

DATED 19 October 2018

Unilateral Undertaking

—Given by—

APPLETHWAITE LIMITED

—and—

CLITHEROE ROYAL GRAMMAR SCHOOL FOUNDATION

—to—

RIBBLE VALLEY BOROUGH COUNCIL

Unilateral Undertaking

under section 106 of the Town and Country Planning Act 1990

relating to development at Claremont Drive, Clitheroe

THIS UNILATERAL UNDERTAKING is given on **19** of **October** 2018 by:

PARTIES

- (1) **APPLETHWAITE LIMITED** (Company Registration Number 05187755) whose registered office is at Sceptre House, Sceptre Way, Bamber Bridge, Preston PR5 6AW (the Developer); and
- (2) **CLITHEROE ROYAL GRAMMAR SCHOOL FOUNDATION** a Charitable Incorporated Organisation (Charity Number 1174177) of York Street, Clitheroe, Lancashire BB7 2DJ (the Owner)
- TO THE **RIBBLE VALLEY BOROUGH COUNCIL** of Council Offices, Church Walk, Clitheroe, Lancashire BB7 2RA (the Council)

BACKGROUND

- A The Council is the local planning authority for the purposes of section 106 of the 1990 Act for the area in which the Site is situated.
- B The Owner is the freehold owner of that part of the Site registered at HM Land Registry under title number LAN177258.
- C The Developer is the freehold owner of that part of the Site registered at HM Land Registry under title number LA823891.
- D The Developer has entered into an option agreement with the Owner dated 29th March 2017 to acquire that part of the Site owned by the Owner.
- E The Developer submitted the Application to the Council and the Council is minded to grant the Permission subject to conditions and the completion of this Undertaking.
- F The Owner and Developer have agreed that the Development shall be carried out only in accordance with the obligations set out in this Undertaking.

IT IS AGREED THAT:

1 Interpretation

- 1.1 In this Undertaking unless the context otherwise requires the following terms shall have the following meanings:

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

Off-site Contribution means the sum of £17,000.00 distributed as follows:

- £14,000 for the installation / improvement / maintenance of off-Site public open space and/or sport and leisure facilities in the District; and
- £3,000 for off-Site biodiversity measures at Salt Hill and/or Cross Hill natures reserves;

OR

- £17,000 for off-Site Affordable Housing or related purposes (such as acquiring and refurbishing vacant properties) in the District;

Affordable Housing means subsidised housing that will be available to persons who cannot afford to rent or buy housing generally available on the open market;

Affordable means that part of the Development comprising the five (5) Residential Units details of which are set out in Schedule 3 hereto and which are identified on Plan 2 annexed hereto

Housing Units	which are to be delivered via a Registered Provider as Shared Ownership Units;
Application	means the application for planning permission for the Development submitted by or on behalf of the Developer to the Council to which the Council has allocated reference number 3/2018/0008;
Development	means the development of the Site comprising the demolition of the existing dwelling and erection of 34 bungalows for the over 55s with associated access, parking, landscaping and open space in accordance with the Permission;
District	means the administrative area of the Council;
Housing Need	means a situation where, in the reasonable opinion of the Council, a person or household (as defined in section 113 of the Housing Act 1985) does not have available to them and cannot afford to buy suitable accommodation at open market value and: (a) needs to move from accommodation which is in disrepair, shared, temporary or overcrowded; or (b) needs to be rehoused as a result of leaving tied accommodation; or (c) is or includes an elderly or disabled person who needs to move due to medical conditions; or (d) needs to move due to special circumstances as determined by the Council's housing allocation policy;
Implementation	means commencement of Development pursuant to the Permission by the carrying out of a 'material operation' (as defined in s 56(4) of the 1990 Act) save that for the purposes of this Undertaking the term shall not include works of demolition, surveys, site clearance, works of archaeological or ground investigation or remediation, the erection of fencing or hoardings, the provision of security measures or lighting, the erection of temporary buildings or structures associated with the Development, the laying, removal or diversion of services, the provision of construction compounds, the temporary display of site notices or advertisements or piling works (and 'Implement' and 'Implemented' shall be construed accordingly);
Market Housing Units	means that part of the Development which is general market housing for sale on the open market and which is not Affordable Housing;
Occupation and Occupied	means occupation for the purposes permitted by the Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations;
Open Market Value	means the estimated price or premium for which the sale of the freehold estate or the grant of a long leasehold interest in land (not being a rack rented lease) for the use thereof specified in this Undertaking should complete on the date of valuation between a willing buyer and a willing seller in an arms length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion;
Permission	means full planning permission (subject to conditions) to be granted by the Council for the Development pursuant to the Application;
Plan 1	means the plans attached to this Undertaking and numbered Plan 1;



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Plan 2	means the plans attached to this Undertaking and numbered Plan 2;
Planning Obligations	means those planning obligations listed in Schedules 1 and 2 being planning obligations for the purposes of section 106 of the 1990 Act;
Qualifying Person(s)	means a person having local connections and proven or identified Housing Need which shall be conclusively presumed in the case of a person who: (a) has immediately prior to designation been continuously resident in the District for three (3) years; or (b) has, immediately prior to designation, been “permanently employed” for a minimum of 16 hours per week in the District or has a firm permanent job offer for a minimum of 16 hours per week in the District (“permanent employment /permanently employed” includes for all purposes of the definition of a Qualifying Person contracts for a minimum of one year’s continuous employment and self-employment on provision of evidence of a viable business); or (c) is currently in the armed forces and in accommodation whose location is beyond his or her control, and immediately before moving to such accommodation, had lived in the District for at least three (3) years; or is an existing or former member of the reserve forces and suffering from a serious injury, illness or disability which is wholly or partly attributable to their service; and immediately before moving to this type of accommodation they had lived in the District for at least three (3) years; or (d) is a bereaved spouse or civil partner of those serving in the regular forces and is no longer entitled to reside in Ministry of Defence accommodation and the death of their spouse or civil partner was wholly or partly attributable to their service and immediately before moving to this type of accommodation they had lived in the District for at least three (3) years; or (e) is currently in prison, in hospital or similar accommodation whose location is beyond their control, who, immediately before moving to such accommodation, had lived in the District for at least three (3) years; or (f) has previously lived in the District for a period of at least three (3) years and who wishes to return to the District having completed a post-secondary (tertiary) education course within the previous three (3) years; or (g) needs to live in the District either because he/she is ill and/or needs support from a relative who lives in the District, or because he/she needs to give support to a relative who is ill and/or needs support and who lives in the District (note that, for the purposes of this qualification, proof of illness and/or need of support will be required from a medical doctor or relevant statutory support agency); or (h) has lived in the District for most of his/her life and left the District less than ten (10) years ago (note that, for the purposes of this qualification, “most of his/her life” is to be interpreted as meaning over half of his/her life up to the point that he/she left the District, or a continuous period of twenty (20) years up to the point that he/she left the District); or (i) has lived continuously in the District for two (2) years or more prior to being accepted as homeless under the Homelessness Act 2003 and who has been placed in any form of temporary accommodation outside of the District for up



DATE BOOK

ROMAN ROAD
(course of)

CLAREMONT

1.8m high feathered edge fence

1.6m high brick wall

Existing tree to be retained

Existing tree to be removed

Denotes chimney draft (pl)

Plan?

Wood
design

Applethwaite

Peel Park Avenue

Peel Park Ave
Clitheroe

Litheroe

 Elwood T 504

December 7, 1954

Proposed Site Layout

100

Author	Year	Ref.
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Sep 2011

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to a maximum of two (2) years; or

- (j) has spent at least ten (10) years of their school education in the District; or
- (k) on the advice of an appropriate professional it is clear that he/ she needs to live in the District due to reported domestic violence, harassment and/or hate crime and moving to the District will reduce the risk of harm to him/her and to enable support and/or his/her employment and educational needs to be met

Registered Provider means a registered social landlord who is registered as a provider of social housing by Homes England or any successor body or is otherwise approved by the Council;

Residential Units means the Affordable Housing Units and the Market Housing Units (or any of them);

Shared Ownership Units means an Intermediate Units where the lessee enters into a lease and purchases a percentage of the equity up to 100% of the equity, the lessee pays a rent to the Registered Provider in respect of the remaining equity share in the property and the lessee has the option to staircase so as to increase their equity share in the Affordable Housing Unit up to 100% and acquire the freehold or long leasehold (as appropriate);

Site means the land at Claremont Drive and Peel Park Avenue, Clitheroe edged red on Plan 1 registered at HM Land Registry with title numbers LAN177258 and LA823891;

Working Day means any day which is not a Saturday, Sunday, Christmas Day, Good Friday or a statutory bank holiday.

2 Interpretation

- 2.1 Words importing one gender shall be construed as meaning any other gender;
- 2.2 Words in the singular include the plural and vice versa;
- 2.3 References to clauses and schedules are references to clauses and schedules within this Undertaking only;
- 2.4 A reference to a person includes a company or any legal entity;
- 2.5 Where more than one person is a party and/or where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually;
- 2.6 "including" means including without limitation or prejudice to the generality of any preceding description defined term phrase or word(s) and "include" shall be construed accordingly;
- 2.7 Works denoting an obligation on a party to do any act or matter or thing include an obligation to procure that it is done and words placing a party under a restriction include an obligation not to cause permit or allow infringement of that restriction;
- 2.8 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans, regulations, permission and directions for the time being made, issued or given under that Act or deriving validity from it and "statutory requirement" will be construed accordingly;
- 2.9 Reference to any party to this Undertaking shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council the successors to their respective statutory functions and any duly appointed employee or agent of the Council or such successor;
- 2.10 The headings in this Undertaking are inserted for convenience only and shall not affect the interpretation or construction of this Undertaking.

3 Obligations and statutory powers

- 3.1 This Undertaking is entered into by unilateral undertaking and is a planning obligation for the purposes of section 106 of the 1990 Act, sections 111 and 120 of the Local Government Act 1972 and section 1 of the Localism Act 2011 and all other enabling powers and it is acknowledged by the parties that the obligations contained within it are binding on the Site and are enforceable by the Council as local planning authority against the Developer and the Owner and against their successors in title in respect of their interests in each and every part of the Site.
- 3.2 The Developer and the Owner hereby covenant to observe and perform the Planning Obligations.

4 Land Bound

- 4.1 The Site is bound by the Planning Obligations.

5 Conditionality

- 5.1 The Planning Obligations in this Undertaking are unless otherwise specified conditional on:
- 5.1.1 the grant of the Permission by the Council; and
- 5.1.2 Implementation of the Permission.

6 Liability

- 6.1 Upon parting with all or any interest in the Site no party shall have liability for the breach of any covenant or Planning Obligation in this Undertaking other than in respect of any breach by it at the time when it held such an interest.
- 6.2 Nothing in this Undertaking shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Permission) granted (whether or not on appeal) after the date of this Undertaking.
- 6.3 This Deed (save for paragraph 1(b) of Schedule 2 hereto) shall not be enforceable against owner-occupiers or tenants of Residential Units constructed pursuant to the Permission nor against any mortgagee or those deriving title from them.

7 Interest

- 7.1 In the event of late payment of the Off-site Contribution by the Owner or Developer to the Council such payment shall be subject to a charge of 2% above the base rate of the Bank of England from time to time in force and such charge shall apply from the date that the sum becomes due to the date of actual payment.

8 Miscellaneous

- 8.1 This Undertaking is capable and may be registered as a local land charge by the Council;
- 8.2 Notwithstanding the provisions of the Contracts (Rights of Third Parties) Act 1999 nothing in this Undertaking confers or purports to confer any right to enforce any of the terms of this Undertaking on any person who is not a party hereto;
- 8.3 Any notice served pursuant to this Undertaking shall be deemed to be served correctly if served to the above addresses by registered post;
- 8.4 If any provision of this Undertaking is or becomes invalid, illegal, unenforceable, it shall be deemed deleted. Any deletion of a provision under this Clause shall not affect the validity or enforceability of the rest of the Undertaking and insofar as reasonably practicable the parties shall amend that provision in such reasonable manner as achieve the intention of the parties without illegality;
- 8.5 The Undertaking will come to an end if the Permission is quashed, revoked or otherwise withdrawn before the Implementation so as to render this Undertaking or any part of it irrelevant, impractical or unviable or the Permission expires before the Implementation without having been Implemented;
- 8.6 Nothing in this Undertaking shall prejudice or affect the rights powers duties and obligations of the Council in the exercise of their respective functions in any capacity;

- 8.7 All consideration given in accordance with the terms of this Undertaking shall be exclusive of any value added tax if properly payable;
- 8.8 No waiver (whether expressed or implied) or any breach or default in performing or observing any of the covenants terms or conditions of this Undertaking shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant terms of conditions or from acting upon any subsequent breach or default;
- 8.9 This Undertaking is governed by the laws of England and Wales;
- 8.10 The provisions of this Undertaking (other than this Clause which shall be of immediate effect) shall be of no effect until this Undertaking has been dated.

This Undertaking has been executed as a deed and delivered on the date stated at the beginning of this Undertaking.

SCHEDULE 2 AFFORDABLE HOUSING

The Owner and Developer covenant with the Council so as to provide the Affordable Housing Units on the following terms

- 1(a) The Affordable Housing Units shall be provided on Site on an Intermediate Housing basis and prior to the Occupation of the last Market Housing Unit on the Site.
- 1(b) Subject to paragraph 2(f), the Affordable Housing Units will be Occupied as the sole or main residence by persons at least one of which is a Qualifying Person upon first and subsequent Occupation. PROVIDED THAT if no persons are forthcoming as Qualifying Persons following the reasonable marketing through a local estate agent (evidence of such marketing to be supplied by the Developer and approved by the Council's Property Services Manager or equivalent post (acting reasonably)) of an Affordable Housing Unit for a period of twelve (12) weeks then this definition is extended to include any person notwithstanding that the person does not meet any of the above criteria. PROVIDED ALWAYS that for the sake of clarity such relaxations of the definition shall apply only to that particular sale of that particular Affordable Housing Unit and does not apply in respect of any subsequent sales of the same or any other Affordable Housing Unit unless the above circumstances apply;
- 1(c) The Affordable Housing Units are to be offered for sale or lease to a Registered Provider at a price of no more than the Open Market Value of the Affordable Housing Units at the time of transfer.
- 1(d) If the sale of any of the Affordable Housing Units to a Registered Provider has not been completed within 9 months of the date on which such Affordable Housing Unit was offered for sale to such Registered Provider then any such Affordable Housing Unit not sold may be offered for sale to persons at least one of which is a Qualifying Person at 70% of the Open Market Value.
- 2(a) The Affordable Housing provisions of this Undertaking (including without limitation this Schedule) shall not be binding on:
 - any mortgagee or charge or any receiver (including an administrative receiver or administrator) (each referred to hereinafter as a "Receiver") of the Registered Provider (unless in possession); or
 - any mortgagee of a residential tenant or person to whom the Registered Provider grants a shared ownership lease;
 - any receiver appointed by such a mortgagee;

- a person who is a successor in title to or derives title through or under or at the direction or requirement of any such mortgagee or receiver appointed by any such mortgagee.

PROVIDED THAT such mortgagee or chargee or Receiver shall first give written notice to the Council of its intention to dispose of the Affordable Housing Units (the "Mortgagee's Notice") and shall have used reasonable endeavours over a period of 3 (three) months from the date of the Mortgagee's Notice to complete a disposal of the Affordable Housing Units to another Registered Provider or to the Council.

2(b) The consideration for the disposal of the Affordable Housing Units to another Registered Provider or the Council (as referred to in paragraph 2(a) above) shall be such sum as the Council and the mortgagee or chargee or Receiver may agree being no more than the then Open Market Value of the Affordable Housing Units at the time of a disposal and in the absence of an agreement within a period of 4 (four) weeks from the receipt of the Mortgagee's Notice by the Council the consideration shall be determined in accordance with paragraph 2(d) hereof PROVIDED ALWAYS THAT the mortgagee or chargee or Receiver shall be under no obligation to effect such a disposal if the consideration fixed by such determination provides a sum 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 (the "Mortgage Debt").

2(c) In the event that the sum agreed in accordance with paragraph 2(b) above or determined in accordance with paragraph 2(d) hereof is less than the Mortgage Debt or if the disposal of the Affordable Housing Units to another Registered Provider or the Council (as referred to in paragraph 2(a) above) has not completed within the said 3 (three) month period, the mortgagee or chargee or Receiver shall be entitled to dispose of the Affordable Housing Units free from the Affordable Housing provisions in this Undertaking which provisions shall determine absolutely PROVIDED ALWAYS THAT the mortgagee or chargee or Receiver, or any person or body acting through or on behalf of them shall not evict, seek possession against (save as below) or in any other way terminate the existing tenancies of the Affordable Housing Units save only when any of the following events have occurred:

- the death of the tenant or the death of the last survivor of a tenant in the case of a joint tenancy or of a statutory successor to the tenancy pursuant to section 17 of the Housing Act 1988 or any replacement or re-enactment thereof;
- voluntary vacation of an Affordable Housing Unit;
- an order for possession has been obtained and enforced on any of the Housing Act 1988 or any statutory modification or equivalent statutory provision from time to time as are specified in or are not excluded under the relevant tenancy agreements PROVIDED THAT no order for possession may be sought on Ground 2 in Schedule 2 to the Housing Act 1988 or amendment or re-enactment thereof or any similar ground; or

- a shared ownership lessee wishes to sell his/her shared ownership lease and move elsewhere.
- 2(d) Any dispute or question between the Council and the mortgagee or chargee or Receiver concerning the Open Market Value of the Affordable Housing Units shall be referred to a single arbitrator appointed by agreement between the Council and the mortgagee or chargee or Receiver or failing such agreement by the President for the time being of the Royal Institution of Chartered Surveyors or his deputy upon the application of either party and these presents shall be deemed to be a submission to arbitration within the Arbitration Act 1996 or any statutory modification or re-enactment thereof for the time being in force.
- 2(e) Any disposal to the Council pursuant to paragraph 2(a) above shall be prepared by the Council's Head of Governance at its own expense and completion shall take place at the office of the Council's Head of Governance following agreement between the parties as to the consideration payable (pursuant to paragraph 2(b) hereof) or its determination (pursuant to paragraph 2(d) here of) (as the case may be) but before the expiry of the said 3 (three) month period.
- 2(f) The Affordable Housing provisions of this Undertaking shall not apply to a lessee or mortgagee of a Shared Ownership Unit and shall cease to apply to such a unit where a Registered Provider disposes of 100% of the equity in any such unit.
- 3 Any net proceeds of sale (after deduction of debt and costs) arising from the sale of any unit of Affordable Housing by any Registered Provider shall be applied by that Registered Provider towards the provision of Affordable Housing as follows:
- first, in the District;
 - second, in the sub-regional strategic housing market area; and
 - third, within England, Wales and Northern Ireland.

SCHEDULE 3
AFFORDABLE HOUSING UNITS

Plot Numbers	Type	Approximate Gross Internal Area (sq.ft.)
Plot 5	1 bed bungalow	620 sq.ft.
Plot 6	1 bed bungalow	620 sq.ft.
Plot 8	1 bed bungalow	620 sq.ft.
Plot 25	2 bed bungalow	772 sq.ft.
Plot 26	2 bed bungalow	772 sq.ft.

SIGNED as a **DEED** by
APPLETHWAITE LIMITED acting by
two directors

SIGNED as a **DEED** by and on behalf of
CLITHEROE ROYAL GRAMMAR SCHOOL
FOUNDATION

Authorised signatories in the presence of:-