

Commercial Estates Group

Land east of Clitheroe Road, Whalley

Planning Application 3/2013/0137

Section 106 of the Town and Country Planning Act 1990

Draft Heads of Terms of Planning Obligations

29th May 2013

1. Introduction

- 1.1 This document sets out the draft Heads of Terms of potential planning obligations which may be entered into in connection with the proposed development pursuant to Section 106 of the Town and Country Planning Act 1990. This document is a revision to the Heads of Terms dated 8th February 2013 which were submitted with the planning application.
- 1.2 The Heads of Terms will inevitably be the subject of further discussions once the Council has had the opportunity to fully appraise the planning application. These Heads of Terms should therefore be viewed as a basis for those discussions and the negotiation and progression of a Section 106 Agreement, rather than a committed set of obligations. A first draft of a proposed Section 106 Agreement will be produced once the matters set out below have been finalised.
- 1.3 In addition, the Heads of Terms will need to take account of any decision by the Council to progress a Community Infrastructure Levy.
- 1.4 In the light of the above, the applicant reserves the right to amend the Heads of Terms as discussions progress during the course of determination of the planning application.
- 1.5 In order to comply with the requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010, each obligation will need to be directly related to the development and, necessary in order for the development to proceed and fairly and reasonably related in scale and kind to the development.

2. Interaction with Planning Conditions

- 2.1 It is important that any S106 Agreement sits alongside and is read in conjunction with the conditions attached to any planning permission granted. Therefore, the applicant will seek to discuss the schedule of draft planning conditions alongside the S106 negotiations and it may be that some of the matters addressed below can be dealt with (wholly or partly) via planning condition instead.

3. General

- 3.1 The S106 Agreement will contain standard provisions relating to conditionality (linked to the grant and implementation of planning permission).
- 3.2 The planning obligations will be specifically tied to any planning permission granted pursuant to the planning application.
- 3.3 Other standard provisions will be included in the S106 Agreement, including (but not limited to) provisions relating to release from obligations in the event of disposal of interests and consequences on the lapsing, revocation or modification of the planning permission, excluding third party rights to enforce etc.
- 3.4 Obligations will be placed upon both the Owner and the Council. For example, the Council will be obliged to ensure that all payments made will be applied towards their stated purpose. Repayment and accounting provisions will be included in order to address the circumstances in which this does not happen.
- 3.5 Obligations will be drafted so as to relate to various trigger points/timings within the carrying out of the development.

4. Affordable Housing

- 4.1 30% of the dwellings (calculated on a “round half up” basis) to be constructed on the Site shall be Affordable Housing.
- 4.2 60% of the Affordable Housing Units shall be 2-bedroom dwellings and 40% shall be 3-bedroom dwellings.
- 4.3 The tenure of the Affordable Housing Units shall be:
 - (a) 50% Affordable Rented; and
 - (c) 50% Shared Ownershipunless otherwise agreed in writing with the Council.

Note: the s106 Agreement will need to explain how each half will be converted into whole dwelling numbers which equate to the overall number of affordable dwellings to be provided.

- 4.4 An Affordable Housing Scheme will identify those dwellings which are to be affordable and other related matters, in line with the principles set out in paragraphs 4.1, 4.2 and 4.3 above.
- 4.5 Allowance should be made for the affordable dwellings to be delivered on a “phase by phase” basis as part of the phasing of the planning permission. Within each phase:

- (a) Not more than 50% of the market dwellings within the Phase can be occupied until the affordable dwellings within the Phase have been offered to a registered provider in accordance with the relevant Affordable Housing Scheme; and
 - (b) Not more than 75% of the market dwellings within the Phase can be occupied before 100% of the Affordable Housing Units within the Phase have been practically completed.
- 4.6 A Priority Order (i.e. a cascade of categories of persons in housing need who may occupy the affordable dwellings) will be agreed with the Council, if required.
- 4.7 The affordable dwellings will also be subject to usual restrictions guarding their affordability in perpetuity, subject to exceptions e.g. for staircasing, mortgagees in possession etc. However for mortgagees in possession of individual affordable dwellings, a procedure will be specified in order to provide the Council with an opportunity to safeguard any such affordable dwelling as affordable housing. This procedure will be subject to the proviso that the mortgagee shall not be required to act contrary to its duties nor dispose of the affordable dwelling at a sum which is insufficient to redeem the outstanding sum of the mortgage plus costs.
- 4.8 A 'fallback' mechanism addresses the circumstances in which, despite reasonable endeavours having been used by the Owners, the affordable dwellings in a phase have not been purchased by an Affordable Housing Provider. In those circumstances the Affordable Dwellings would (subject to the Council's prior approval) be sold on the open market free of restrictions.