require the mortgagee to act contrary to its duties under the charge or mortgage nor oblige the mortgagee to dispose of an Affordable Housing Unit at a sum which is insufficient to redeem the outstanding sum of the mortgage plus costs.

1.12. any Protected Tenant or any mortgagee or chargee of a Protected Tenant or

any person deriving title from the Protected Tenant or any successor in title thereto and their respective mortgagees and chargees; or

1.13. A disposal (and any subsequent occupation) required by:

- 1.13.1. any statutory provisions now or hereafter in force; or
- 1.13.2. the Homes and Communities Agency; or
- 1.13.3. a court order.

1.14. The Owners shall ensure that any transfer of an Affordable Housing Unit to an Affordable Housing Provider shall contain the following provisions:

- 1.14.1. A covenant that the Affordable Housing Provider shall not use the Affordable Housing Unit otherwise than for Affordable Housing;
- 1.14.2. A covenant that the Affordable Housing Unit shall only be offered for Occupation in accordance with the Priority Order (unless otherwise agreed in writing with the Council); and
- 1.14.3. A covenant that those Affordable Housing Units which are Affordable Rented Housing Units shall be made available for letting at a rent level not exceeding the Local Housing Allowance Rent;

1.15. In the event that:

- 1.15.1. the Affordable Housing Provider to whom an offer is made by the Owner in accordance with paragraph 1.7 of this Schedule 2 declines to accept a transfer of some or all of the Affordable Housing Units within the Development; or
- 1.15.2. no sale of some or all of the Affordable Housing Units within the Development has been effected within six months from either the Commencement of Development of the Development or the date the Affordable Housing Units were offered to the Affordable Housing Provider in accordance with paragraph 1.7 of this Schedule 2 (whichever is the later)

then paragraph 1.16 of this Schedule 2 (below) shall apply in respect of such Affordable Housing Units.

1.16. Where this paragraph 1.16 applies then:

1.16.1. the Owner may at any time serve notice upon the Council stating that this paragraph 1.16 applies and providing evidence as to why despite complying with paragraph 1.8 of this Schedule 2 the Owner has been unable to transfer the Affordable Housing Units to the Affordable Housing Provider, together with evidence from the Affordable Housing Provider that they are not willing to so purchase the Affordable Housing Units (if such evidence is available);

1.16.2. upon receipt of the Owner's written notice served pursuant to sub-paragraph 1.16.1 above the Council shall consider the evidence and confirm in writing within 10 Working Days of the date of receipt whether or not it agrees that despite complying with paragraph 1.8 of this Schedule 2 the Owners have been unable to transfer the Affordable Housing Units to the Affordable Housing Provider and in the event that the Council disagrees the Council shall set out its full reasons for such disagreement.

1.17. In the event that the Council confirms in writing pursuant to sub-paragraph 1.16.2 that it disagrees that that despite complying with paragraph 1.8 of this Schedule 2 the Owners have been unable to transfer the Affordable Housing Units to the Affordable Housing Provider then the Owners may:

1.17.1. make a further offer to transfer the relevant Affordable Housing Units to the Affordable Housing Provider or another Affordable Housing Provider in accordance with paragraphs 1.7 and 1.8 of the Schedule 2 (in which case the Owners shall be entitled to invoke the procedure set out in this paragraph 1.15 in the event that some or all of the Affordable Housing Units have still not been transferred to an Affordable Housing Provider at the end of a further period of 20 Working Days beginning with the date of the making of such an offer); or

1.17.2. submit further evidence and submissions to the Council in order to address the Council's reasons for

disagreement (in which case sub-paragraphs 1.16.1 to 1.16.4 of this Schedule 2 shall apply mutatis mutandis to the Council's consideration of such evidence and submission; or

1.17.3. refer any dispute or disagreement for independent determination in accordance with Clause 8.6 of this Deed.

1.18. In the event that the Council or an Expert (as defined in Clause 8.6 of this Deed) confirms pursuant to this paragraph 1.18 of this Schedule 2 or Clause 8.6 (as the context requires) that despite complying with paragraph 1.7 of this Schedule 2 the Owners have been unable to transfer the Affordable Housing Units to the Affordable Housing Provider then the Owner shall be entitled to dispose of the relevant Affordable Housing Units as Discount Sale Units free from the restrictions in this Schedule 2 PROVIDED that such disposal shall be at no more than [70%] (seventy per cent) of Open Market Value but shall be subject to Priority Order in perpetuity .

## 2 Longridge Loop Contribution

To pay to the Council £30,000 towards the Longridge Loop on the occupation of the 30<sup>th</sup> Dwelling

### **SCHEDULE 3**

The Owner hereby Covenants with the County Council as follows:

#### **1. Education Contribution**

Within 20 working days following the grant of a Reserved Matters Consent to notify the County Council that a Reserved Matters Consent has been granted and request that the County Council calculates the Primary Education Contribution relating to the said Reserved Matters Consent in accordance with this Deed

#### **2 Calculation of the Education Contribution**

- 2.1 The calculation of the Primary Education Contribution generally and of the Spare Places shall be undertaken in the same manner as demonstrated in the County Council's Education Methodology May 2016 (attached at Schedule 5 to this Deed)
- 2.2 The County Council's pupils projections that are current at the time of the calculation shall be used
- 2.3 For the avoidance of doubt, if the County Council's calculations show that the number of Spare Places in primary school has increased then there may be a reduction in the payment due in accordance with the recalculated shortfall, if however the recalculated number of Spare Places is expected to exceed the calculated pupil yield from the Development then no Primary Education Contribution shall be payable

#### **3 Education Contribution Triggers**

##### **3.1 Primary Education Contribution**

- 3.1.1 Not to occupy nor permit the occupation of the 99<sup>th</sup> Dwelling until 20% of the Primary Education Contribution has been paid to the County Council.
- 3.1.2 Not to occupy nor permit the occupation of the 150<sup>th</sup> Dwelling until a further 25% of the Primary Education Contribution has been paid to the County Council.
- 3.1.3 Not to occupy nor permit the occupation of the 200<sup>th</sup> Dwelling until a further 30% of the Primary Education Contribution has been paid to the County Council.
- 3.1.4 Not to occupy nor permit the occupation of the 250<sup>th</sup> Dwelling until a further 25% of the Primary Education Contribution has been paid to the County Council.

#### **4. Notification**

- 4.1 To notify the County Council at the address shown in this Deed within 10 working days of the above trigger points in clause 3 to this Schedule 3 having been reached.

#### **5. PROVIDED THAT**

- 5.1 The County Council shall not use the Primary Education Contribution other than for the purpose of a contribution towards the costs of the provision primary education provision for children living on the Development leading to an increase in the admission number of the school where such provision is made.
- 5.2 The County Council shall hold the Primary Education Contribution in an interest bearing account pending use for the purpose set out in paragraph 5.1 above.
- 5.3 If on the day 5 years after the day on which the last payment from the Owner under this deed was received the sum or any part of the sum paid or

of the interest earned on it has not been used by the County Council in accordance with paragraph 5.1 of this Schedule, the County Council shall return the unspent portion to the party who made such payment together with any interest earned on it.

- 5.4 Upon request, the County Council shall provide to the Owner reasonable evidence as to the expenditure of the sums paid by the Owner under this Deed.

#### **SCHEDULE 4 Covenants by the Council**

**1. Contributions**

- 1.1 To pay any Contributions received into a separately identified interest-bearing section of the Council's combined accounts as soon as reasonably practicable.
- 1.2 Not to use any part of the Contribution other than for the purposes for which it was paid (whether by the Council or another party).
- 1.3 In the event that the Contributions have not been spent or committed for expenditure by the Council within 5 years following the date of receipt of the Contributions in whole or any installments the Council shall refund to the Owners any part of the Contributions which has not been spent or committed for expenditure, together with any accrued interest.



**SCHEDULE 5**  
**COUNTY COUNCIL'S EDUCATION METHODOLOGY**