

3/2014/0597

32020 82P

THIS AGREEMENT is made the 24<sup>th</sup> day of February, 2015

**BETWEEN:**

- (1) (a) NICHOLAS GUY le GENDRE STARKIE c/o Ingham & Yorke Huntroyde Estate Office Padiham Lancashire BB12 7QX ('the First Owner')
- (b) CLITHEROE AUCTION MART COMPANY LIMITED whose registered office is at Ribblesdale Centre Lincoln Way Clitheroe Lancashire BB7 1QD (Company number 00054139) ('the Second Owner')
- (c) JOHN HOWARD TAYLOR of St Annes High Halden Ashford Kent TN26 3BY SARAH JANE HOWARD of 1006-1438 Richards Street Vancouver British Columbia Canada V9A 3B8 and SAMANTHA ANNE HOWARD of 2919 Wascana Street Victoria British Columbia Canada (V9A 1V6) ('the Third Owner')  
(The parties of the first three parts being together "the Owner")
- (2) RIBBLE VALLEY BOROUGH COUNCIL of Council Offices Church Walk Clitheroe Lancashire BB7 2RA ('the Council') and
- (3) LANCASHIRE COUNTY COUNCIL of PO Box 78 County Hall Preston Lancashire PR1 8XJ ('the County Council')

**RECITALS**

- (1) The Council is the local planning authority for the purposes of the 1990 Act for the area in which the Site is situated.
- (2) The County Council is also a local planning authority, the local highway authority and the education authority for the area in which the Site is situated.
- (3) The Owner is the freehold owner of the Site as set out in Schedule 1.  
The Owner submitted the Application to the Council on 4<sup>th</sup> July 2014
- (4) The Owner is prepared to enter into this deed in order to secure the planning obligations it creates.

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 1980 Act' means the Highways Act 1980,
- 1.1.2 'the 1990 Act' means the Town and Country Planning Act 1990,
- 1.1.3 'Affordable Housing' means subsidised housing that will be available to an Approved Person
- 1.1.4 'the Affordable Housing Land' means the land on which the Affordable Housing Units are erected
- 1.1.5 'the Affordable Housing Scheme' means a scheme to be agreed with the Council setting out the detail of the size and type of affordable housing units, the number of bedrooms, and the location of the affordable housing units on the site
- 1.1.6 'the Affordable Housing Units' means that part of the Development comprising - 30% of the residential units constructed on the Site (to include one half of the Older Persons Housing) of which 50% are to be Shared Ownership Units and 50% are to be affordable units for rent and 'an Affordable Housing Unit' shall be construed accordingly,
- 1.1.7 "the Applicant" shall mean a person applying to the Owner for a Rental Agreement of a Unit and in assessing an Applicant's application and eligibility for a Rental Agreement of a Unit all due regard shall be given to the Applicant's intended household;
- 1.1.8 the Application' means the application for outline planning permission for the Development dated 4<sup>th</sup> July 2014 submitted to the Council and allocated reference number 3/2014/0597/P
- 1.1.9 "Approved Person" means a person who meets the Qualifying Criteria;
- 1.1.10 a Mortgagee' means any mortgagee or chargee of the Registered Social Landlord, the successors in title to such a mortgagee or chargee, or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925,
- 1.1.11 "Commencement of Development" means the commencement of any material operation (as defined in the 1990 Act section 56(4)) forming part of the Development other than (for the purposes of this deed and for no other purpose) operations consisting of site clearance, 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 surfaces, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and 'Commencement of Development' shall be construed accordingly.

- 1.1.12 "Contributions" means the Education Contribution the Public Open Space Contribution and the Transport Contribution,
- 1.1.13 'the Date of Practical Completion' means the date of issue of a certificate of practical completion of a phase of the Development by the Owner's architect or, if the Development is constructed by a party other than the Owner, by that other party's architect,
- 1.1.14 'the Development' means the development of the Site with up to 275 dwellings,
- 1.1.15 "Discounted Sale Unit" means the sale of an Affordable Housing Unit at a discount of 40 per cent of the Open Market Value in perpetuity.
- 1.1.16 "Dispose" means each and every means by which the right of occupation of the Affordable Housing Unit is given or transferred to another person body or company and 'Disposal' shall be construed accordingly
- 1.1.17 '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,
- 1.1.18 'the Education Contribution' means the sum calculated in accordance with Schedule 3
- 1.1.19 the Education Contribution Purposes' means the provision of additional educational facilities required as a consequence of the Development,
- 1.1.20 'Financial Need' means an Applicant whose means are not reasonably sufficient to enable him/her to buy or rent suitable property in the locality which is reasonably convenient and suitable for the Applicant
- 1.1.21 "Financial Need Criteria" means:
- (a) that the Applicant cannot afford to rent suitable accommodation on the open market in the Locality; or
  - (b) no suitable alternative affordable accommodation is available in the Locality on the open market
- 1.1.22 'a Highways Agreement' means an agreement substantially in the form of the County Council's model s278 agreement providing for those matters set out in Schedule 4 as appropriate
- 1.1.23 "Homes and Communities Agency" means the Homes and Communities Agency or its statutory successors
- 1.1.24 the Housing Corporation' means the Housing Corporation as defined in Section 56 of the Housing Act 1996 or its statutory successors

- 1.1.25 "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 Owner and the Council or in default of agreement within seven working days of either party seeking the agreement of the other to an appointment at the request of the Owner or the Council by or on behalf of the President for the time being of the Royal Institution of Chartered Surveyors,
- 1.1.26 'the Index' means in respect of the Transport Contribution the All In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organization, in respect of the Education Contribution the Building Cost Information Service General Building Cost Index published by the Royal Institution of Chartered Surveyors or any successor body
- 1.1.27 'Indexation Factor' means the recalculation of a financial contribution to be made under this Agreement applying the following formula
- $$A \times B/C = D$$
- A = the contributions payable in accordance with Schedules 3 and 5 to this Deed as the case may be
- B = the figure shown in the relevant Index for the month before the date such relevant Contribution is paid
- C = the figure shown in the relevant Index for the month and year of the date of this Agreement
- D = the recalculated sum payable
- 1.1.28 'Interest' means interest at 1% above the base lending rate of Royal Bank of Scotland Bank plc from time to time,
- 1.1.29 "the Local Housing Allowance" means the Local Housing Allowance rates for the Borough of Ribble Valley from time to time or any statutory replacement thereof
- 1.1.30 "Living" means those currently living in the Locality or Borough (as applicable),
- 1.1.31 'the Market Housing Units' means that part of the Development which is general market housing for sale on the open market and which is not Affordable Housing,
- 1.1.32 "Next of Kin" means mother, father, brother, sister or adult dependant children.
- 1.1.33 "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,

- 1.1.34 "Nomination Process" means the process of nominating an Approved Person in accordance with the Council's Allocation Policy,
- 1.1.35 Notice" means a written notice from the Owner to the Council confirming that the Owner intends to market for sale Shared Ownership Units and in which the Owner invites the Council to agree the Open Market Value of the Shared Ownership Units,
- 1.1.36 "Occupation" means the use of a Market Housing Unit for residential purposes,
- 1.1.37 to Occupy' means to occupy or permit or suffer to be occupied for the purposes permitted by the Planning Permission but does not include occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and 'Occupation' and 'Occupied' shall be construed accordingly,
- 1.1.38 'Older Persons Housing' means dwellings suitable to accommodate older people comprising 15% of the total number of housing units constructed on the Site of which 50% will be Affordable Housing Units and 50% Market Housing Units.
- 1.1.39 'Open Market Value' means the best price at which the sale of the freehold interest in the Shared Ownership 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 at the date of the Notice with vacant possession on completing of the sale assuming:
  - 1.1.39.1 a willing seller; and
  - 1.1.39.2 that prior to the date of the Notice there had been a reasonable period (having regard to the nature of the Shared Ownership 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
  - 1.1.39.3 that the state of the market levels of values and other circumstances were on any earlier assumed date of exchange of contracts the same as on the date of the Notice; and
  - 1.1.39.4 that no account is taken of any additional bid by a buyer with a special interest; and
  - 1.1.39.5 that both parties to the transaction had acted knowledgeable prudently and without compulsion;
- 1.1.40 'The Owner' means the First Owner, the Second Owner and the Third Owner

- 1.1.41 The 'Title Plan' means the plan number 1 attached to this deed,
- 1.1.42 the Planning Permission' means the planning permission issued by the Council
- 1.1.43 The 'Public Open Space Contribution' means the sum set out in Schedule 4.
- 1.1.44 'Qualifying Criteria' means priority in which an Applicant will be allocated a Rental Agreement of a Rented Unit being first in priority order;
- (a) those currently Living in the Borough for more than ten years'
  - (b) those currently Living in the Borough and have done so continually for between five to ten years
  - (c) those currently Living in the Borough and have done so continually for a minimum of twelve months; or
  - (d) those currently Working in the Borough to which they have applied for accommodation;
  - (e) those Returning to the Borough; and finally
  - (f) those who are able to justify a requirement for accommodation in the Borough;
- 1.1.45 'the Registered Social Landlord' (RSL) means a registered social landlord as defined in Part 1 of the Housing Act 1996, who is registered with the Housing Corporation pursuant to Section 3 of that Act and has not been removed from the register pursuant to Section 4 of that Act, and who is approved by the Council (such approval not to be unreasonably withheld or delayed),
- 1.1.46 "the Regulations" means the Community Infrastructure Levy Regulations 2010 no. 948
- 1.1.47 Rental Agreement" means a letting agreement for a Rented Unit granted by the Registered Social Landlord on its standard terms and conditions, or by the Owner under the provisions of clause 4.1.2 of Schedule 2, to an Approved Person in accordance with the Nomination Process as shall be appropriate for the site and subject to a rent which is accepted as affordable for the Borough by the Homes and Communities Agency provided that it does not exceed the Local Housing Allowance but which shall exclude any right which the lessee may otherwise have to acquire the freehold interest in the Rented Unit to which that rental agreement relates (as far as it is legally possible to do so),
- 1.1.48 "Rented Units" are Units which are available for rent only,
- 1.1.49 "Reserved Matters Consent" means any reserved matters approval granted pursuant to the Planning Permission and in relation to any part of the Site which permits residential development and specifies the number of dwellings and number of bedrooms permitted on that part of the Site

- 1.1.50 "Returning" means persons who at least one of the adult Applicants have Next of Kin who currently live in the Borough'
- 1.1.51 "Right of Pre-emption" is a right contained in a Shared Ownership Lease for the Registered Social Landlord to buy back the Shared Ownership Units,
- 1.1.52 "Shared Ownership Lease" means a lease of a Shared Ownership Unit that contains with it a Right of Pre-emption and Shared Ownership Leases shall be construed accordingly, \
- 1.1.53 'a Shared Ownership Unit' means a unit of Affordable Housing in respect of which a shared ownership lease is granted by the Registered Social Landlord to an Approved Person and Shared Ownership Unit shall be construed accordingly
- 1.1.54 'the Site' means the land against which this deed may be enforced shown edged red green and orange on the Title Plan and described in Schedule 1, and
- 1.1.55 'a Social Rented Unit' means an Affordable Housing Unit which is let subject to an assured tenancy agreement with the Registered Social Landlord to persons identified in accordance with the nominations requirements of any funding agreement as approved by the Council in writing, at a rent not exceeding the target rent of the Housing Corporation,
- 1.1.56 "Staircase" means the exercise by the occupier pursuant to the Shared Ownership Lease of the right to acquire a greater interest in the Shared Ownership Unit by paying a percentage of the market value to the Registered Social Landlord after which the rent payable on the part retained by the Registered Social Landlord shall be reduced proportionately,
- 1.1.57 "Transport Contribution" means the sums set out in Schedule 5,
- 1.1.58 "Units " means the Affordable Housing Units and 'a Unit' shall be construed accordingly,
- 1.1.59 "Working" means a person who is permanently employed or self-employed for a minimum of eighteen hours per week paid or unpaid in the Borough,
- 1.1.60 "Working Days" means any day of the week excluding Saturdays, Sundays and Bank Holidays.
- 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 deed is made pursuant to the 1990 Act section 106.

2.2 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.

## **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 Site being occupied

save for the provisions of clause 5, 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

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.

### **3.4 Non-enforcement**

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

3.4.1 any statutory undertaker or other person who acquires any part of the Site or any interest in it for the purposes of the supply of electricity, gas, water, drainage telecommunication services or public transport services,

3.4.2 the Owner after he has disposed of his interest in the Site, 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,

3.4.3 any mortgagee of a Registered Social Landlord or any receiver appointed by such a mortgagee, or any person deriving title through such a mortgagee or receiver,

3.4.4 any person to whom a Registered Social Landlord grants a lease or Shared Ownership lease of a Unit or any successor in title to any such person,

3.4.5 a tenant or any occupant of an Affordable Housing Unit exercising a right to buy, right to acquire or similar statutory right to purchase,

3.4.6 any mortgagee of a tenant under a lease of a Shared Ownership Unit or any receiver appointed by such mortgagee or any person deriving title through any such mortgagee or receiver,

3.4.7 any person who by virtue of the terms of the lease of a Shared Ownership Unit is granted a new lease of that Shared Ownership Unit or any mortgagee of a Shared Ownership Unit or any successor in title of such person or mortgagee,

3.4.8 the purchasers or occupiers of any Market Housing Unit or any mortgagee of a Market Housing Unit,

3.4.9 any mortgagee of a Shared Ownership Unit or any receiver appointed by such a mortgagee or any person deriving title through such a mortgagee or receiver;

provided that any mortgagee shall be a full member of the Council of Mortgage Lenders, unless otherwise approved in writing by the Council on a case-by-case basis.

#### **4 Owner's covenants**

The Owner covenants with the Council and County Council as set out in Schedules 2, 3, 4 and 5.

#### **5 Provisions of immediate effect**

5.1 On completion of this deed the 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 £300 respectively.

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

5.3 The Owner agrees with the Council to give the Council prompt written notice within 14 days of any change in ownership of any of its interests in the Site occurring before all the obligations under this Deed have been discharged such notice to contain details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation purchased by reference to a plan.

#### **6 Notices**

6.1 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.

6.2 The address for any notice or other written communication shall be within the United Kingdom.

6.3 A notice or communication shall be served or given:

- 6.3.1 on the Owner at c/o Ingham & Yorke Huntroyde Estate Office Padiham BB12 7QX or such other address as shall be notified in writing to the Council and the County Council from time to time, marked for the attention of J H Staples,
- 6.3.2 on the Council at Church Walk Clitheroe Lancashire BB7 2RA 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
- 6.3.3 on the County Council at PO Box 78 County Hall Preston Lancashire PR1 8XJ

## **7 Local land charge**

- 7.1 This deed shall be registered as a local land charge.
- 7.2 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

## **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 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 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.
- 8.5 Subject to clause 8.8, if any dispute arises relating to or arising out of the terms of this agreement, any party (which for the purposes of this clause 8.5 shall include the Owner the Council and the County Council) may serve written notice upon the other parties requiring the dispute to be determined under this clause 8.5. 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.
  - 8.5.1 For the purposes of this clause 8.5 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.

8.5.2 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.

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

8.6.1 each party may make written representations within ten Working Days of his appointment and will copy the written representations to the other party;

8.6.2 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;

8.6.3 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;

8.6.4 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;

8.6.5 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

8.6.6 the Specialist is to use all reasonable endeavours to publish his decision within thirty Working Days of his appointment.

8.7 Responsibility for the costs of referring a dispute to a Specialist under this clause 8, 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.

8.8 This clause 8 does not apply to disputes in relation to matters of law, enforcement or the construction or interpretation of this Agreement which will be subject to the jurisdiction of the courts.

9 **Indexation, interest and VAT**

- 9.1 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.
- 9.2 All consideration given in accordance with the terms of this deed shall be exclusive of any value added tax properly payable.
- 9.3 The Contributions set out in Schedule 3 and Schedule 5, including every instalment where a Contribution is payable by instalments, shall be adjusted in accordance with the Indexation Factor from the date of this deed to the date of payment.

## **10 Contributions**

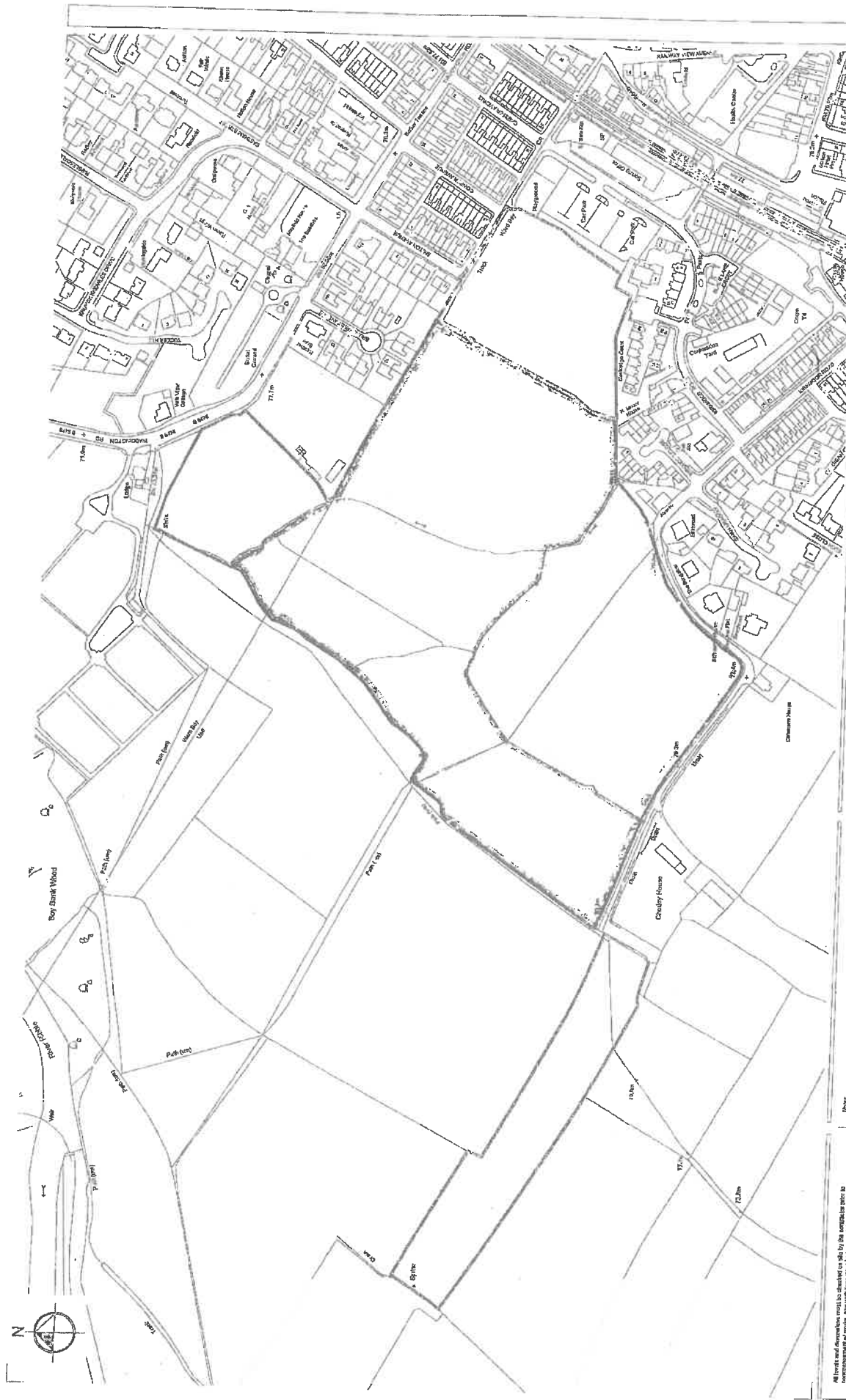
- 10.1 In the event that any of the Contributions shall not have been expended or contractually committed to be spent then on expiry of a five year period (to be calculated from the date that the last instalment of the Contribution is paid to the Council or County Council as herein provided) then the Council (in respect of the Public Open Space Contribution) and the County Council (in respect of the Education and Transport Contributions) respectively covenant to repay the Contribution or the unexpended balance thereof (if any) together with all interest accrued upon such balance (if any) as may have arisen thereon promptly to the Owner
- 10.2 The Council and the County Council respectively shall hold any Contribution paid to it in accordance with the provisions of this Agreement in an interest bearing account pending use.

## **11. Community Infrastructure Levy**

- 11.1 If after the date of this Agreement the Council approves a charging schedule pursuant to the Regulations under the Planning Act 2008 as amended and the same has taken effect and as a consequence thereof any planning obligations under this Agreement change and/or require that the Landowner must pay a sum of money to any person (whether HM Government or to the Council or otherwise) which would duplicate, add to or overlap with any planning obligation of a party under this Agreement, then the parties agree that the terms of this Agreement may at the election of the party affected be modified to such extent (if any) as is necessary to provide terms which are financially and practically no less advantageous and no more onerous than the terms of this Agreement as at the date they are entered into.
- 11.2 If having regard to the Regulations as amended it is expressly declared by the Secretary of State or an Inspector appointed by him that any of the Contributions have not been taken into account in the determination of the Application as a reason for the grant of planning permission then the obligations clauses of this Agreement relating to the relevant Contribution(s) shall be severed and

rendered ineffective as far as possible without modifying the remaining provisions of this Agreement and shall not in any way affect any other circumstances of or the validity or enforcement of this Agreement.

IN WITNESS whereof the parties of the first to third parts have set their hands and deliver this as their deed the day and year first before written



Drawing Title		SITE LOCATION PLAN	
Drawn	MS	Checked	
Created	02.07.2014	Drawn	
Revised		Checked	
Project No.	1110-LOC	Scale	1:1250
Project Name	Waddow View, Clitheroe	Author	MS

**GREENSKY ARCHITECTURE**  
 1110-LOC  
 Waddow View, Clitheroe  
 Tel: 01207 340073  
 Email: info@greenskyarchitects.com

Client: **Huntroyd Estate & Clitheroe Auction Mart**  
 Project No: 1110-LOC  
 Project Name: Waddow View, Clitheroe

Scale: 1:1250  
 Date: 02.07.2014  
 Author: MS  
 Checked: [ ]  
 Drawn: [ ]  
 Revised: [ ]

**PLAN 1.**

All levels and dimensions shall be related to the datum as indicated on the site plan. The site plan shall be used as a guide only and does not constitute a contract. Any variation shall be immediately reported to the architect.

All dimensions are given in meters unless otherwise stated. The site plan shall be used as a guide only and does not constitute a contract. Any variation shall be immediately reported to the architect.

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SCHEDULE 1

The Owner's Title and Site Description

All that freehold land shown edged red, green and orange on the Title Plan comprising:

First Owner – part of Chews Farm Clitheroe being registered with title absolute under title number LAN152692 edged red on the Title Plan

Second Owner – edged green on the Title Plan being part of the land comprised in a Conveyance dated 14<sup>th</sup> May 1949 made between (1) Frank Shirley Adams and (2) Clitheroe Auction Mart Co Ltd

Third Owner – edged orange on the Title Plan being registered with possessory title under title number LA641973

SCHEDULE 2

The Owner's Covenants with the Council

**1 Progress of development**

The Owner shall notify the Council:

- 1.1 upon the Commencement of Development and
- 1.2 upon first Occupation of a dwelling

**2 Affordable housing**

- 2.1 To build the Units in accordance with the Planning Permission and the Affordable Housing Scheme.
- 2.2 To use its best endeavours to dispose of the Units to a RSL.
- 2.3 To procure that on any Disposal the RSL shall covenant:
  - 2.3.1 Not to Dispose of any interest in the Units or any part thereof prior to the grant of a Shared Ownership Lease save to another RSL who has been approved in writing by the Council (such consent not to be unreasonably withheld or delayed)
  - 2.3.2 To ensure that the Units which are available to occupy are Shared Ownership Units and Rented Units made available to an Approved Person where each Shared Ownership Unit is occupied by someone who is part renting and part purchasing the property and where the share initially purchased by each occupier shall not be less than thirty per cent of the interest in the Shared Ownership Unit unless otherwise agreed in writing by the Council
  - 2.3.3 To permit any occupier of a Shared Ownership Unit to Staircase to one hundred per cent by increments of no less than ten per cent and to ensure that every Shared Ownership Lease granted contains suitable provisions to secure compliance with this covenant
  - 2.3.4 To ensure that the annual rent on the non-purchased share of each Shared Ownership Unit shall be in line with the prevailing normal rental levels for an RSL or such other figure as shall be approved in writing by the Council.
  - 2.3.5 To ensure that the Disposal by the RSL (and any subsequent owners) of the Units shall be subject to the nomination rights and qualifications set out in this Schedule.

- 2.3.6 that the RSL shall only transfer a Shared Ownership Unit to an Approved Person
  - 2.3.7 that the RSL shall serve notice in writing on the Council within twenty one Working Days of the Disposal of a Shared Ownership Unit so that the Council is kept fully informed of tenancies and ownerships on the Site.
  - 2.3.8 If the RSL is minded to Dispose of the whole or any part of the Units to any other RSL then it shall serve written notice of its intention on the council and shall obtain the prior written consent of the Council to any Disposal., such consent not to be unreasonably withheld or delayed.
- 2.4 To give notice in writing to the Council within fifteen Working Days after the completion of the disposal of the Units to a RSL.
- 3 Phasing**
- 3.1 the first 33% of the affordable housing units shall be completed before 21.5% of the Market Housing Units are occupied  
a further 33% of the affordable housing units shall be completed before 43% of the Market Housing Units are occupied  
the final 34% of the affordable housing units shall be completed before 65% of the Market Housing Units are occupied
- 4 Obligations of the Owner if the Affordable Housing Units are not transferred to an RSL**
- 4.1 In relation to the Affordable Housing Units the obligation of this schedule to convey the Units to a RSL shall at the Owner's discretion cease to have effect upon the expiry of a period of one year from the Date of Practical Completion of the relevant phase of Market Housing Units PROVIDED THAT:
- 4.1.1 it is demonstrated to the reasonable satisfaction of the Council that the Owner has used reasonable endeavours to conclude such an agreement with a RSL; and
  - 4.1.2 in relation to the Rented Units, the Owner shall undertake with the Council that the Owner will enter into Rental Agreements; and
  - 4.1.3 in relation to the Shared Ownership Units, the following shall apply:-
    - (a) they shall be offered for sale to an Approved Person for a maximum of sixty per cent of the Open Market Value as a Discounted Sale Unit;

- (b) immediately upon service of the Notice the Owner and the Council shall consult together and attempt in good faith to agree the Open Market Value of the Shared Ownership Unit(s); and
- (c) if the Owner and the Council have not agreed the Open Market Value within five working days of the service of the Notice each party shall be entitled to refer the matter for determination by the Independent Valuer who shall act as an expert (and not as arbitrator).

5 **Additional Affordable Provision**

5.1 The Transfer or letting of the Units to any RSL or any other person in accordance with Clause 4.13 shall be subject to the following provisions:

5.1.1 a covenant providing that the Units shall only be occupied by an Approved Person meeting the Qualifying Criteria and nominated in accordance with the Nomination Process;

5.1.2 a Restriction on the title of the Affordable Housing Unit in favour of the Council that "no disposition of the registered estate (other than a charge) by the proprietor of the registered estate or by the proprietor of any registered charge not being a charge registered before the entry of this restriction is to be registered without a certificate signed by the Solicitor or Conveyancer of the Council that the provisions of Schedule 2 of this Agreement pursuant to Section 106 of the Act made the day of Two Thousand and Fifteen between the Owner (1) the Council (2) and the County Council (3) have been complied with"

5.2 The provisions of paragraph 5.1 of this Schedule shall not be binding on a mortgagee in possession of the whole or any part of a Unit provided that such mortgagee or chargee in possession exercising any power of sale shall first have used reasonable endeavours over a period of four months in consultation with the Council to dispose of the Unit to an Approved Person approved by the Council (such approval not to be unreasonably withheld or delayed);

5.3 Any Mortgagee shall prior to seeking to dispose of the Affordable Housing Units pursuant to any default under the terms of its mortgage or charge shall give not less than two months' prior notice to the Council of its intention to dispose and:

5.3.1 in the event that the Council responds within one 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 then the Mortgagee shall co-operate with such arrangements and use its best endeavours to secure such transfer

5.3.2 if the Council does not serve its response to the notice served under paragraph 5.3 within the one month then the Mortgagee shall be entitled to dispose free of the restrictions

5.3.3 if the Council or any other person cannot within two months of the date of service of its response under paragraph 5.3.1 secure such transfer then provided that the Mortgagee shall have complied with its obligations under paragraph 5.2 and 5.3 the Mortgagee shall be entitled to dispose free of the restrictions

PROVIDED THAT at all times the rights and obligations in this paragraph 5.3 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 moneys outstanding under the charge or mortgage

## 6 Housing to accommodate older people

To build 50% of the Older Persons Housing as Market Housing Units

## SCHEDULE 3

## The Education Contribution

1. The calculation of the education contribution will be undertaken in accordance with the following:
2. "GBCI" 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) for the quarter in which the contribution (or any part of it) is paid;
3. "Primary Cost Per Place" means  $\text{£}12,257 \times 0.9 \times \text{GBCI}/288.4$
4. "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;
5. "Pupil Places Required" means the number of primary or secondary Pupils Expected to be Resident in the Development less any Spare Places expected to be available to cater for the Development;
6. "Pupils Expected to be Resident" means the sum of the number of Dwellings less Older Persons Housing Units with a given number of bedrooms x corresponding Pupil Yield Figure for primary or secondary education (rounded to the nearest whole number);
7. "Pupil Yield Figure" means

	Total Number of Bedrooms in Dwelling – Pupil Yield per Dwelling				
	One	Two	Three	Four	Five
Primary	0.01	0.07	0.16	0.38	0.44

Secondary	0	0.03	0.09	0.15	0.23
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8. **"Secondary Cost Per Place"** means  $\text{£}18,469 \times 0.9 \times \text{GBCI}/288.4$
9. **"Secondary Education Contribution"** means the sum equating to the number of secondary Pupil Places Required x Secondary Cost Per Place to be paid to the County Council in accordance with the terms of this Deed for the provision of additional secondary school places within three miles of the Site;
10. **"Spare Places"** means the number of primary and secondary places expected to be available to meet the needs of the Development calculated in accordance with the principles set out in Schedule 3 hereto;
11. 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 and the Secondary Education Contribution relation to the said Reserved Matters Consent in accordance with this Deed.
12. The calculation of the Primary Education Contribution and the Secondary Education Contribution generally and of Spare Places shall be undertaken in the same manner as demonstrated in the County Council's Education Methodology (Appendix 1).
13. The County Council's pupils projections that are current at the time of the calculation shall be used.
14. The Owner covenants with the County Council to pay the Education Contribution by 5 equal instalments the first of which will be payable on the occupation of 18% of the dwellings being constructed pursuant to the Planning Permission and thereafter each subsequent instalment to be paid on occupation of each additional 20% of the dwellings constructed pursuant to the Planning Permission.
15. The Owner further covenants to give the County Council written notice of the occupation of the first 18% and each additional 20% of the dwellings constructed as aforesaid within 14 days of the date each such level of occupation is achieved.

SCHEDULE 4

**Public Open Space Contribution**

1. The Public Open Space Contribution will be at the rate of £370 per dwelling the total to be calculated at Reserved Matters Consent stage when the actual number of dwellings approved will be known.
2. Subject to Clause 10 of this Agreement the Public Open Space Contribution will be used by the Council to improve the provision of activity play for all ages in Clitheroe Castle Grounds through the installation of an Outdoor Gym Adventure Play facility.
3. The Owner covenants with the Council to pay the Public Open Space Contribution by 5 equal instalments the first of which will be payable on the occupation of 18% of the dwellings being constructed pursuant to the Planning Permission and thereafter each subsequent instalment to be paid on occupation of each additional 20% of the dwellings constructed pursuant to Planning Permission.
4. The Owner further covenants to give the Council written notice of the occupation of the first 18% and each additional 20% of the dwellings constructed as aforesaid within 14 days of the date each such level of occupation is achieved.

## SCHEDULE 5

## Transport Contribution and Highways

The Owner covenants with the County Council as follows:

1. on submission of the first annual travel plan report to pay to the County Council the sum of £24,000 for support in delivering a successful Travel Plan
2. prior to occupation of the first Dwelling to pay to the County Council the sum of £10,000 in respect of provision for a secure cycle storage facility at Clitheroe Railway Station
3. prior to the Commencement of Development on site to pay to the County Council the sum of £6,000 for the completion of Traffic Regulation Order (TRO) investigations and legal procedures in respect of the highway projects listed below. Any works arising from such investigations and procedures shall be delivered through a Highways Agreement between the developer and the County Council under Section 278 of the Highways Act 1980.

Waddington Road	Extend the 20mph zone order to a point north of the entrance to Clitheroe cemetery; zebra crossing; amend priority and right turn junction design into site; design of mini-roundabout at junction of Railway View Road
Kirkmoor Road	New parking restriction (no waiting at any time) junction with Castle View
Bawdlands/Castle View junction	New parking restriction (no waiting at any time) on both sides of Castle View
Whalley Road	Improvements to mini-roundabout at junction with Queensway
Corbridge Court/back King Street	Improved footway and cycling provision linking site to Clitheroe Town Centre
Waterloo Road/Shawbridge Street	A scheme to mitigate the combined impact of the proposed Waddow View (3/2014/05978) and

	<p>Standen (3/2012/0942) developments to the junction to be agreed with the Develop with a Transport Contribution for this development calculated on the proportion which the growth in peak hour traffic flow at the junction from 2014 to 2018 created by Waddow View bears to the total growth arising from the two combined developments over the same period.</p> <p>PROVIDED ALWAYS THAT the Transport Contribution shall be limited to the scheme set out on Plan 2 attached hereto prepared by DTPC (Northwest) LLP in the event that the first application for Reserved Matters Consent for the Standen development is not made within 2 years of Commencement of Development.</p>
Site	Introduce 20mph zone

4. Within 28 days of the first occupation of 33% of the dwellings being constructed to pay to the County Council the sum of £110,000 and within 28 days of each of the next 4 succeeding anniversaries of such payment to pay to the County Council further sums of £110,000 for an amended bus route through the Site to provide increased frequency of bus services serving Clitheroe



APPENDIX

Lancashire County Council Planning Obligations Methodology re contributions towards education places  
(update March 2014)



**Planning Obligations in Lancashire  
Methodology**

**Contributions towards education places-  
Update March 2014**

## Planning Obligations in Lancashire Policy

### Contributions towards education places- updated March 2014

#### Background

- 1.1 This document sets out the Lancashire County Council methodology used for claiming education contributions against housing developments, which are projected to create a shortfall of places at schools within the local area of a development.
- 1.2 Education services for Lancashire are managed through Lancashire County Council (LCC) and the two unitary authorities of Blackpool and Blackburn with Darwen. For the purposes of this policy paper, the education services referred to are those covered by Lancashire County Council only.  
  
These authorities have a statutory responsibility for the provision of sufficient school places for children residing in their areas.
- 1.3 The Department for Education specifies that 'statutory walking distance is two miles for children aged under eight, and three miles for children aged eight and over'. For this reason, (which is reflected in LCC's Home to School Transport Policy), LCC assesses primary schools within two miles and secondary schools within 3 miles of the development.
- 1.4 Current contextual information regarding Lancashire schools can be found within the current 'Strategy for the Provision of School Places and Schools' Capital'
- 1.5 This update to policy refers to the provision of mainstream school places only. It does not relate to the planning of special needs school provision, nor independent school provision.
- 1.6 Pressure for additional school places can be created by an increase in the birth rate, new housing developments, greater inward migration and parental choice of one school over another. If local schools are unable to meet this demand, a new development can have an adverse impact on the infrastructure of its local community.
- 1.7 R122 of the Community Infrastructure Levy (CIL) Regulations 2010 imposes a limitation on the use of planning obligations and provides that a planning obligation may only constitute a reason for granting planning permission if the obligation is:
  - o necessary to make the development acceptable in planning terms;
  - o directly related to the development; and
  - o fairly and reasonably related in scale and kind to the development

In addition, the R123 (3) of the CIL regulations 2010 scales back the way planning obligations operate. Limitations are also placed on the use of planning obligations in the following respects:

- Ensuring the local use of the levy and planning obligations does not overlap; and
- Limiting pooled contributions from planning obligations towards infrastructure which may be funded by the levy

1.8 Where LCC assess that a proposed development will create a full or partial shortfall of places in primary or secondary schools, a contribution will be sought from the developer, assessed in accordance with the methodology below.

1.9 Quality education provision is at the heart of sustainable communities and therefore should be a fundamental aspect of all new housing developments. Where new housing development creates a demand for school places in excess of those available, the local authority will expect district councils to work with LCC in seeking a financial contribution from the developers that is proportionate to impact in order to mitigate against the effect of any new development on local infrastructure. It is critical that developers make a financial contribution to school places as, without one, the local authority will be unable to ensure school places are accessible and this is likely to impact on the children and families that come to settle in new developments.

#### Methodology for assessing contributions

- 2.1 Planning Obligations will be sought for education places where Lancashire primary schools within 2 miles and/or Lancashire secondary schools within 3 miles of the development are;
- Already over-subscribed, or
  - Projected to become over-subscribed within 5 years
- 2.2 Where a development will result in schools within its radius area becoming oversubscribed, LCC will seek contributions from the developer to pay towards the associated capital costs of providing the additional school places. This will be calculated in accordance with the methodology at 3.2
- 2.3 Whilst LCC seeks to provide additional places in existing schools wherever possible (to maintain stability in the existing school system, provide places in a timely fashion and to achieve best value for money), it may not always be feasible to expand one or more existing school. In such circumstances, a new school may be required to address the shortfall of places.
- 2.4 If a large new housing development (over 150 houses) is proposed, it may not be feasible to expand one or more existing schools. In such cases, LCC will

undertake an initial assessment on whether a site may be required, taking into account the existing provision in the area.

Because the significant enlargement of an existing school or the establishment of a new school both require the authority to consult interested parties before making any decision, under the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007 (as amended by The School Organisation and Governance (Amendment) (England) Regulations 2007 which came into force on 21 January 2008 and the School Organisation and Governance (Amendment)(England) Regulations 2009 which came into force on 1 September 2009), we cannot predetermine where the education contribution provided by a developer will be used to provide additional places at the time of planning application. Wherever possible, an education contribution will be used within 3 miles of the development.

- 2.5 Section 14 of the education act 1996 dictates that Lancashire County Council's statutory obligation is to ensure that every child living in Lancashire is able to access a mainstream school place in Lancashire. Some children have Special Educational Needs for which they access school provision outside of Lancashire.
- 2.6 Where there are a number of developments within an area yielding an education contribution, LCC may decide to pool contributions to provide places, where this accords with regulation 123 (3) of the Community Infrastructure Levy Regulations 2010.
- 2.7 If the development is large enough to justify the possibility of a new school, the developer may be asked to contribute a suitable school site as part of the development. The size of this site would be determined in accordance with DfE guidance.
- 2.8 Where a number of small developments are expected to come forward in an area with an aggregated requirement for a new school, LCC would expect the district planning authority to assist in the negotiations to secure a school site.

## Calculation

### 3.1 Exemptions

Contributions are not sought in respect of:

- Sheltered accommodation
- Student accommodation

### 3.2 Contributions

Contributions will be assessed as follows:

- The schools within the radius of the development are determined. (Within 2 miles for primary and 3 miles for secondary schools)
- An assessment is undertaken, using:
  - The number on roll;
  - The latest net capacity of the schools; and
  - The latest pupil projections

These projections take into account current numbers on roll, live births, inward/ outward migration to and from schools based upon recent patterns of attendance and planned housing contained within the district 5 year Housing Land Supply Documentation.

If a shortfall is identified at this point, the contribution sought would be for the full potential pupil yield of the development.

Should there be sufficient places at this stage or only a partial shortfall of places identified, LCC will need to consider approved housing developments (outside of the 5 year Housing Land Supply) which will impact upon one or more of the schools in the catchment of the assessed development before reaching a conclusion on the expected number of surplus places.

Once a shortfall has been identified, a contribution will be calculated in accordance with the following:

## Yield

The analysis on which this yield is based on includes a cross section of Lancashire conurbations taking into account mix of rural, urban and city locations. The sample used takes into account a range of large developments and individual dwellings.

No of Bedrooms	Yield per development - Primary	Yield per development - Secondary
1	0.01	0.00
2	0.07	0.03
3	0.16	0.09
4	0.38	0.15
5	0.44	0.23

## Primary Schools

£ per place: £12,257 DFE Cost multiplier

Adjustments: 0.9 (DFE location factor for Lancashire)

BCIS inflation indices to reflect the cost multiplier's last update was in 2008. This will be updated in accordance with BCIS General Building Cost Index.

## Secondary Schools:

£ per place: £18,469 DFE Cost multiplier

Adjustments: 0.9 (DFE location factor for Lancashire)

BCIS inflation indices to reflect the fact that the DFE cost multiplier's last update was in Q4 of 2008. This will be updated in accordance with BCIS General Building Cost Index.

### Formula Applied

#### Primary places:

$(£12,257 \times 0.9) \times \text{BCIS General Buildings Cost Index (314.50 April 2013 / 288.4 Q4 2008 = 1.090499)}$

= £12,029.62 per place

£12,029.62 x \*\*\* places = £\*\*\*\*\*

#### Secondary places:

$(£18,469 \times 0.9) \times \text{BCIS General Buildings Cost Index (314.50 April 2013 / 288.4 Q4 2008 = 1.090499)}$

= £18,126.38 per place

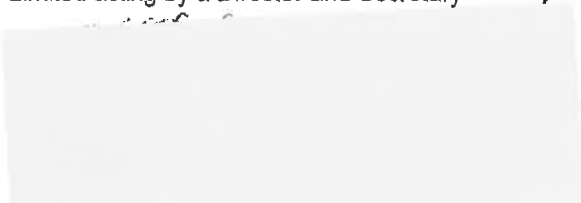
£18,126.38 x \*\*\* places = £\*\*\*\*\*

- 3.3 In order to accurately determine the correct level of contribution required, Lancashire County Council will need to be provided with the bedroom information for the proposed development. If this is not available at the time of assessment, Lancashire County Council will apply the yield attributed to 4 bedroom developments until the relevant bedroom information is provided.
- 3.4 If a developer does not agree to payment of the requested education contribution or the district planning authority does not pursue LCC's request on its behalf, LCC cannot guarantee that children yielded by the development will be able to access a school place within reasonable distance from their home.
- 3.5 LCC reserves the right to reassess the school place position in respect of a development in accordance with this methodology paper, to take into account changing circumstances up to the point where a planning application is approved.
- 3.6 Frequently Asked Questions in relation to Planning Obligations for education places can be found on the Planning Obligations web page.
- 3.7 Due to the significant increase in the number of planning applications received and the prescribed timescale for responses and in order that we are able to respond to planning applications in a timely fashion, we are unable to treat pre-applications as a priority.
- 3.8 Requests for information subsequent to the submission of an education request must be provided in writing to [schools.planning@lancashire.gov.uk](mailto:schools.planning@lancashire.gov.uk) and will endeavour to reply to within 10 working days.

SIGNED as a Deed by Nicholas Guy le Gendre )  
Starkie in the presence of: )

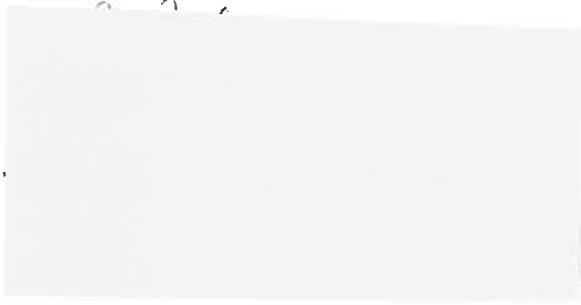


SIGNED as a Deed by Clitheroe Auction Mart )  
Limited acting by a Director and Secretary )

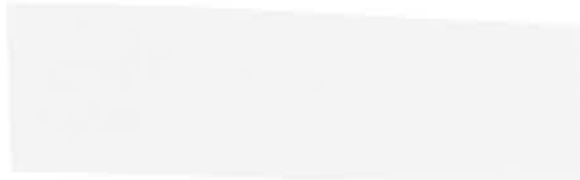
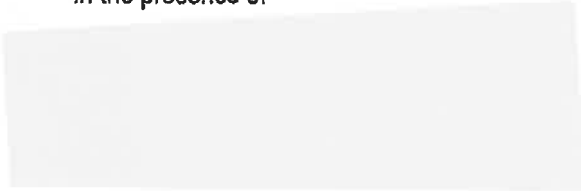


Director...

Secretary.



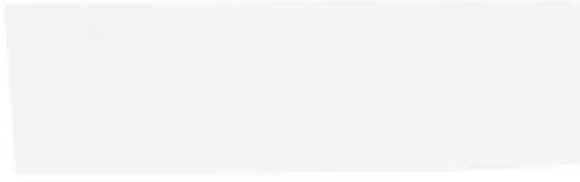
SIGNED as a Deed by John Taylor )  
in the presence of )



SIGNED as a Deed by Sarah Howard )  
in the presence of )



SIGNED as a Deed by Samantha Howard )  
in the presence of: )



The COMMON SEAL of Ribble Valley Borough Council  
was hereunto affixed in the presence of:-

Mayor

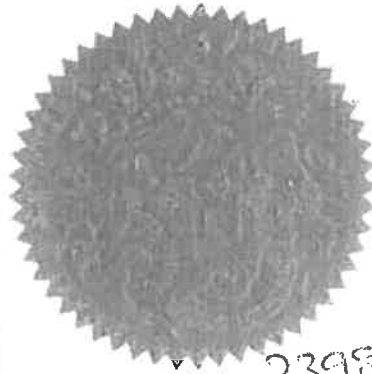
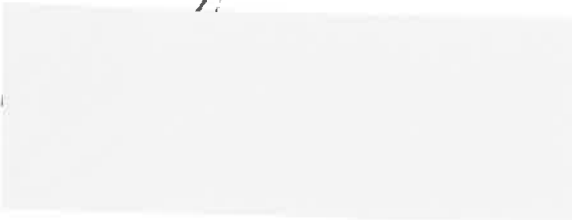
Chief Executive



1511

The COMMON SEAL of Lancashire County Council  
was hereunto affixed in the presence of:-

Authorised Officer



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