

DATED 10<sup>TH</sup> FEBRUARY

2021 2022

**LANCASHIRE COUNTY COUNCIL**

- and -

**RIBBLE VALLEY BOROUGH COUNCIL**

- and -

**MERSEY CARE NHS FOUNDATION TRUST**

- and -

**PROSPECT (GB) LIMITED**

**SECTION 106 AGREEMENT**

**TOWN AND COUNTRY PLANNING ACT 1990**

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**RELATING TO LAND AT MITTON ROAD**

**THIS DEED** is made the 10<sup>th</sup> day of **FEBRUARY** 2021 2022

**BETWEEN**

1. **LANCASHIRE COUNTY COUNCIL** of PO Box 78, County Hall, Fishergate, Preston, Lancashire, PR1 8XJ ("the **County Council**");
2. **RIBBLE VALLEY BOROUGH COUNCIL** of Council Offices Church Walk Clitheroe Lancashire BB7 2RA ("the **Council**");
3. **MERSEY CARE NHS FOUNDATION TRUST** of V7 Building, Kings Business Park, Kings Drive, Prescot L34 1PJ ("the **Owner**");
4. **PROSPECT (GB) LIMITED** (Company Number 04192419) of 2 Estuary Boulevard, Estuary Commerce Park, Liverpool ("the **Developer**").

**WHEREAS**

- (1) The Owner is the freehold owner of the Application Site the title of which land is as at the date of this Deed registered at HM Land Registry under title numbers LA754966 and LA846945 and is indicatively shown edged red on Plan 1 against which this Deed is enforceable.
- (2) The Council is the Local Planning Authority for the purposes of Section 106 of the 1990 Act for the area within which the Application Site is situated and by whom the obligations contained in Schedule 1 and Schedule 2 are enforceable.
- (3) The County Council is the County Planning Authority and Education Authority for the area within which the Application Site is situated and by whom the obligations contained in Schedule 1 and 3 are enforceable.
- (4) The Developer has the benefit of a contract for sale and purchase of the Application Site dated 17 December 2020.

- (5) There are no other interests in the Application Site that would prevent the Owner entering into and complying with this Deed.
- (6) The Developer made the Application to the Council for full planning permission for the demolition of 34 existing dwellings and the erection of 50 new dwellings with vehicular access, landscaping and other associated works as detailed in the plans and particulars deposited with Council under reference 3/2021/0076.
- (7) The Council resolved that the Application be approved subject to the entering into of this Planning Obligation Deed in accordance with Section 106 of the 1990 Act.

**NOW THIS DEED WITNESSETH** as follows:

**1. DEFINITIONS**

In this Deed unless the context otherwise requires:

**1990 Act**

"1990 Act" means the Town and Country Planning Act 1990 (as amended).

**Affordable Housing**

"Affordable Housing" has the meaning given to it in Annex 2 of the NPPF and shall include Affordable Rented Housing Units and Affordable Ownership Housing Units.

**Affordable Housing Provider**

"Affordable Housing Provider" means a not for profit registered provider of affordable housing either:

- (a) as defined by the Housing and Regeneration Act 2008 (or as redefined by any amendment, replacement or re-enactment) and registered with Homes England (or similar successor body) or any

company or other body approved by Homes England for receipt of social housing grant; or

- (b) such other body approved by the Council to own and/or let the Affordable Housing.

#### **Affordable Housing Scheme**

"Affordable Housing Scheme" means the scheme for the provision of the Affordable Housing Units in accordance with the terms of this Deed, the Affordable Housing Unit Mix and Plan 2 to be submitted to and approved by the Council pursuant to paragraph 1.2 of Schedule 2 such scheme to also identify the size of the Affordable Housing Units and also to confirm whether the Affordable Ownership Housing Units shall be provided as Shared Ownership Dwellings and/or Discount Market Sale Dwellings together with the plot numbers for such Dwellings by reference to a plan, subject to such variations as may be agreed between the Council and the Owner from time to time.

#### **Affordable Housing Units**

"Affordable Housing Units" means those 6 (six) Dwellings which are to be provided and constructed as Affordable Housing on the Application Site as part of the Development in accordance with the Affordable Housing Scheme, the Affordable Housing Unit Mix and Plan 2 and the internal arrangements of the unit 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 2010 (or any subsequent revisions) and 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 and "Affordable Housing Unit" shall be construed accordingly.

#### **Affordable Housing Unit Mix**

"Affordable Housing Unit Mix" means the mix of Affordable Housing Units which shall comprise:

- (i) 3 (three) Affordable Rented Housing Units comprising 3-bedroom houses  
to be constructed on plots 1, 2 and 3 as shown marked orange on Plan 2; and
- (ii) 3 (three) Affordable Ownership Housing Units comprising 3-bedroom houses to be constructed on plots 4, 20 and 21 as shown marked blue on Plan 2.

**Affordable Ownership Housing Unit(s)**

"Affordable Ownership Housing Unit(s)" means Shared Ownership Dwellings and/or Discount Market Sale Dwellings

**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 Homes England in relation to affordable costs being at the date hereof an initial maximum rental level of a maximum of the Local Housing Allowance rate.

**Affordable Rented Housing Unit(s)**

"Affordable Rented Housing" means affordable rented housing constructed pursuant to the Planning Permission and Transferred to an Affordable Housing Provider for allocation as affordable rented housing to Eligible Households where the lettings shall be made under a form of tenancy prescribed by Homes England and at Affordable Rent.

**Allocations Scheme**

"Allocations Scheme" means the Council's policy for the allocation of Affordable Rented Housing Units.

**Application**

"Application" means the application for full Planning Permission submitted to the Council and registered by the Council on 4 February

2021 and given reference number 3/2021/0076 for the demolition of 34 existing dwellings and the erection of 50 new dwellings with vehicular accesses, landscaping and other associated works on the Application Site.

#### **Application Site**

"Application Site" means the freehold property comprising the land at Queen Mary Terrace and Bridge Terrace Mitton Road Whalley BB7 9JS as shown indicatively edged red on Plan 1 against which this Deed may be enforced and registered as at the date of this Deed at HM Land Registry under title numbers LA846945 and LA754966.

#### **Commencement of Development**

"Commencement of Development" means the earliest date on which any material operation (as defined by Section 56(4) of the 1990 Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and for no other purposes) operations consisting of:

- (i) site clearance;
  - (ii) demolition;
  - (iii) archaeological investigation;
  - (iv) advanced habitat creation;
  - (v) investigation for the purposes of assessing contamination and minor or temporary general maintenance works or works of repair;
  - (vi) remedial action in respect of contamination;
  - (vii) diversion and provision of services and drainage;
  - (viii) the erection of means of enclosure for the purpose of site security and/or the display of advertisements;
  - (ix) tree works; or
  - (x) construction of temporary access
- and "Commence Development" shall be construed accordingly.

**Contribution**

"Contribution" means all or any of the Secondary Education Contribution and the Off Site Recreation Contribution.

**Council's Monitoring Fee**

"Council's Monitoring Fee" means the sum of £1,099.77 to be paid by the Owner to the Council to cover the Council's costs in monitoring compliance with this Deed

**Development**

"Development" means the development on the Application Site as approved by the Planning Permission.

**Discount Market Sale Dwelling**

"Discount Market Sale Dwelling" means any units of the Affordable Housing which are to be sold to Eligible Households at the Discount Market Sale Price.

**Discount Market Sale Price**

"Discount Market Sale Price" means no more than 70% (seventy per cent) of the Market Value of that Dwelling.

**Discount for Sale Restriction**

"Discount for Sale Restriction" means the restriction to be entered in the proprietorship register at the Land Registry in relation to each Discount Market Sale Dwelling in the following terms:

"No disposition of the registered estate (other than a charge) by the proprietor of the registered estate is to be registered without a written consent by the solicitor of the disponor or the disponent or Ribble Valley Borough Council that the provisions of paragraph 1.13.2 of Schedule 2 of a Section 106 Agreement dated 10<sup>th</sup> FEBRUARY 2022 and made between (1) Lancashire County Council (2) Ribble Valley Borough Council (3) Mersey Care NHS Foundation Trust and (4) Prospect (GB) Limited have

been complied with or do not apply to the disposition"

### **Dwelling**

"Dwelling" means any building or residential unit within a building intended to be occupied as a dwelling (including a house, flat, bungalow or maisonette) to be constructed on the Application Site as part of the Development pursuant to the Planning Permission.

### **Eligible Households**

"Eligible Households" means a person or household that the Council has confirmed in writing as being in need of Affordable Housing because their needs are not met by the market as determined with regard to housing need, local incomes, local house prices and:

- (i) in the case of Affordable Rented Units, identified in accordance with the provisions of the Allocations Scheme or other criteria adopted by the Council from time to time;
- (ii) in the case of Shared Ownership Dwellings, a household with an income of £80,000.00 (eighty thousand pounds) or less and a first-time buyer, or someone who owns an existing home where they are unable to afford to buy a home suitable for meeting the housing needs on the open market; and
- (iii) in the case of Discount Market Sale Dwelling a household with an income of £80,000.00 (eighty thousand pounds) or less and a first-time buyer, or someone who owns an existing home but they are unable to afford to buy a home suitable to meet their housing needs on the open market.

### **Education Contribution Assessment**

"Education Contribution Assessment" means the assessment dated 25 February 2021 and annexed hereto at Appendix 3.

### **Expert**

"Expert" means an independent person appointed in accordance with clause 13 to determine a dispute.



**First Occupation**

"First Occupation" means the date on which a Dwelling is first Occupied.

**Index**

"Index" means:

- (i) in the case of the Secondary Education Contribution 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; and
- (ii) in all other cases the All Items Index of Retail Prices issued by the Office for National Statistics or in the event of discontinuance any replacement thereof or such alternative index as may be proposed by the Owner and agreed by the Council.

**Indexation**

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

$$\begin{array}{rcll} \text{Contribution} & \times & \text{Index for the period} & \div \\ & & \text{immediately prior} & \text{Index for the period} \\ & & \text{to the date of} & \text{last published} \\ & & \text{payment under the} & \text{before the date of} \\ & & \text{S106 agreement} & \text{the Planning} \\ & & & \text{Permission} \end{array}$$

**Homes England**

"Homes England" means Homes England 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.

**Interest**

"Interest" means interest at 4% (four) per cent above the base lending rate of Barclays Bank Plc from time to time.

**Local Housing Allowance**

"Local Housing Allowance" means the list of rents set by the Valuation Office Agency for the area in which the Application Site is situated.

**Market Dwelling**

"Market Dwelling" means those Dwellings which comprise general market housing for sale between a willing seller and a willing buyer in an arm's length transaction wherein the parties had each acted knowledgeably, prudently and without compulsion on the open market and which are not Affordable Housing.

**Market Value**

"Market Value" means the estimated amount for which a Dwelling should sell on the open market for cash consideration on the date of valuation as agreed by the Council (or in the absence of agreement by an Expert) assuming:-

- (i) a willing buyer and a willing seller in an arm's length transaction;
- (ii) 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;
- (iii) 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;
- (iv) that no account is taken of any additional bid by a purchaser with a special interest; and
- (v) that each party had acted knowledgeably prudently and without compulsion.

**Nationally Described Space Standards**

"Nationally Described Space Standards" means the standards published by the Ministry of Housing Communities and Local Government setting out the minimum gross internal floor space requirements for the Affordable Housing Units at a defined level of occupancy.

**Nominated Officer**

"Nominated Officer" means the Council's Housing Strategy Officer.

**NPPF**

"NPPF" means the Department for Communities and Local Government document entitled "National Planning Policy Framework" (July 2021) or any replacement or modification thereof in force from time to time.

**Occupation**

"Occupation" means occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, occupation for marketing or display or occupation in relation to security operations and "Occupied" and "Occupy" shall be construed accordingly.

**Off Site Recreation Contribution**

"Off Site Recreation Contribution" means the sum of £9,977.40 (nine thousand nine hundred and seventy seven pounds and forty pence) calculated by reference to the number of bedrooms of a Dwelling to be paid to the Council in accordance with the terms of this Deed for the Off Site Recreation Improvements.

**Off Site Recreation Improvements**

"Off Site Recreation Improvements" means improvements to the open space provision at Whalley woodland.

**Plan 1**

"Plan 1" means the plan annexed hereto at Appendix 1 and so marked.

## **Plan 2**

"Plan 2" means the plan annexed hereto at Appendix 2 and so marked.

## **Planning Permission**

"Planning Permission" means the full planning permission subject to conditions to be granted pursuant to the Application, a draft of which is set out in Appendix 4 (and including any amendment of it granted pursuant to an application under Section 96A of the 1990 Act).

## **Practical Completion**

"Practical Completion" means the issue of a cover note by the new home warranty provider for the relevant Dwelling confirming that the new home warranty provider has inspected the relevant Dwelling and that they are satisfied with the relevant Dwelling and that the new home warranty will be issued 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 1.12 of Schedule 2 in the first instance where at least one ordinarily resident member of the Eligible Household is a person who is in housing need and who:

- (i) have lived in the Borough of Ribble Valley for at least 5 (five) years of the last 10 (ten) years;
- (ii) currently live within the Borough of Ribble Valley and have done so for at least the past 12 (twelve) 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);
- (iii) used to live in the Borough of Ribble Valley for not less than 3 (three) years but was forced to move away because of the lack of Affordable Housing;

- (iv) currently work in the Borough of Ribble Valley and have done so for at least the past 12 (twelve) months for more than 18 (eighteen) hours per week;
- (v) 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 3 (three) years.
- (vi) 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 (v) above.

#### **Protected Tenant**

"Protected Tenant" means any tenant who:

- (i) has exercised the right to acquire pursuant to the Housing Act 1996 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Housing Unit;
- (ii) has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Housing Unit; or
- (iii) has been granted a shared ownership lease by an Affordable Housing Provider (or similar arrangement where a share of the Affordable Housing Unit is owned by the tenant and a share is owned by the Affordable Housing Provider) in respect of a particular Affordable Housing Unit and the tenant has subsequently purchased from the Affordable Housing Provider all the remaining shares so that the tenant owns the entire Affordable Housing Unit.

#### **Secondary Education Contribution**

"Secondary Education Contribution" means the sum of £46,123.50 (Forty Six Thousand One Hundred and Twenty Three Pounds and Fifty Pence) adjusted by Education Indexation payable to the County Council in accordance with the terms of this Deed and the Education Contribution

Assessment towards secondary school places at either St Augustines RC High School and/or The Hyndburn Academy or any subsequent name or designation by which they are known.

### **Shared Ownership Dwellings**

"Shared Ownership Dwellings" means housing made available to an Affordable Housing Provider and sold to Eligible Households subject to a Shared Ownership Lease

### **Shared Ownership Lease**

"Shared Ownership Lease" means a lease in the form of the Home England's model shared ownership lease as amended from time to time and on terms that permit part purchase of a minimum of 25% (twenty five per cent) of the equity in a Dwelling together with the rent payable for the open market rack rental value of the un-purchased percentage of the equity in the unit up to a value which does not exceed the rent set by Homes England from time to time (or such other rent or form of lease approved in writing by the Council in its absolute discretion) and permits staircasing up to 100% (one hundred per cent) ownership.

### **Transfer**

"Transfer" means in relation to the transfer of an interest in property the transfer of a freehold interest.

### **Working Days**

"Working Days" means those days that are not a Saturday or Sunday, Christmas Day, Good Friday or any day that is a bank holiday.

### **Interpretation**

- 1.1. 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.
- 1.2. 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.

- 1.3. 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.
- 1.4. 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.
- 1.5. 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.
- 1.6. References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party to the Site or any part thereof and in the case of the Council and County Council the successors to their respective statutory functions.

## **2. Legal Basis and Enforceability**

- 2.1 This Deed is made pursuant to Section 106 of the 1990 Act, Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other enabling powers.
- 2.2 This Deed is a planning obligation under Section 106 the 1990 Act with the intent to bind the Application Site and is enforceable by the Council (and where applicable the County Council) as local planning authority against the Owner and successors in title who shall observe and perform the covenants herein.

2.3 The Developer enters into this Deed for the purpose of consenting to the Application Site being bound by its terms and (unless expressed otherwise in this Deed) the Developer shall have no liability unless and until it takes a leasehold or freehold interest in the Application Site (or any part thereof) whereupon it shall be bound by this Deed as successor in title to the Owner.

2.4 The covenants and obligations of this Deed are conditional on:

2.4.1 the grant of the Planning Permission; and

2.4.2 the Commencement of the Development

SAVE FOR the provisions of clauses 4, 5, 7.1 (only in respect of paragraph 1.1 of Schedule 1, paragraph 1.2 of Schedule 2, paragraph 2 of Schedule 2 and paragraph 3 of Schedule 2), 9, 13, 14.2, 14.5, 14.6 and 15 which shall come into effect immediately upon completion of this Deed

2.5 No persons shall be liable for a breach of covenant contained in this Deed after he shall have parted with his interest in the Application Site 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 and/or subsisting 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 Application Site in any transfer of the Application Site will constitute an interest for the purposes of this clause 2.5.

2.6 This Deed shall not be enforceable against:

2.6.1 individual owner-occupiers or tenants of the Dwellings SAVE THAT the provisions of Part 1 Schedule 2 shall remain binding on owners occupiers and tenants of the Affordable Housing Units and their respective successors in title and their mortgagees



2.6.3 any mortgagee or chargee or any new mortgagee or chargee of a Market Dwelling SAVE THAT if such mortgagee or chargee becomes a mortgagee in possession of the Application Site (or any part thereof) it too will be bound by the planning obligations in this Deed as if it were a person deriving title from the Owner and any legal charge taken over the Application Site in the future will take effect subject to this Deed.

2.6.4 any statutory undertakers or telecommunications provider in respect of any plant, equipment or apparatus installed on the Application Site for the purposes of the Development.

2.7 The provisions of this Deed shall not 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 Owner) pursuant to the Contract (Rights of Third Parties) Act 1999.

### **3 Expiry Modification Variation or Amendments of Planning Permission**

3.1 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure (other than an application made under Section 96A of the Act) or expires prior to the Commencement of Development.

3.2 Nothing in this Deed shall prohibit or limit the right to develop any part of the Application Site 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**

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

#### **5 Service of Notices**

- 5.1 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**

- 6.1 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 Owner hereby covenants with the Council to perform the obligations as specified in Schedule 1 and 2.
- 7.2 The Owner hereby covenants with the County Council to perform the obligations as specified in Schedule 1 and Schedule 3.
- 7.3 The County Council covenants with the Owner in the terms set out in Schedule 4.
- 7.4 The Council covenants with the Owner in the terms set out in Schedule 5.

## **8 Waiver**

- 8.1 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 for acting upon any subsequent breach or default.

## **9 Change of Ownership**

- 9.1 The Owner agrees with the Council to give the Council within 10 (ten) Working Days written notice of any change in the ownership of any if its interests in the Application Site (save for any transfer in respect of an individual Dwelling) occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Application Site purchased by reference to a plan.

## **10 Interest**

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

## **11 VAT**

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

## **12 Indexation**

- 12.1 Any Contribution in this Deed shall be subject to Indexation from the date of the Planning Permission until the date on which such sum is payable.

### **13 Dispute Resolution**

- 13.1 In the event of any dispute or difference arising between any of the parties to this Deed touching or concerning any matter or thing arising or contained in this Deed (other than a dispute or difference touching or concerning the meaning or construction of this Deed) such dispute or difference shall be referred to an Expert being an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in England to such qualifications.
- 13.2 In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to clause 13.1 or as to the appropriateness of the professional body then within 14 (fourteen) Working Days after any party has given to the other parties to the dispute or difference a written request to concur in the professional qualifications of the Expert to be appointed pursuant to clause 13.1 then such question may be referred by either party to the president for the time being of the Law Society of England and Wales and for him to appoint a solicitor to determine the dispute such solicitor acting as an expert and his decision shall be final and binding on all parties in the absence of a manifest error and his costs shall be payable by the parties to the dispute in such proportion as the Expert shall determine and failing such determination shall be borne by the parties in equal shares
- 13.3 The Expert howsoever appointed shall act as an expert and not as an arbitrator and his reasonable costs shall be at his discretion and the Expert shall be subject to the express requirement that he reaches his decision and communicates it to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than 46 (forty six) Working Days after the date of his appointment to act.

13.4 The Expert shall be required to give notice to each of the said parties inviting each of them to submit to him within 10 (ten) Working Days of notification of his appointment written submissions and supporting material and shall afford to each of the said parties an opportunity to make counter submissions within a further 15 (fifteen) Working Days in respect of any such submission and material and the Expert's decision shall be given in writing within 21 (twenty-one) Working Days from receipt of any counter submissions or in the event that there are no counter submissions within 21 (twenty-one) Working Days of receipt of the written submissions and supporting material with reasons and in the absence of manifest error the Expert's decision shall be final and binding on the said parties.

13.5 The provisions of this clause shall not affect or fetter the ability of the Council to apply for and be granted any of the following: declaratory relief, injunction, specific performance, payment of any sum, damages, any other means of enforcing this Deed and consequential and interim orders and relief.

#### **14 Miscellaneous**

14.1 Nothing contained or implied in this Deed shall prejudice or affect or restrict the rights, discretions, powers, duties and obligations of the Council and the County Council under all statutes, by-laws, statutory instruments, orders and regulations in the exercise of its functions as a local authority.

14.2 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.

14.3 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.

- 14.4 The Council and the County Council will upon written request of the Owner at any time after the obligations of the Owner under this Deed have been fulfilled (and subject to the payment of the Council and County Council's reasonable and proper costs and charges) issue written confirmation thereof.
- 14.5 The Developer shall pay the Council's legal fees incurred in relation to this Deed the sum of £1,500.00 and the County Council's legal fees of £350.00 on or before the date of this Deed.
- 14.6 The Developer shall pay to the Council the Council's Monitoring Fee on completion of this Deed and the Owner shall not Commence Development until the Council's Monitoring Fee has been paid.
- 14.7 This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales (as they apply in England) and the parties submit to the non-exclusive jurisdiction of the courts of England and Wales.

## **15 DELIVERY**

- 15.1 The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

**IN WITNESS** whereof the Parties hereto have executed this Deed on the day and year first before written.

**SCHEDULE 1**  
**Owner's Obligations**

The Owner hereby covenants:

**1. Notice of Commencement**

- 1.1 To give written notice to the Council (via the Nominated Officer) and the County Council of the Commencement of Development on the Application Site within 15 (fifteen) Working Days of the same.

**2. Notice of Occupations**

- 2.1 Within 15 (fifteen) Working Days of each date to give written notice to the Council (via the Nominated Officer) and the County Council of the following:
- 2.1.1 the date of First Occupation of a Dwelling;
  - 2.1.2 Practical Completion of the first Affordable Housing Unit;
  - 2.1.3 the date of each other Occupation that triggers a payment or other obligation or which is otherwise referred to under the terms of this Deed.



## **SCHEDULE 2**

### **The Owner's Covenants with the Council**

The Owner covenants with the Council in the following terms:-

#### **Part 1 – Affordable Housing**

##### **1. Affordable Housing**

- 1.1. The Owner shall provide and deliver Affordable Housing as part of the Development in accordance with the provisions of this Part 1 Schedule 2.
- 1.2. The Owner shall submit the Affordable Housing Scheme to the Council for approval prior to Commencement of Development and the Owner shall not Commence Development or permit the Commencement of Development until the Affordable Housing Scheme has been approved in writing by the Council.
- 1.3. 6 (six) of the Dwellings to be provided with the Development shall be constructed, provided and Occupied as Affordable Housing Units in accordance with the Affordable Housing Unit Mix, which shall comprise the following:
  - 1.3.1. 3 (three) Affordable Rented Housing Units comprising 3-bedroom houses to be constructed on plots 1, 2 and 3 as shown marked orange on Plan 2; and
  - 1.3.2. 2 (three) Affordable Ownership Housing Units comprising 3-bedroom houses to be constructed on plots 4, 20 and 21 as shown marked blue on Plan 2.
- 1.4. The Affordable Housing Units shall be constructed and provided strictly in accordance with the approved Affordable Housing Scheme.



- 1.5. The Council shall give notice of approval or rejection of the Affordable Housing Scheme submitted pursuant to paragraph 1.2 of this Schedule 2 not later than 15 (fifteen) 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.
- 1.6. In the event that the Council rejects the Affordable Housing Scheme submitted pursuant to paragraph 1.2 of this Schedule 2 then the Owner 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 1.5 above.
- 1.7. The Owner shall be entitled to invoke paragraph 1.6 of this Schedule 2 as many times as is necessary in order to secure an approval in respect of the Affordable Housing Scheme submitted to the Council pursuant to paragraph 1.2 of this Schedule 2.
- 1.8. All of the Affordable Housing Units must be constructed strictly in accordance with the relevant standards laid down by the National House-Building Council so as to secure the National House-Building Council's Buildmark cover (or any equivalent cover that may be introduced in substitution from time to time) and comply with minimum internal space standards set out in the Nationally Described Space Standards (or equivalent successor standards from time to time) ( or other such standards agreed in writing between the Owner and the Council PROVIDED THAT such standards are no less than those applied to the Market Dwellings) and the internal arrangements of the Affordable Housing Units 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 2010 (or any

subsequent revisions) and 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

- 1.9. Not to Occupy or permit the Occupation of more than 75% (seventy five per cent) of the Market Dwellings within the Development until the Owner has made bona fide offers on an arm's length basis to enter into a contract to sell the Affordable Housing Units within the Development to an Affordable Housing Provider in accordance with the approved Affordable Housing Scheme and the terms of this Deed (save in respect of the Affordable Ownership Housing Units which the Council has agreed in writing may be provided as Discount Market Sale Dwellings and shall be offered to Eligible Households) and has given to the Council a summary of those Affordable Housing Providers to whom such offers have been made.
- 1.10. From the date the Affordable Housing Units within the Development are first offered to an Affordable Housing Provider pursuant to paragraph 1.9 of this Schedule 2 (above) the Owner shall use all reasonable endeavours to complete a Transfer of the Affordable Housing Units to the Affordable Housing Provider (save in respect of the Affordable Ownership Housing Units which the Council has agreed in writing which may be provided as Discount Market Sale Dwellings which shall be Transferred to Eligible Households) in accordance with the terms of this Deed prior to the Occupation of 75% (seventy five per cent) of the Market Dwellings and the Owner shall not Occupy or permit the Occupation of more than 75% (seventy five per cent) of the Market Dwellings until all of the Affordable Housing Units have been Transferred to an Affordable Housing Provider (save in respect of the Affordable Ownership Housing Units which the Council has agreed in writing which may be provided as Discount Market Sale Dwellings which shall be Transferred to Eligible Households) in accordance with the terms of this Deed PROVIDED THAT for the avoidance of doubt there shall be no obligation on the

Owner to have commenced construction of the relevant Affordable Housing Units at the point when the said Affordable Housing Units are offered in accordance with paragraph 1.10.

1.11. No more than 75% (seventy five per cent) of the Market Dwellings within the Development shall be Occupied until all of the Affordable Housing Units within the Development have been Practically Completed in accordance with the approved Affordable Housing Scheme, subject to such variations as may be agreed between the Council and the Owner from time to time.

1.12. 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 to and Occupied by Eligible Households in accordance with the Priority Order unless otherwise agreed in writing with the Council SAVE THAT this obligation shall not be binding upon:

1.12.1 any mortgagee or chargee (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a Receiver) of an individual Affordable Housing Unit or any persons or bodies deriving title through such chargee or Receiver PROVIDED THAT:

- (i) such mortgagee or chargee or Receiver shall first give written notice to the Council of its intention to dispose of the relevant Affordable Housing Unit and shall have used reasonable endeavours over a period of 3 (three) months from the date of the written notice to complete a disposal of the relevant Affordable Housing Unit to another registered

provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and

- (ii) if such disposal has not completed within the 3 (three) month period, the mortgagee, chargee or receiver shall be entitled to dispose of the relevant Affordable Housing Unit free from the affordable housing provisions in this Deed which provisions shall determine absolutely in respect of such Affordable Housing Unit(s)

BUT FURTHER PROVIDED THAT at all times the rights and obligations of the mortgagee or chargee or receiver in this paragraph 1.12.1 shall not require the mortgagee or chargee to act contrary to its duties under the charge or mortgage nor oblige the mortgagee or chargee to dispose of an Affordable Housing Unit at a sum which is insufficient to redeem the outstanding sum of the mortgage or charge plus costs;

1.12.2 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

1.12.3 a disposal (and any subsequent Occupation) required by:

- (i) any statutory provisions now or hereafter in force; or
- (ii) Homes England; or
- (iii) a court order

1.13 The Owner shall ensure that any Transfer of an Affordable Housing Unit:

1.13.1 to an Affordable Housing Provider shall contain the following provisions and that the following obligations shall be binding on the Affordable Housing Provider to whom the Affordable Housing Units are Transferred and all future successors in title but subject to the provisions of paragraph 1.12 above :

- (i) A covenant that the Affordable Housing Provider shall not use the Affordable Housing Unit otherwise than for Affordable Housing
- (ii) A covenant that the Affordable Housing Unit shall only be offered for Occupation by Eligible Households in accordance with the Priority Order (unless otherwise agreed in writing with the Council); and
- (iii) 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 Affordable Rent; and
- (iv) A covenant that those Affordable Housing which are Shared Ownership Dwellings shall not be Occupied other than under the terms of the Shared Ownership Lease.

1.13.2 in respect of a Discount Market Dwelling, to an Eligible Household, shall be at no more than the Discount Market Sale Price and contain a covenant that the Eligible Household shall not use the Affordable Housing Unit otherwise for Affordable Housing and the Transfer shall also be subject to the Discount for Sale Restriction which shall be entered in proprietorship register at the Land Registry for each and every Discount Market Dwelling on the first sale of that Discount Market Dwelling to a plot purchaser.

1.14 In the event that:

- 1.14.1 the Affordable Housing Provider to whom an offer is made by the Owner in accordance with paragraph 1.9 of this Schedule 2 declines to accept a Transfer of some or all of the Affordable Housing Units within the Development; or
- 1.14.2 no sale of some or all of the Affordable Housing Units within the Development has been effected within 6 (six) months from either the Commencement of Development or the date the Affordable Housing Units were offered to the Affordable Housing Provider in accordance with paragraph 1.9 of this Schedule 2 (whichever is the later);

then paragraph 1.15 of this Schedule 2 (below) shall apply in respect of such Affordable Housing Units.

1.15 Where this paragraph 1.15 applies then:

- 1.15.1 the Owner shall serve notice upon the Council stating that this paragraph 1.15 applies and providing evidence as to why despite complying with paragraph 1.9 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);
- 1.15.2 upon receipt of the Owner's written notice served pursuant to sub-paragraph 1.15.1 above the Council shall consider the evidence (if any is available) and confirm in writing within 10 (ten) Working Days of the date of receipt whether or not it agrees that despite complying with paragraph 1.9 of this Schedule 2 the Owner has 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.



1.16 In the event that the Council confirms in writing pursuant to sub-paragraph 1.15.2 that it disagrees that despite complying with paragraph 1.9 of this Schedule 2 the Owner has been unable to Transfer the Affordable Housing Units to the Affordable Housing Provider then the Owner may:

1.16.1 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 1.9 of this Schedule 2 (in which case the Owner shall be entitled to invoke the procedure set out in this paragraph 1.16 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 (twenty) Working Days beginning with the date of the making of such an offer); or

1.16.2 submit further evidence and submissions to the Council in order to address the Council's reasons for disagreement (in which case sub-paragraphs 1.15.1 to 1.15.2 of this Schedule 2 shall apply mutatis mutandis to the Council's consideration of such evidence and submission; or

1.16.3 refer any dispute or disagreement for independent determination in accordance with Clause 13 of this Deed.

1.17 In the event that the Council or Expert pursuant to Clause 13 of this Deed confirms pursuant to this paragraph 1.17 of this Schedule 2 or Clause 13 (as the context requires) that despite complying with paragraph 1.9 of this Schedule 2 the Owner has 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 Market Sale Dwellings PROVIDED that such disposal shall be at no more than the Discount Market Sale Price and shall be to Eligible Households subject to Priority Order in perpetuity and a Discount for Sale Restriction shall be entered in the proprietorship register at the Land

Registry for each and every Discount Market Sale Dwelling on the first sale of that Discount Market Sale Dwelling to a plot purchaser.

**Part 2 - Off Site Recreation Contribution**

2. The Owner shall not Commence Development or permit the Commencement of Development until the Off Site Recreation Contribution has been paid to the Council in full.
3. The Owner shall pay the Off Site Recreation Contribution prior to the Commencement of Development.



### **SCHEDULE 3**

#### **The Owner covenants to the County Council**

The Owner hereby covenants with the County Council as follows:

**1        Secondary Education Contribution**

- 1.1    Not to Occupy nor permit the Occupation of more than 30 Dwellings until the Secondary Education Contribution has been paid to the County Council.

**2        Notification**

- 2.1    To notify the County Council at the address shown in this Deed within 10 (ten) Working Days of the above trigger points in paragraph 1 to this Schedule 3 having been reached.

## **SCHEDULE 4**

### **Covenants by the County Council**

1. To pay the Secondary Education Contribution received into a separately identified interest-bearing section of the County Council's combined accounts as soon as reasonably practicable.
2. The Secondary Education Contribution paid to the County Council shall be used solely for the purposes set out in this Deed and for no other purpose.
3. The County Council shall not use the Secondary Education Contribution or any part of it other than towards secondary school placed at either St Augustines RC High School or The Hyndburn Academy.
4. Should the Secondary Education Contribution not be spent on the projects named within this Deed within 5 (five) years of the payment of the Secondary Education Contribution, the County Council will return the sum which has not been expended or committed for expenditure to the party who paid the Contribution, together with interest calculated at the Bank of England base lending rate. Furthermore the County Council shall ensure that sufficient local school places are provided to address the impact of the Development at no cost to the Owner.

## **SCHEDULE 5**

### **Covenants by the Council**

1. To pay the Off Site Recreation Contribution received into a separately identified interest-bearing section of the Council's combined accounts as soon as reasonably practicable.
2. The Off Site Recreation Contribution paid to the Council shall be used solely for the purposes set out in this Deed and for no other purpose.
3. Should the Off Site Recreation Contribution not be spent on the projects named within this Deed within 10 (ten) years of the final payment of the Off Site Recreation Contribution, the Council will return the sum which has not been expended or committed for expenditure (and money shall be deemed to be expended if the Council has entered into a contract for the expenditure of the money for the purpose for which it is paid which is reasonably likely to result in the fulfilment of that purpose) to the party who paid the Off Site Recreation Contribution SAVE THAT it is agreed that the Council may use public funds to carry out the purposes specified in the Deed in advance of receiving any of the sums from the Owner and may apply the sums received towards offsetting the amount spent from public funds.

## **APPENDIX 1**

### **Plan 1**



**Key**

- Affordable Plot - Affordable Rent
- Affordable Plot - Shared Ownership

**Note:** Exact tenure split subject to change following discussions with Housing Associations



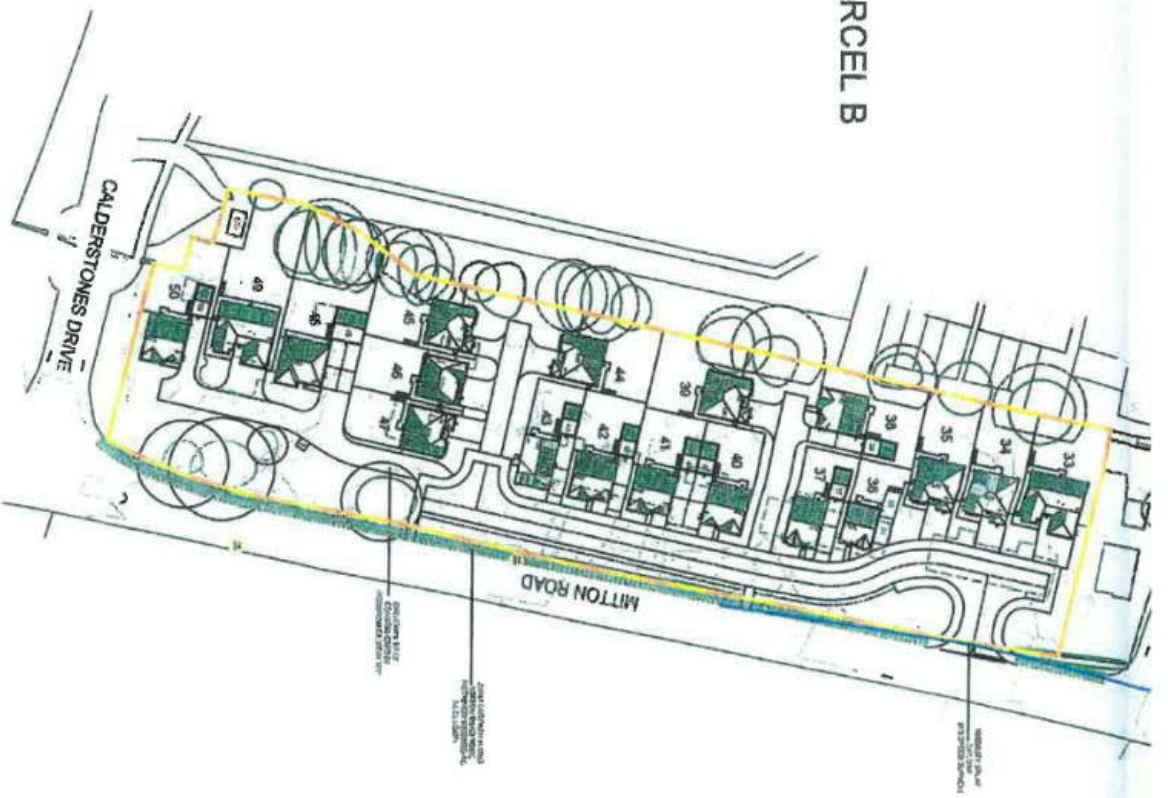
30407

Signature



PARCELA

# PARCEL B



# Mitton Road, Whalley



Project Name	MITTON ROAD, WHALLEY
Client	WHALLEY TOWN COUNCIL
Project Number	12345678
Scale	1:500
Author	J. Smith
Check	M. Jones
Drawn	P. Brown
Date	12/12/2023
Sheet	1 of 1
Scale	1:500
Author	J. Smith
Check	M. Jones
Drawn	P. Brown
Date	12/12/2023
Sheet	1 of 1

## **APPENDIX 2**

### **Plan 2**



prospect.  
HOMES

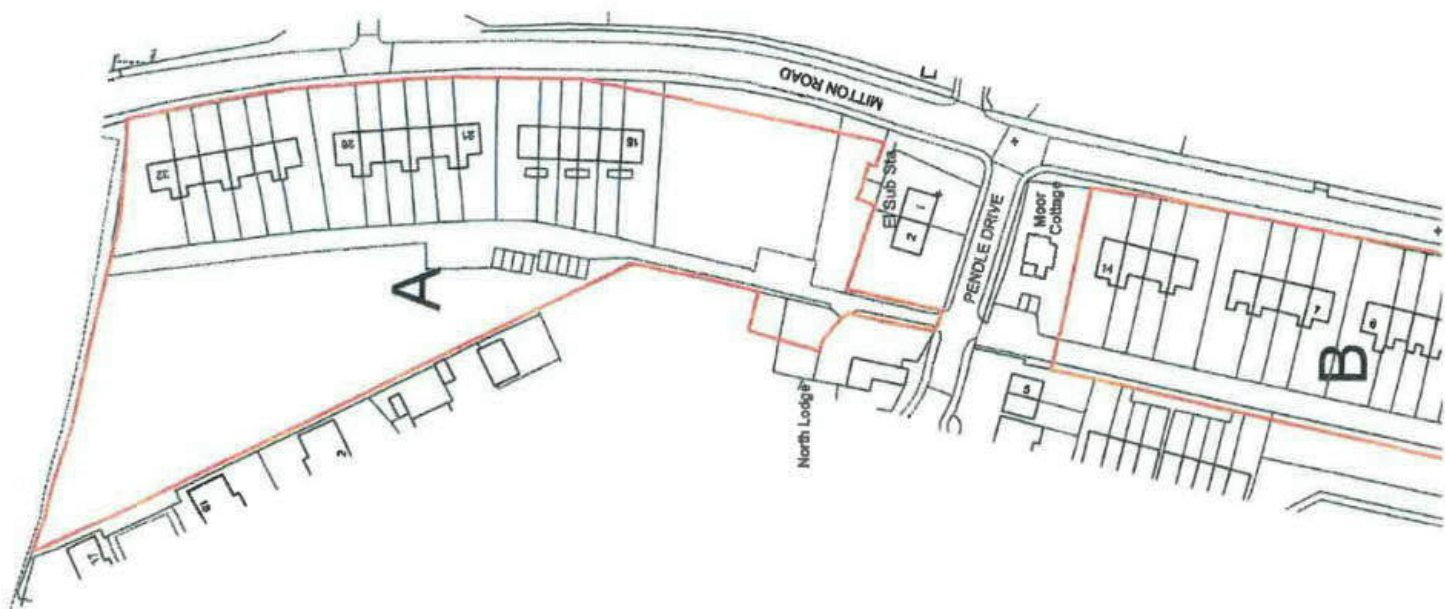
Part of  
**Riverside**



30407



Signature







## **APPENDIX 3**

**Education Contribution Assessment dated 25 February 2021**



# Education Contribution Assessment

**Queen Mary Terrace and Bridge Terrace - 3/2021/0076**

***Ribble Valley Borough Council***

**25<sup>th</sup> February 2021**

## **Education Assessment 25<sup>th</sup> February 2021**

Lancashire County Council is responsible for the provision of school places across the 12 county districts. The county has been facing significant increases in the birth rate at the same time as capital funding from the Department for Education has been significantly reduced.

In accordance with Lancashire County Council's 'School Place Provision Strategy', the following will apply:

Where the growth in pupil numbers is directly linked to housing development and existing school places are not sufficient to accommodate the potential additional pupils that the development may yield, Lancashire County Council would seek to secure developer contributions towards additional school places. Only by securing such contributions (which, depending upon the scale of development, may also include a contribution of a school site), can Lancashire County Council mitigate against the impact upon the education infrastructure which the development may have.

This assessment shows the level of impact on primary and secondary school places relevant to the following development and provides details on the level of contribution required to mitigate the development impact:

### **Queen Mary Terrace and Bridge Terrace**

#### **Pupil Yield**

Through a detailed research project carried out during 2012 LCC have established a pupil yield to be applied for the bedroom mix within a development.

Using the Rightmove database (based on Land Registry information), a cross matching exercise was undertaken to match the first occupation of a house with the relevant School Census. The research enabled LCC to ascertain the likely impact of a dwelling with 1, 2, 3, 4, or 5+ bedrooms in terms of the child yield. This enabled LCC to project the pupil yield of new houses, based on the number of bedrooms per dwelling.

LCC will seek to apply these pupil yields to our assessment, however, if bedroom information has not been provided by the developer LCC will apply the 4 bedroom yield, to provide a medium to worst case scenario. Once bedroom information is available the impact of this development will be reassessed using the yield information provided in the 'Development details' section below.

**Local primary schools within 2 miles of development**

When assessing the need for an education contribution from this development Lancashire County Council considers primary school provision within a 2 mile radius of the proposed site. Details of the schools relevant to this site are provided below:

School Name	Latest Number on Roll *	Future Planned Net Capacity (Jan 2026) **	Projected Pupils by Jan 2026 ***
Whalley Church of England Primary School	289	315	324
Barrow Primary School	154	210	165
Langho and Billington St Leonard's Church of England Voluntary Aided Primary School	290	315	286
<b>Total</b>	<b>733</b>	<b>840</b>	<b>775</b>

\* Latest Number on Roll (NOR) reflects the most up-to-date pupil numbers at the school. Assessments between 1st December and 31st March will use October NOR, assessments between 1st April and 30th November will use January NOR.

\*\* The net capacity figure is agreed via consultation with the schools, during September each year. The future net capacity includes any agreed capacity changes, which LCC have been informed about.

\*\*\* Based on the latest projections at the time of the assessment. Please note that the figures provided are based upon current circumstances and this position is subject to change in response to a number of factors that can affect parental preference. The figures take into account the latest available birth information, evidence of migration and also the projected pupil place demand in 5 years.

**Projected places in 5 years: 65**

Additional information which may provide context to the figures above has been included in the table below. This table provides year by year pupil projections for the schools affected by the development.

JAN 2022	JAN 2023	JAN 2024	JAN 2025	JAN 2026
714	701	678	664	644

The figures above show the forecast number on roll before housing and migration is applied. Using the appropriate district's 5 year Housing Land Supply documents (or equivalent) and migration figures in 5 years' time we forecast there will be 775 pupils in these schools.

**Development details**

Number of bedrooms	Yield applied per dwelling	Number of dwellings	Primary yield for this development
1	0.01		
2	0.07		
3	0.16	6	0.96
4	0.38	10	3.8
5	0.44		
<b>Totals</b>		<b>16</b>	<b>(4.8) 5 Places</b>

**Education Requirement**

The calculation below details the effect on pupil places,

840	Net Cap
- 775	Forecast
65	Projected places available in 5 years
- 0	Yield from approved applications
65	Places available in 5 years
- 5	Yield from this development
60	Places available in 5 years
- 10	Yield from pending applications
50	Places available in 5 years

Latest projections for the local primary schools show there to be 65 places available in 5 years' time, with no additional planning approvals expected to generate a demand for further school places. There are pending applications expected to generate demand for a further 10 school places. With an expected pupil yield of 5 pupils from this development, we would not be seeking a contribution from the developer in respect of primary places.

**Local Secondary schools within 3 miles of the development**

When assessing the need for an education contribution from this development Lancashire County Council considers secondary school provision within a 3 mile radius of the proposed site. Details of the schools relevant to this site are provided below:

<b>School Name</b>	<b>Latest Number on Roll *</b>	<b>Future Planned Net Capacity (Jan 2026) **</b>	<b>Projected Pupils by Jan 2026 ***</b>
St Augustine's Roman Catholic High School Billington .	1086	1075	1118
Ribblesdale High School	1339	1425	1446
<b>Total</b>	<b>2425</b>	<b>2500</b>	<b>2564</b>

\* Latest Number on Roll (NOR) reflects the most up-to-date pupil numbers at the school. Assessments between 1st December and 31st March will use October NOR, assessments between 1st April and 30th November will use January NOR.

\*\* The net capacity figure is agreed via consultation with the schools, during September each year. The future net capacity includes any agreed capacity changes, which LCC have been informed about.

\*\*\* Based on the latest projections at the time of the assessment. Please note that the figures provided are based upon current circumstances and this position is subject to change in response to a number of factors that can affect parental preference. The figures take into account the latest available birth information, evidence of migration and planned housing development, to provide a 5 year projection.

Projected places in 5 years: **-64**

Additional information which may provide context to the figures above has been included in the table below. This table provides year by year pupil projections for the schools affected by the development.

<b>JAN 2022</b>	<b>JAN 2023</b>	<b>JAN 2024</b>	<b>JAN 2025</b>	<b>JAN 2026</b>
2493	2515	2519	2484	2461

The figures above show the forecast number on roll before housing and migration is applied. Using the appropriate districts 5 year Housing Land Supply documents (or equivalent) and migration figures in 5 years' time we forecast there will be **2564** pupils in these schools.



**Development details**

Number of bedrooms	Yield applied per dwelling	Number of dwellings	Secondary yield for this development
1	0.00		
2	0.03		
3	0.09	6	0.54
4	0.15	10	1.5
5	0.23		
<b>Totals</b>		<b>16</b>	<b>(2.0) 2 Places</b>

**Education Requirement**

Latest projections for the local secondary schools show there to be a shortfall of 64 places in 5 years' time. These projections take into account the current numbers of pupils in the schools, the expected take up of pupils in future years based on the local births, the expected levels of inward and outward migration based upon what is already occurring in the schools and the housing development within the local 5 year Housing Land Supply document, which already have planning permission.

With an expected yield of 2 places from this development the shortfall would increase to 66.

Therefore, we would be seeking a contribution from the developer in respect of the full pupil yield of **this development**, i.e. 2 places.

### **Summary and Calculations**

This assessment represents the current position on 25/02/2021 but will be adjusted by indexation at the point of payment.

The latest information available at this time was based upon the 2021 School Census and resulting projections.

Based upon the latest assessment, taking into account all approved applications, LCC will be seeking a contribution for 2 secondary school places. However, LCC will not be seeking a contribution for primary school places.

Calculated at the current rates, this would result in a claim of:

#### **Permanent expansion**

Secondary places:

$(£23,775 \times 0.97)$

= £23,061.75 per place

$£23,061.75 \times 2 \text{ places} = £46,123.50$

*LCC reserve the right to reassess the education requirements taking into account the latest information available.*

### **Named Infrastructure Project**

The final position assessment of the impact of the development on school places including infrastructure details should be provided as part of your development control committee process. The infrastructure project(s) where the secured education contribution will be spent to deliver additional school places will be determined at the point at which the application is considered for decision. The local planning authority will need to notify the School Planning Team of the final decision date to enable the final position, including the school infrastructure project, to be provided.

#### **Please Note**

- LCC have assessed the viability of this development by assuming the 16 dwellings are based on the proportionate average of 3 and 4 bedroom houses as requested by Ribble Valley Borough Council. Should this not be the case a reassessment will be required once accurate bedroom information becomes available. This could result in a reduced pupil yield dependant on dwelling size.
- The cost per place used in this assessment is in line with the Education Methodology at the point of assessment. However, the cost per place to be used within the s106 agreement, if this is the district's chosen method of mitigation of the development impact on school places, will be that within the Education Methodology at the point of sealing.

### Further Information

If the education contribution assessment identifies the need for a contribution to be provided Lancashire County Council is, in effect, objecting to the application. A developer contribution to deliver school places, to Lancashire County Council as the education authority, including indexation will, in most cases, overcome the objection. If a developer does not agree to payment of the requested education contribution or the local planning authority does not pursue Lancashire County Council's request on its behalf, Lancashire County Council cannot guarantee that children yielded by the development will be able to access a school place within reasonable distance from their home, so the development could be considered to be unsustainable. Furthermore, if the planning application is approved without the required education contribution LCC would request that the local planning authority confirm how the shortfall of school places, resulting from the development, will be addressed. (Please see page 10 of the Education Contribution Methodology).

If you require any further information about the assessment process (including the current rates), in the first instance, please refer to LCC's Planning Obligations Education Methodology and supporting information at:  
<http://www.lancashire.gov.uk/council/planning/planning-obligations-for-developers.aspx>

## **APPENDIX 4**

### **Draft Planning Permission**

**RIBBLE VALLEY BOROUGH COUNCIL**

Department of Development

Council Offices, Church Walk, Clitheroe, Lancashire, BB7 2RA

Telephone: 01200 425111 [www.ribblevalley.gov.uk](http://www.ribblevalley.gov.uk) [planning@ribblevalley.gov.uk](mailto:planning@ribblevalley.gov.uk)

Town and Country Planning Act 1990

**PLANNING PERMISSION**

**APPLICATION NO:** 3/2021/0076

**DECISION DATE:** 29 July 2021

**DATE RECEIVED:** 29/01/2021

**APPLICANT:**

Mr Richard Dimisianos  
Prospect (GB) Ltd  
Unit 5 Meridian Business Village  
Hansby Drive  
Liverpool  
L24 9LG

**AGENT:**

Miss Ann Daniels  
Pegasus Group  
Queens House  
Queen Street  
Manchester  
M2 5HT

**DEVELOPMENT PROPOSED:** Proposed demolition of 34 existing dwellings and the erection of 50 new dwellings with vehicular accesses, landscaping and other associated works.

**AT:** Queen Mary Terrace and Bridge Terrace Mitton Road Whalley BB7 9JS

Ribble Valley Borough Council hereby give notice that **permission has been granted** for the carrying out of the above development in accordance with the application plans and documents submitted subject to the following condition(s):

1. The development hereby permitted shall be commenced before the expiration of three years from the date of this permission.

Reason: Required to be imposed pursuant to Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. Plans:

Unless explicitly required by condition within this consent, the development hereby permitted shall be carried out in complete accordance with the proposals as detailed on drawings:

MR/W-SJS-LP01 Rev A - Location Plan

MR/W-SJS-PL01 Rev F - Planning Layout

MR/W-SJS-ML01 Rev E - Materials Layout

MR/W-SJS-AH01 Rev C - Affordable Housing

MR/W-SJS-FFL01 Rev C - Indicative Finished Floor Level Layout

MR/W-SJS-BT01 Rev E - Boundary Treatment Layout

Landscape Plans Sheets 1,2,3&4 18544B

House Types -

NDSS-22-32A Rev - - The Barton ES2

HT21-1-41D Rev G - The Barley ES1

HT21-41DE Rev G - The Barley Plus ES2

HT21-2-42D Rev D - The Cleveley ES2

HT21-1-31D Rev E - The Croston ES1

HT21-2-31D Rev E - The Croston ES2

HT21-1-T2D Rev B The Mawdesley ES1

HT21-2-T2D Rev B - The Mawdesley ES2

HT21-1-44D Rev G - The Whalley ES1

HT21-2-44D Rev G - The Whalley ES2

HT21-1-46D Rev F - The Keighley ES1

HT21-2-46D Rev F - The Keighley ES2

HT21-2-33D Rev D - The Edmonton ES2

HT21-2-47D Rev F - The Pattersley ES1

HT21-2-47D Rev F - The Pattersley ES2

Reason: For the avoidance of doubt and to clarify which plans are relevant to the consent hereby approved.

3. Materials:

The materials to be used on the external surfaces of the development hereby approved as indicated on drawing ML-101 Rev E shall be implemented as indicated.

Reason: In order that the Local Planning Authority may ensure that the materials to be used are appropriate to the locality and respond positively to the inherent character of the area.

4. Highways:

No part of the development hereby approved shall commence until a scheme for the construction of the site access and the off-site works of highway mitigation has been submitted to, and approved by, the Local Planning Authority in consultation with the Highway Authority.

Reason: In order to satisfy the Local Planning Authority and Highway Authority that the final details of the highway scheme/works are acceptable before work commences on site.

- 
5. The new estate roads and accesses between the site and Mitton Road shall be constructed in accordance with Lancashire County Council's Specification for Construction of Estate Roads to at least base course level before any development takes place within the site.

Reason: To ensure that satisfactory access is provided to the site before the development hereby permitted becomes operative.

6. All garage facilities on off street parking shall include provision of an electrical supply suitable for charging an electric motor vehicle as shown on plan MR/W-SJS-PL01 Rev F .

Reason: To support sustainable transport objectives and to contribute to a reduction in harmful vehicle emissions.

7. No part of the development hereby approved shall be occupied or opened for trading until all the highway works have been constructed and completed in accordance with a scheme that shall be submitted to and approved by the Local Planning Authority in consultation with the Highway Authority.

Reason: In order that the traffic generated by the development does not exacerbate unsatisfactory highway conditions in advance of the completion of the highway scheme/works.



8. No development shall take place, including any works of demolition or site clearance, until a Construction Management Plan (CMP) or Construction Method Statement (CMS) has been submitted to, and approved in writing by the local planning authority.  
The approved plan / statement shall provide:
- o 24 Hour emergency contact number.
  - o Details of the parking of vehicles of site operatives and visitors.
  - o Details of loading and unloading of plant and materials.
  - o Arrangements for turning of vehicles within the site.
  - o Swept path analysis showing access for the largest vehicles regularly accessing the site and measures to ensure adequate space is available and maintained, including any necessary temporary traffic management measures.
  - o Measures to protect vulnerable road users (pedestrians and cyclists).
  - o The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate.
  - o Wheel washing facilities.
  - o Measures to deal with dirt, debris, mud or loose material deposited on the highway, as a result of construction.
  - o Measures to control the emission of dust and dirt during construction.
  - o Details of a scheme for recycling/disposing of waste resulting from demolition and construction works.
  - o Construction vehicle routing.
  - o Delivery, demolition and construction working hours.
- The approved Construction Management Plan or Construction Method Statement shall be adhered to throughout the construction period for the development.

Reason: - In the interests of the safe operation of the adopted highway during the demolition and construction phases.

9. Drainage:  
The development permitted by this planning permission shall be carried out in accordance with the principles set out within the submitted flood risk assessment and outline surface water drainage strategy (ref: 200903-EDGE-XX-XX-RP-C0001\_FLOOD RISK ASSESSMENT[P01], by: EDGE Consulting Engineers, dated: 22 March 2021).  
The measures shall be fully implemented prior to first occupation of any building and in accordance with the timing / phasing arrangements embodied within the scheme, or within any other period as may subsequently be agreed, in writing, by the local planning authority in consultation with the Lead Local Flood Authority.

Reason: To ensure satisfactory drainage of the site.

10. No development shall commence until a final, detailed surface water sustainable drainage scheme for the site has been submitted to, and approved in writing by, the local planning authority. The detailed sustainable drainage scheme shall be based upon the site-specific flood risk assessment submitted and the sustainable drainage principles set out in the National Planning Policy Framework, Planning Practice Guidance and Defra Technical Standards for Sustainable Drainage Systems. No surface water shall be allowed to discharge to the public foul sewer(s), either directly or indirectly. The detailed sustainable drainage scheme shall include, as a minimum:
- a) Final sustainable drainage plans, appropriately labelled to include:
    - i. A final surface water drainage layout plan showing all pipe and structure references, dimensions and design levels;
    - ii. A plan identifying the areas contributing to the surface water drainage network, including surface water flows from outside the curtilage as necessary;
    - iii. Details of all sustainable drainage components, including landscape drawings showing topography and slope gradient as appropriate;
    - iv. Flood water exceedance routes in accordance with Defra Technical Standards for Sustainable Drainage Systems;
    - v. Finished Floor Levels (FFL) in AOD with adjacent ground levels for all sides of each building;
    - vi. Details of proposals to collect and mitigate surface water runoff from the development boundary; and
    - vii. Measures taken to manage the quality of the surface water runoff to prevent pollution, protect groundwater and surface waters, and deliver suitably clean water to sustainable drainage components;
  - b) A full set of sustainable drainage flow calculations for the surface water drainage network. The calculations must show the full network design criteria, pipeline schedules and simulation outputs for the 1 in 1 year, 1 in 30 year and 1 in 100 year return period, plus an additional 40% allowance for climate change and a 10% allowance for urban creep. Surface water run-off must not exceed the existing pre-development surface water runoff rates and volumes for the corresponding rainfall intensity. The scheme shall be implemented in accordance with the approved details prior to first occupation of any of the approved dwellings.

Reason: To ensure satisfactory sustainable drainage facilities are provided to serve the site in accordance with the Paragraphs 163 and 165 of the National Planning Policy Framework, Planning Practice Guidance and Defra Technical Standards for Sustainable Drainage Systems.

11. No development shall commence until details of how surface water and pollution prevention will be managed during each construction phase have been submitted to and approved in writing by the local planning authority.

Those details shall include, as a minimum:

- a) Measures taken to ensure surface water flows are retained on-site during construction phase(s) and, if surface water flows are to be discharged they are done so at a restricted rate to be agreed with the Lancashire County Council LLFA.
- b) Measures taken to prevent siltation and pollutants from the site into any receiving groundwater and/or surface waters, including watercourses, with reference to published guidance.

The development shall be constructed in accordance with the approved details.

Reasons:

1. To ensure the development is served by satisfactory arrangements for the disposal of surface water during each construction phase(s) so it does not pose an undue flood risk on site or elsewhere;
  2. To ensure that any pollution arising from the development as a result of the construction works does not adversely impact on existing or proposed ecological or geomorphic condition of water bodies.
12. No building hereby permitted shall be occupied until a Verification Report and Operation and Maintenance Plan for the lifetime of the development, pertaining to the surface water drainage system and prepared by a suitably competent person, has been submitted to and approved by the Local Planning Authority.

The Verification Report must demonstrate that the sustainable drainage system has been constructed as per the agreed scheme (or detail any minor variations), and contain information and evidence (including photographs) of details and locations (including national grid reference) of inlets, outlets and control structures; landscape plans; full as built drawings; information pertinent to the installation of those items identified on the critical drainage assets drawing; and, the submission of an final 'operation and maintenance manual' for the sustainable drainage scheme as constructed.

Details of appropriate operational, maintenance and access requirements for each sustainable drainage component are to be provided, with reference to published guidance, through an appropriate Operation and Maintenance Plan for the lifetime of the development as constructed. This shall include arrangements for adoption by an appropriate public body or statutory undertaker, and/or management and maintenance by a Management Company and any means of access for maintenance and easements, where applicable. Thereafter the drainage system shall be retained, managed and maintained in accordance with the approved details.

Reason: To ensure that flood risks from development to the future users of the land and neighbouring land are minimised, together with those risks to controlled waters, property and ecological systems, and to ensure that the development as constructed is compliant with and subsequently maintained pursuant to the requirements of Paragraph 165 of the National Planning Policy Framework.



13. Ecology:

No removal of vegetation including trees or hedges shall be undertaken within the nesting bird season (1st March - 31st August inclusive) unless a pre-clearance check on the day of removal, by a licenced ecologist, confirms the absence of nesting birds. A letter from the ecologist confirming the absence of nesting birds shall be submitted to the Council within one month of the pre-clearance check being undertaken.

Any removal of vegetation outside the nesting bird season shall be preceded by a pre-clearance check by a licensed ecologist on the day of removal to ensure that removal does not result in unacceptable impacts upon nesting birds or other species of conservation concern.

Reason: To ensure that there are no adverse effects on the favourable conservation status of birds, to protect the bird population and species of importance or conservation concern from the potential impacts of the development.

14. The development shall be carried out in strict accordance with the recommendations and timings set out within the Bat Mitigation Strategy by Biora dated December 2020 and in accordance with the details of roosting provision specified on the approved drawings.

Reason: To ensure the protection of species/habitat protected by the Wildlife and Countryside Act 1981 (as Amended) and in the interests of biodiversity and to enhance habitat opportunities for species of conservation concern/protected species and to minimise/mitigate the potential impacts upon protected species resultant from the development

15. Landscaping:

The landscaping proposals hereby approved shall be implemented in the first planting season following occupation or use of the development, whether in whole or part and shall be maintained thereafter for a period of not less than 10 years to the satisfaction of the Local Planning Authority.

This maintenance shall include the replacement of any tree or shrub which is removed, or dies, or is seriously damaged, or becomes seriously diseased, by a species of similar size to those originally planted.

All trees/hedgerow shown as being retained within the approved details shall be retained as such in perpetuity.

Reason: To ensure the proposal is satisfactorily landscaped and trees/hedgerow of landscape/visual amenity value are retained as part of the development.

16. During the construction period, all trees to be retained shall be protected in accordance with British Standard BS 5837:2012 or any subsequent amendment to the British Standard.

Reason: To protect trees/hedging of landscape and visual amenity value on and adjacent to the site or those likely to be affected by the proposed development hereby approved.

**Note(s)**

1. For rights of appeal in respect of any condition(s)/or reason(s) attached to the permission see the attached notes.
2. The applicant is advised that should there be any deviation from the approved plan the Local Planning Authority must be informed. It is therefore vital that any future Building Regulation application must comply with the approved planning application.
3. The Local Planning Authority has endeavoured to work proactively and positively to resolve issues and considered the imposition of appropriate conditions and amendments to the application to deliver a sustainable form of development.
4. \_table InformativeText

*John Machole*

pp NICOLA HOPKINS  
DIRECTOR OF ECONOMIC DEVELOPMENT AND PLANNING

**Notes**

**Right of Appeal**

If you are aggrieved by the decision of your local planning authority to refuse permission for the proposed development or to grant it subject to conditions, then you can appeal to the Secretary of State under section 78 of the Town and Country Planning Act 1990.

- If you want to appeal against your local planning authority's decision then you must do so within 6 months of the date of this notice.
- If this is a decision to refuse planning permission, or approve with conditions, a householder application, if you want to appeal against your local planning authority's decision then you must do so within 12 weeks of the date of this notice.
- If this is a decision to refuse planning permission, or approve with conditions, a minor commercial application, if you want to appeal against your local planning authority's decision then you must do so within 12 weeks of the date of this notice.

Appeals can be made online at: <https://www.gov.uk/planning-inspectorate>. If you are unable to access the online appeal form, please contact the Planning Inspectorate to obtain a paper copy of the appeal form on tel: 0303 444 5000. The Secretary of State can allow a longer period for giving notice of an appeal but will not normally be prepared to use this power unless there are special circumstances which excuse the delay in giving notice of appeal. The Secretary of State need not consider an appeal if it seems to the Secretary of State that the local planning authority could not have granted planning permission for the proposed development or could not have granted it without the conditions they imposed, having regard to the statutory requirements, to the provisions of any development order and to any directions given under a development order. If an enforcement notice is served relating to the same or substantially the same land and development as in your application and if you want to appeal against your local planning authority's decision on your application, then you must do so within: 28 days of the date of service of the enforcement notice, or within 6 months [12 weeks in the case of a householder appeal] of the date of this notice, whichever period expires earlier. In certain circumstances, a claim may be made against the local planning authority for compensation, where permission is refused or granted subject to conditions by the Secretary of State on appeal or on a reference of the application to him. The circumstances in which such compensation is payable are set out in section 114 of the Town and Country Planning Act 1990.

**Purchase Notices**

If permission to develop land is refused or granted subject to conditions, whether by the local planning authority or by the Secretary of State for the Environment and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, they may serve on the Council of the county borough or county district in which the land is situated a purchase notice requiring that Council to purchase their interest in the land in accordance with the provisions of Part VI of the Town and Country Planning Act 1990.

**IN WITNESS** whereof this Deed has been duly executed by the parties the day  
and year first before written

**THE COMMON SEAL OF  
LANCASHIRE COUNTY COUNCIL**  
Was hereunto affixed to this Deed  
In the presence of:-



**Authorised Signatory**

**THE COMMON SEAL OF  
RIBBLE VALLEY BOROUGH COUNCIL**  
Was hereunto affixed to this Deed  
In the presence of :-



**Mayor**



**Chief Executive**





2513 EXECUTED as a DEED by  
PROSPECT (GB) LIMITED  
acting by two Directors:-

Director

Director

Secretary

Executed as a Deed by affixing  
THE COMMON SEAL OF  
MERSEY CARE NHS FOUNDATION TRUST  
In the presence of :-

Authorised Signatory

Authorised Signatory