

DATED

2013

RIBBLE VALLEY BOROUGH COUNCIL

-AND-

JOHN EDWARD ASHCROFT

AGREEMENT

Under Section 106 Town and Country Planning Act 1990

relating to property known as

Land at Clitheroe Road, Barrow

1. **THIS** Agreement is made as a Deed in pursuance of Section 106 of the Town and Country Planning Act 1990 (as amended) and is a planning obligation for the purposes of that Section enforceable by the Council with the intent to

bind the property and bind the Owner to observe and perform the covenants restrictions and obligations set out in the Schedule hereto

2. **THE** expressions 'the Council' and 'the Owner' shall include their respective successors in title and assign PROVIDED THAT no such person (including the parties hereto) shall be liable for any breaches occurring after they have disposed of their interest in the property or the relevant part of parts hereof

3. **Legal basis**

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

Conditions, duration and enforcement

Conditions precedent

This deed is conditional upon:

- 3.1.1 the grant of the Planning Permission, and
- 3.1.2 the Commencement of Development

Save for the provisions of clause 5, Provisions of Immediate Effect, which shall come into effect immediately upon completion of this deed.

4. **Duration**

- 4.2.1 This deed shall cease to have effect, in so far only as it has not already been complied with, if the Planning Permission is quashed, revoked or otherwise withdrawn or, without the consent of the Owner, it is modified by any statutory procedure or expires before the Commencement of Development
- 4.2.2 No person shall be liable for any breach of any of the planning obligations or other provisions of this deed after parting with his interest in that part of the

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

- 4.2.3 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.

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

Non-enforcement

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

- 4.4.1 any statutory undertaker or other person who acquires any part of the Site or any interest in it for the purposes of the supply of electricity, gas, water, drainage, telecommunication services or public transport services.
- 4.4.2 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 obligation.
- 4.4.3 the owners or occupiers of any Market Housing Unit or any mortgagee of a Market Housing Unit

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

5. Jurisdiction and legal effect

- 5.1 This deed shall be governed by and interpreted in accordance with the law of England and Wales
- 5.2 This Courts of England and Wales are to have jurisdiction in relation to any disputes between the parties arising or related to this Agreement
- 5.3 In so far as any clause or clauses of this deed are found (for whatever reason) to be invalid, illegal or enforceable, that invalidity, illegality or enforceability shall not affect the validity or enforceability of the remaining provisions of this deed.
- 5.4 No waiver (whether expressed or implied) by the Council 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 from enforcing any of the relevant terms or conditions or from acting upon any subsequent breach or default.
- 5.5 Subject to clause 5.8, if any dispute arises relating to or arising out of the terms of this agreement, any party (which for the purposes of this clause 5.5 shall include the Council) may serve written notice upon the other parties requiring the dispute to be determined under this clause 5.5. 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.
- 5.5.1 For the purposes of this clause 5.5 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
- 5.5.2 Any dispute over the type of specialist appropriate to resolve the dispute may be referred to at the request of either party to the President or next most senior available officer of the Law Society who will have the power, with the right to take such further advice as he may require, to determine the

appropriate type of Specialist and to arrange his nomination under clauses 5.5.3

5.5.3 Any dispute over the identity of the Specialist is to be referred to at the request of either party to the President or other most senior available officer of the organisation generally recognised as being responsible for the relevant type of Specialist who will have the power, with the right to take such further advice as he may require, to determine and nominate the appropriate Specialist or to arrange the nomination. If no such organisation exists, or the parties cannot agree the identity of the next organisation, then the Specialist is to be nominated by the President or next most senior available officer of the Law Society.

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

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

5.6.2 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;

5.6.3 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;

5.6.4 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;

5.6.5 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

- 5.6.6 the Specialist is to use all reasonable endeavours to publish his decisions within 30 Working Days of his appointment
- 5.7 Responsibility for the costs of referring a dispute to a Specialist under this clause 5, 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
- 5.8 This clause 5 does not apply to disputes in relation to matters of law or the construction or interpretation of this Agreement which will be subject to the jurisdiction of the courts.
6. **THE** Owner hereby covenants with the Council to pay on demand the Council's reasonable costs of and incidental to the preparation and completion of this Agreement in the sum of £330.
7. This Agreement is made as a Deed and is a Local Land Charge registered under the Local Land Charges Act 1975

IN WITNESS whereof the parties have executed as a Deed the day and year first
before written

THE SCHEDULE

1. The Owners hereby covenant with the Council that the said Property shall be permanently subject to the restrictions regulating the development thereof as hereafter contained and the purport and intent of such covenants shall be registered upon the Title of the Owners at HM Land Registry by way of an appropriate entry on the Charges Register of title number LAN136921
2. The Owners hereby agrees to provide to the Council within 3 months of the date hereof an Official Copy of the Register as evidence that such registration has been completed.
3. The said covenants referred to in the preceding clause are as follows:

3.1 that the Affordable Housing Units shall be the three bungalows of the nine dwellings to be built, shall not be sold by the Owners other than to an Approved Person as defined at Clause 5 below and the sale price shall be not less than at a 40% discount to the Open Market Value.

3.2 that the Owner shall not occupy the bungalows

3.3 that in respect of the sale of each of the two bungalows that on each and every disposal that the sale price of each of the bungalows shall be not less than 40% below the Open Market Value at the time of completion of construction of the bungalows in the first instance and at the time of sale in other cases and details of the Open Market Value and the proposed sale price shall be submitted to the Council for approval prior to any sale taking place and such approval shall not be unreasonably withheld or delayed

4. 'Open Market Value' in clause 3 above shall mean the best price at which the interest in the house might reasonably be expected to be sold by private treaty at the date of valuation assuming the willing seller and a reasonable period within which to negotiate the sale and should be established by a qualified independent chartered surveyor not acting for either party in the transaction

5. The Approved Person shall fulfil the criteria in the following order of priority:-

5.1 Firstly buyers who can demonstrate a housing need requirement for the type of House who are over 55 years in order of priority either

5.1.1 currently living in the Parish of Whalley or Wiswell for more than 10 years or

5.1.2 currently living in the Parish of Whalley or Wiswell and have done so continually for between 5 to 10 years or

5.2.3 currently living in the Parish of Whalley or Wiswell and have done so continually for a minimum of 12 months or

- 5.1.4 currently permanently employed in the Parish of Whalley or Wiswell for a minimum of 12 months and are employed for a minimum of 18 hours per week paid or unpaid or
 - 5.1.5 Persons who at least one of the adult applicants have next of kin who have lived in the Parish of Whalley or Wiswell continually for a minimum of five years. Next of kin for the purposes of this clause shall be defined as mother, father, brother, sister or adult dependant children or
 - 5.1.6 Persons who are former residents of the Parish of Whalley or Wiswell who have been forced to move from the Parish because of lack of affordable housing in the Parish
- 5.2 Secondly buyers who can demonstrate a housing need requirement for the type of House who are over 55 years in order of priority either
- 5.2.1 currently living in the Parishes of Pendleton, Read, Sabden, Little Mitton, Billington and Langho for more than 10 years or
 - 5.2.2 currently living in the Parishes of Pendleton, Read, Sabden, Little Mitton, Billington and Langho and have done so continually for between 5 or 10 years or
 - 5.2.3 currently living in the Parishes of Pendleton, Read, Sabden, Little Mitton, Billington and Langho and have done so continually for a minimum of 12 months or
 - 5.2.4 currently permanently employed in the Parishes of Pendleton, Read, Sabden, Little Mitton, Billington and Langho for a minimum of 12 months and work for a minimum of 18 hours per week paid or unpaid or
 - 5.2.5 Persons who at least one of the adult applicants have next of kin who have lived in the Parishes of Pendleton, Read, Sabden, Little Mitton, Billington and Langho continually for a minimum of 5 years. Next of kin

for the purposes of this clause shall be defined as mother, father, brother, sister or adult dependant children or

- 5.2.6 Persons who are former residents of the Parishes of Pendleton, Read, Sabden, Little Mitton, Billington and Langho who have been forced to move from the Parish because of lack of affordable housing in the Parish
- 5.3 Thirdly buyers who can demonstrate a housing need requirement for the type of House who are over 55 years in order of priority either
 - 5.3.1 currently living in the Borough of Ribble Valley for more than 10 years or
 - 5.3.2 currently living in the Borough of Ribble Valley and have done so continually for between 5 or 10 years or
 - 5.3.3 currently living in the Borough of Ribble Valley and have done so continually for a minimum of 12 months or
 - 5.3.4 currently permanently employed in the Borough of Ribble Valley for a minimum of 12 months and work for a minimum of 18 hours per week paid or unpaid or
 - 5.3.5 Persons who at least one of the adult applicants have next of kin who have lived in the Borough of Ribble Valley continually for a minimum of 5 years. Next of kin for the purposes of this clause shall be defined as mother, father, brother, sister or adult dependant children or
 - 5.3.6 Persons who are former residents of the Borough of Ribble Valley who have moved from the Borough because of lack of affordable housing in the Borough
- 5.4 The owner shall market the property to households in the Parish of Whalley and Wiswell for 2 months, neighbouring Parishes for 2 months and within the Borough for 2 months

- 5.5 In the event that the Owners are unable to dispose of the House to an Approved Person because it is unable to find a person who meets the definition of Approved Person in this Agreement then the Owners shall use reasonable endeavours to market the House to a potential Approved Person for a period of at least six months. If at the end of the period of six months in which the House has been marketed and no Approved Person has been identified then the Owners may dispose of the House to a person who is not an Approved Person. The six month marketing period shall begin from the date that the Council is notified in writing that marketing is to commence.
- 5.6 The Council shall confirm its approval or otherwise to the proposed Approved Person within 5 working days from the Owners giving notice to the Council. Any Mortgagee shall prior to seeking to dispose of the Affordable Housing Units pursuant to pay 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:
- (a) in the event that the Council responds within [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 then the Mortgagee shall co-operate with such agreements and use its best endeavours to secure such transfer
 - (b) if the Council does not serve its response to the notice served under paragraph 5.6 (a) within [1] month then the Mortgagee shall be entitled to dispose free of the restrictions set out in paragraphs 3 to 5.5 of the First Schedule
 - (c) if the Council or any other person cannot within [2] months of the date of service of its response under paragraph 5.5(a) secure such transfer then provided that the Mortgagee shall have complied with its obligations under paragraph 5.5(a) the Mortgagee shall be entitled to dispose free of the restrictions set out in paragraph 3 to 5.5 of the First Schedule

PROVIDED THAT at all times the rights and obligations in this paragraph 5.6 shall not require the Mortgagee at 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

5.7 Not more than three of the market units shall be occupied before the two Affordable Housing Units are completed and ready for occupation.

5.8 The Owner hereby covenants with the Council that a Form L Restriction shall be made in the Proprietorship Register of the title of each and every Affordable Housing Unit as follows:

"No disposition of the registered estate (other than a charge) by the proprietor of the registered estate is to be registered without a certificate signed by Ribble Valley Borough Council or their conveyancer that the provisions of the Section 106 Agreement dated.....2013 have been complied with."

THE COMMON SEAL OF RIBBLE)

VALLEY BOROUGH COUNCIL was)

hereunto affixed to this Deed in the)

presence of:

Mayor

Chief Executive

SIGNED AS A DEED BY

JOHN EDWARD ASHCROFT

IN THE PRESENCE OF:-

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