

Dated 20th June 2019

ROSSENDALE BOROUGH COUNCIL

And

LANCASHIRE COUNTY COUNCIL

And

CULZEAN DEVELOPMENTS LIMITED

And

LSC FINANCE LIMITED

A PLANNING OBLIGATION BY AGREEMENT

SECTION 106 TOWN AND COUNTRY PLANNING ACT 1990

relating to land at Rossendale Football Club, Dark Lane, Newchurch

Rossendale Borough Council
The Business Centre
Futures Park
Bacup
OL13 0BB

THIS AGREEMENT is made the 20th day of June 2019

BETWEEN

(1) ROSSENDALE BOROUGH COUNCIL of The Business Centre, Futures Park, Bacup OL13 0BB ("the Council and First Owner")

(2) LANCASHIRE COUNTY COUNCIL of PO Box 78, County Hall, Fishergate, Preston, Lancashire. PR1 8XJ ("the County Council")

(3) CULZEAN DEVELOPMENTS LIMITED ("the Second Owner") of [REDACTED]

(4) LSC FINANCE LIMITED ("the Mortgagee") of 1-7 Fallbarn Road, Rawtenstall, BB4 7NT

1. Recitals

- 1.1 The Council and the County Council are local planning authorities for the purposes of the Act for the area within which the Site is located and are the authorities by which the planning obligations herein contained are enforceable.
- 1.2 The Second Owner has applied to the Council pursuant to the Act for permission to develop the Site under the Application reference 2016/0563 and enter this Agreement with the intention that it is bound by the obligations contained herein.
- 1.3 The First Owner is the freehold owner of part of the Site which is registered at the Land Registry under title numbers LA953635 and LA953749
- 1.4 The Second Owner is the freehold owner of part of the Site which is registered at Land Registry under Title Numbers LA945840 and LAN9775
- 1.5 The covenants, restrictions and requirements imposed upon the Second Owner under this Agreement create planning obligations pursuant to Section 106 of the Act and the Second Owner is a person against whom such obligations are enforceable in respect of the part of the Site registered under title numbers LA945840 and LAN9775.
- 1.6 The First Owner and the Second Owner have agreed to enter into this Agreement so as to create a planning obligation in favour of the Council and the County Council pursuant to Section 106 of the Act and to be bound and to observe and perform the covenants hereinafter contained.

2. Definitions and Interpretation

2.1

"the Act"	means the Town & Country Planning Act 1990 (as amended) or any statute amending or modifying repealing or re-enacting the same for the time being in force.
"Affordable Housing"	means housing provided to eligible households whose needs are not met by the market in accordance with the definition in Annex 2 of the National Planning Policy Framework (or any successor policy or legislation in respect of affordable housing).
"Affordable Housing Provider (AHP)"	means a registered provider, registered social landlord or a housing association or similar organisation registered in accordance with section 80 of the Housing and Regeneration Act 2008 or if such bodies cease to exist or are superseded the equivalent body whose main objectives included the provision of Affordable Housing and to whom the Affordable Housing Units may be transferred as approved by the Council in writing (such approval not to be unreasonably withheld or delayed.)
"Affordable Housing Units"	means the Dwellings of Affordable Housing to be provided by the Owner in accordance with the terms of this Agreement and shall comprise 100% Affordable Rented Dwellings (as defined within Annex 2 of the NPPF July 2018).
"the Application"	means the application for outline planning permission numbered 2016/0563 dated 16 th November 2016 for the development of the Site for the outline application for demolition of all existing buildings and structures and erection of up to 100no. dwellings (Use Class C3) with all matter reserved except for access
"Approved Person"	means a person who meets the criteria as appropriate set out in the Sixth Schedule
"BCIS All-in Tender Price Index"	means 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;
"the Borough"	means the Borough of Rossendale
"Chargee"	means any mortgagee or chargee of the

	Registered Provider and or any mortgagee or chargee of a Protected Tenant or any administrator, receiver including any fixed charge receiver, receiver appointed under the Law of Property Act 1925, administrative receiver or any other person appointed under any security documentation to enable such mortgagee or charge to realise its security or any housing administrator howsoever appointed
"Commence"	means the carrying out of a material operation as defined by section 56 (4) of the Act (excluding for the purposes of this Agreement and for no other purpose any Preparatory Operation) in accordance with the Planning Permission and the expressions "Commencement" shall have a corresponding meaning.
"Commencement Date"	means the date of the Commencement of the Development
"Development"	means the development proposed in the Application and described at the Second Schedule.
"the Disposal"	each and every means by which the right of occupation of an Affordable Housing Unit is given or transferred to another person body or company and shall include sale, transfer, option, gift, exchange, declaration or trust, assignment, lease and contract for such disposal and shall include the subsequent disposals and "Dispose" shall be construed accordingly and for the sake of clarity the term "Disposal", "Dispose" and "Disposed of" shall be construed accordingly and further shall include the exercise of the right to Staircase under a shared ownership lease.
"Dwelling"	means a residential dwelling (including a house, apartment, bungalow or maisonette) to be constructed on the Site in accordance with the Planning Permission and "Dwellings" shall be construed accordingly and includes both Market Units and an Affordable Housing Units.
"Eligibility Criteria"	means the criteria set out in the Sixth Schedule
"Equipped Play Space"	means the sum of £541.00 [five hundred and forty one pounds] per Dwelling to provide facilities for older children at Staghills Road play area
"Footpath from site to Public Right of Way Footpath 203"	a contribution of £36,480 (thirty-six thousand, four hundred and eighty pounds) shall be paid to

	the County Council to provide a footpath by using compacted stone between Public Right of Way 205 at the south western boundary of the development site to Public Right of Way 203 Top Barn Lane and to improve Public Right of Way 203 and Public Right of Way 205.
"Homes England"	means Homes England or any body corporately charged under the Housing and Regeneration Act 2008 with the functions of regulating provision of Affordable Housing or if such body ceases to exist or is superseded the equivalent or successor body
"Housing Authority"	means Rossendale Borough Council
"Housing Need"	means living in unsuitable housing conditions and/or being unable to afford suitable housing at open market prices.
"Informal Footpath link"	Means that which the developer will work with the Council on to investigate the potential to improve the informal footpath link from the site to Public Right of Way 169. As part of any planning application submission a timetable for this investigation shall be provided to the Council. In the event that a more defined route can be provided a commuted sum of £45,000 shall be paid to the County Council to provide an improved footpath using compacted stone from the eastern side of the site, towards the rear of Queensway, 90 metres in length and between Queensway and Springfield Drive (140m in length) and to improve Public Right of Way 169.
"Interest"	means interest at the rate of 3 per cent above the base lending rate of the Bank of England from time to time unless where otherwise expressly stated herein.
"Interest Bearing Account"	means a separately identifiable account within the financial accounting system of the Council or the [County Council] (as appropriate) to which will be added interest equivalent to that which the Borough Council or the County Council obtains on its interest
"Manage and Maintain"	Means to manage and maintain the Woodland in complete accordance with the Woodland Management and Maintenance Plan and "Management and Maintenance" shall be construed accordingly.

"Management and Maintenance Body"	The body which is established by the Owner pursuant to section 5 of the Fourth Schedule hereto for the purposes of Managing and Maintaining the On Site Equipped Play Space and the Woodland.
"Market Value Notice"	means the notice to the Council giving the Open Market Value of the proposed Affordable Units
"Net Sales Proceeds"	means the amount received by the Seller after all costs and expenses are deducted from the gross proceeds arising from the disposal of the relevant Affordable Housing Unit.
"Nomination Agreement"	means an agreement between the Council and an Affordable Housing Provider which allows the Council to nominate the prospective tenants and assignees for the Affordable/ Social Rented Units.
"NPPF"	means the National Planning Policy Framework issued by the Department for Communities and Local Government on 27 March 2012
"Occupation"	means to occupy or permit or suffer to be occupied for the purposes permitted by the Planning Permission but does not include occupation by personnel engaged in construction , fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and "Occupy" and "Occupied" shall be construed accordingly.
"Open Market Value"	has the meaning ascribed to it in the Appraisal and Valuation Manual published by the Royal Institution of Chartered Surveyors.
"On-Site Equipped Play Area and Woodland Management and Maintenance Plan"	Means: 1) a written scheme setting out the proposals for the provision of the On-Site Equipped Play Space and the ongoing maintenance and management thereof and such scheme shall include (save where such matters are dealt with adequately by a condition or conditions within the Planning Permission); 2) the long term plan for the ecological enhancement of Staghills Wood including the management and maintenance of the Woodland which is to be submitted to and approved by the Council pursuant to section 4 of the Fourth Schedule hereto.
"the Owner (s)"	includes Rossendale Borough Council and

	Culzean Developments Limited
"Plan"	means the Plan annexed hereto in the First Schedule
"Planning Permission"	means the outline detailed planning permission (as may be amended or varied from time to time) granted in accordance with the Application in the form of and subject to the conditions set out in the draft in the Third Schedule or any reserved matters approval granted pursuant to any Qualifying Application.
"Playing Pitch Contribution"	means the sum of £566 [five hundred and sixty six pounds] per Dwelling towards the improvement of existing playing pitches in at Marl Pitts
"Preparatory Operation"	means a material operation as specified in Section 56(4) of the Act provided that the term "material operation" in Section 56(4) shall not for the purposes of this Agreement include operations in connection with site clearance, demolition, ground stabilisation, archaeological investigation, investigation for the purpose of assessing contamination, removal of contamination, diversion and laying of Services, earthworks and the erection of means of enclosure for the purposes of site security and/or display of notices or advertisements, exploratory boreholes and any dug works, matters and operations to enable any of the foregoing to take place.
"Protected Tenant"	Any tenant or owner (or its successors) who either: a) has exercised the right to acquire the dwelling of which he is a tenant pursuant to section 16 of the Housing Act 1996 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular rented Affordable Housing Unit; or b) has exercised any statutory right to buy the dwelling of which he is a tenant pursuant to Part V of the Housing Act 1985 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular rented Affordable Housing Unit; or
"Qualifying Application"	means any application for reserved matters approval in relation to the Planning Permission and/or any subsequent applications for planning permission made under section 73 of the Act

	and/or in accordance with article 20 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 in respect of the Development
"Recycling"	means recycling by the Affordable Housing Provider by procuring of further Affordable Housing within the Borough of a type of a location and tenure to be agreed between the Housing Authority and the Affordable Housing Provider (both to act reasonably)
"Registered Provider"	means any registered provider of social housing as defined under the Housing and Regeneration Act 2008 with the Regulator of Social Housing and has not been removed from the Register
"Replacement Pitch"	means a contribution of £136,000 for the provision of a replacement pitch at Marl Pits
"Reserved Matters Consent(s)"	means any reserved matters approval granted pursuant to the Planning Permission and in relation to any part of the Site which permits residential development and specifies the number of Dwellings and number of bedrooms permitted on that part of the Site;
"RPIX"	means the Retail Prices Index excluding Mortgage Interest Payments (RPIX) published by the Office for National Statistics each month and if such index ceases to exist such other similar index as the Council shall specify to the Owners In writing.
"Services"	means all the media and apparatus for the supply and removal of water, sewerage, gas and electricity.
"Site"	means the land against which this Agreement may be enforced shown for illustrative purposes only edged red on the Plan and as more particularly described in the First Schedule.
"Social Rent"	means a rent which is charged by the Affordable Housing Provider based upon guideline target rents determined through the national rent regime based on the guidance and formulae set by the Homes England on social rents.
"Social Rented Units"	means the housing owned by local authorities or an Affordable Housing Provider for which guideline target rents are determined through the national rent regime and the term "Social

	Rented Unit" shall be construed accordingly.
"Staghills Wood"	Means that part of the adjacent woodland shown indicatively hatched red on the Plan 2 attached to this Deed.
"Tenancy"	is an assured tenancy where the Affordable Housing Unit is occupied by the individual household as their only or principle home by way of a lease.
"Woodland"	Means that part of the adjacent Staghills Wood which is to be subject to ecological enhancement works to create a high value ecological habitat in accordance with the Planning Permission and the terms of this Deed.
"Working Day"	means any day on which the clearing banks in the City of London are (or would be but for strike, lockout, or other stoppage affecting such banks generally) open during banking hours Monday to Friday (inclusive) excluding national holidays and the period 24 December - 1 January inclusive and excluding Saturdays, Sundays and bank holidays.

- 2.2 The expressions "the Council", "the County Council" and "the Owners" shall where the context admits includes their successors in title and assigns (and in the case of the Council the successor to its statutory functions) and those deriving title under each of them.
- 2.3 Words importing one gender shall be construed as including any gender.
- 2.4 Words importing the singular shall be construed as importing the plural and vice versa.
- 2.5 The clause and the paragraph headings in the body of this Agreement and in the Schedules do not form part of this Agreement and shall not be taken into account in its construction or interpretation. Reference made to any clause paragraph or schedule or recital context is a reference to a clause paragraph or schedule or recital in this Agreement.
- 2.6 In the absence of any contrary provision any reference to a statute includes any statutory modification or re-enactment of it and any and every order instrument regulation permission direction or plan made or issued under the statute or deriving validity from it.

3. Legal Effect

- 3.1 This Agreement is a planning obligation and is made pursuant to Section 106 of the Act and the obligations contained in this Agreement are planning obligations for the purposes of that section insofar as they fall within the terms of sub-section 106(1) and with the intention that they bind the interests held by those persons in the Site and their respective successors and assigns. .
- 3.2 Insofar as any of the covenants contained in this Agreement are not planning obligations within the meaning of the Act they are entered into pursuant to the powers contained in Section 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011 and all other enabling powers with the intention that the obligations contained herein are planning obligations for the purposes of the provisions in respect of the Site which may be enforced by the Council or the County Council in respect of obligations given to the County Council against the Second Owners.
- 3.3 The parties agree that the requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) relating to planning obligations and all other relevant regulations thereunder are satisfied.

4. COMMENCEMENT

- 4.1 This Agreement is conditional upon the grant of the Planning Permission and shall not take effect until the Commencement of Development authorised by the Planning Permission.
- 4.2 Save for the provisions of clause 7.8 and 7.10 (Land Charges registration) and 7.13 (third parties) and 9 (Legal Costs) 7.3 (Notices) 10 (Notices of Change in Ownership) and Paragraph 1 of the Fourth Schedule (notice of intended Commencement of Development) which shall come into effect immediately upon completion of this Agreement.

5. The Covenants of the Second Owners

- 5.1 The Second Owner hereby covenant so as to bind its interest in the Site with the Council to perform the obligations on its part specified in the Fourth, Fifth, Sixth and Seventh Schedules and with the County Council to perform the obligations on its part specified in the Eighth Schedule.

6. The Covenants of the Council and the County Council

6.1 The Council hereby covenants with the Second Owner and the County Council to perform the obligations on its part specified in the Ninth Schedule. The County Council hereby covenants with the Owners to perform the obligations on its part specified in the Tenth Schedule.

7. Agreements and Declarations

It is hereby agreed and declared as follows:

7.1 Save as provided in respect of the successors in title to the Site or any successor to the relevant statutory functions of the Council this Agreement shall not be enforceable by any third party pursuant to the Contracts (Rights of Third Parties) Act 1999.

7.2 This Agreement is governed by and interpreted in accordance with the Law of England and the parties submit to the non-exclusive jurisdiction of the Courts of England.

7.3 Any notice or other written communication to be served by one party upon any other pursuant to the terms of this Agreement shall be deemed to have been validly served if delivered by hand or sent by pre-paid first class or recorded delivery post to the party to be served at its address herein specified or such other address as may from time to time be notified for this purpose by notice served under this Agreement and any such notice or other written communication to be given by the Council shall be deemed valid and effectual if on its face value it is signed on behalf of the Council by an officer or duly authorised signatory thereof.

7.4 Where any certificate, consent, permission, nomination or other approval is to be given by any party or any person on behalf of any party hereto under this Agreement the decision of the same shall not be unreasonably be delayed or withheld and if refused written reasons for the refusal shall be provided.

7.5 No person shall be liable for breach of a covenant contained in this Agreement after it shall have parted with all interest in the Site or that part of the Site in respect of which such breach occurred but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest.

7.6 This Agreement shall not be enforceable against:

7.6.1 owner-occupiers or tenants, Protected Tenants or their successors of any Dwelling constructed pursuant to the Planning Permission or against those deriving title there from;

7.6.2 any mortgagee or Chargee or their successors of a Dwelling or any receiver or administrative receiver appointed by such a mortgagee;

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

7.6.4 the relevant highway authority to whom any part of the Site is disposed of for the purposes of adoption of any roads and/or footpaths and or/cycle ways to be constructed on the Site.

7.7 PROVIDED ALWAYS THAT nothing in this Agreement restricts or is intended to restrict the exercise at any time by the Council or the County Council of any of their statutory functions or discretions in relation to any part of the Site or otherwise.

- 7.8 If the Planning Permission shall expire before the Commencement Date or shall at any time be quashed, revoked, otherwise withdrawn or it is, without the consent of the Owner, modified by any statutory procedure the provisions of this Agreement shall forthwith determine and cease to have effect (insofar only as they have not already been complied with) and any Local Land Charge registered pursuant to clause 7.10 shall be cancelled as soon as reasonably practicable.
- 7.9 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Agreement.
- 7.10 This Agreement shall upon completion be registered by the Council as a Local Land Charge.
- 7.11 If any sum due under this Agreement shall remain unpaid after the same has become due (without prejudice to any other right of the parties to this Agreement) Interest shall be paid thereon by the defaulting party to the other party from the date the sum becomes due to the date of actual receipt of the payment by the receiving party at the rate of 3% above the base lending rate of the Bank of England from time to time.
- 7.12 Obligations entered into by any party which comprises of more than one person shall be deemed to be joint and several.
- 7.13 This Agreement is binding on successors in titles and assigns.
- 7.14 No waiver (whether express or implied) by the Council or the County Council of any breach or default in performing or observing any of the covenants terms or conditions of this Agreement shall constitute a waiver and no such waiver shall prevent the Council or the County Council from enforcing any of the said terms or conditions or from acting upon any subsequent breach or default.
- 7.15 If any provision in this Agreement shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions shall not in any way be deemed thereby to be affected or impaired.
- 7.16 Nothing in this Agreement shall be construed as granting planning permission or any other approval consent or permission required from the Council in exercise of any other statutory function.

8. Disputes

- 8.1 Unless and to the extent not specified otherwise in this Agreement any dispute (save for any disputes as to matters of law) shall be referred at any appropriate time by any party hereto to a person having appropriate professional qualifications and experience in such matters ("the Expert") appointed jointly by the parties or in default of agreement within 10 Working Days after either party has given to the other a written request requiring the appointment of the expert by the President for the time being of the Royal Institution of Chartered Surveyors or the President of such other professional body as shall be relevant for the nature of the dispute in question (as appropriate) (or on his behalf) on the application of either party and such reference shall be deemed to be submission to arbitration within the

meaning of the Arbitration Act 1996 or any statutory modification or re-enactment thereof for the time being in force.

- 8.2 The Expert shall have at least 10 years post qualification experience in the area of the dispute in question.
- 8.3 The Expert shall act as an expert and not as an arbitrator and the decision of the Expert shall be final and binding upon the parties (except where there is a manifest error and/or on a matter of law) and the following provisions shall apply to the Expert.
- 8.4 The charges and expenses of the Expert shall be borne between the parties in such proportions as the Expert may direct.
- 8.5 The Expert shall give each of the parties an opportunity to make representations to him before making his decision which he shall make available to the other parties on request.
- 8.6 The Expert shall be entitled to obtain opinions from others if he so wishes.
- 8.7 The Expert shall make his decision on valuation matters within the range of any representations made by the parties.
- 8.8 The Expert shall comply with any time limits or other directions agreed by the parties on or before his appointment.
- 8.9 If the Expert is unable or unwilling to accept his appointment or to carry out his functions then either party may apply for a replacement to be appointed in his place and this procedure may be repeated as often as necessary.
- 8.10 The decision of the Expert must be given in writing setting out the reasons behind such decision.
- 8.11 If the parties fail to agree as to the nature of the difference or question then a decision as to the nature of such difference or question shall be referred to a solicitor of at least ten (10) years post qualification experience in the same manner and the same terms as set out in clauses 8.1 to 8.1 inclusive who shall determine which type of professional should be appointed in relation to such matter.

9. Legal Costs

- 9.1 The Second Owner agrees to pay to the Council on the date hereof the sum of £1500 (one thousand five hundred pounds) as a contribution towards the reasonable legal costs incurred by the Council in the negotiation preparation and execution of this Agreement.

10. Notice of Change in Ownership

- 10.1 The Second Owners agree with the Council that until all obligations under this Agreement have been discharged to give the Council notice of any change in ownership of any of their legal interests in the Site and the creation of any new legal interests by them on the Site within 15 Working Days of the occurrence of such change or creation and such notice shall give details of the transferee's full name and registered office (if a company) or usual address together with the area of the Site or relevant unit of occupation by reference to a plan.

11. Mortgagee Consent

11.1 The Mortgagee acknowledges and declares that this Agreement has been entered into by the Second Owner with its consent and that the Site shall be bound by the obligations contained in this Agreement and that the security of the Mortgagee over the Site shall take effect subject to this Agreement PROVIDED THAT the Mortgagee Chargee and any future mortgagee or Chargee of the Site shall have no liability under this Agreement unless it itself caused the breach of the Agreement whilst mortgagee in possession, in which case it too will be bound by the obligations as if it were a person deriving title in the Site from the Second Owner. The Mortgagee, Chargee and any future mortgagee or Chargee of the Site shall in no circumstances be liable for any pre-existing breach. The Mortgagee, Chargee and any future mortgagee or Chargee of the Site shall have no liability after they have discharged the security or disposed of the Site which is subject to their security, whether by sale or otherwise.

THE FIRST SCHEDULE

THE SITE

The registered freehold land at Dark Lane, Newchurch, Rossendale BB4 7UA being part of the land registered at the Land Registry under Title Numbers LAN945840 and LAN9775 and LA953635 and LA953749 for the purposes of identification only shown edged red on the attached Plan

**THE SECOND SCHEDULE
DESCRIPTION OF THE DEVELOPMENT**

Outline application for demolition of all existing buildings and structures and erection of up to 100no. dwellings (Use Class C3) with all matter reserved except for access
Application No: 2016/0563

**THE THIRD SCHEDULE
DRAFT PLANNING PERMISSION**

Rossendale Borough Council

APPLICATION FOR PLANNING PERMISSION

Town and Country Planning Act 1990

Applicant Name: Mr NICK KENNEDY
Notice Recipient: Mr EUAN KELLIE
5300 Lakeside
Cheadle Royal Business Park
Cheadle
SK8 3GP

Part 1 – Particulars of Application:

Date Received: 12th December 2016

Application Number: 2016/0563

First Schedule: Outline application for demolition of all existing buildings and structures and erection of up to 100no. dwellings (Use Class C3) with all matter reserved accept for access

Second Schedule: Rossendale Football Club Dark Lane Newchurch

Following consideration of the application in respect of the proposal outlined above, it was resolved to GRANT PLANNING PERMISSION subject to the following:-

- a) A Section 106 Agreement,
- b) A Memorandum of Understanding; and
- b) The Conditions set out below.

CONDITIONS:

1. An application for approval of the reserved matters (namely the landscaping, layout, scale, and appearance) must be made to the Council before the expiration of three years from the date of this permission and the development hereby permitted must be begun two years from the date of approval of the last of the reserved matters to be approved.

Reason: This condition is required to be imposed by the provisions of the Town and Country Planning (General Development Procedure) Order 2015 and Section 92 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. The development hereby permitted for up to 100 residential units shall be carried out in accordance with the following approved plans unless otherwise required by the conditions below:

Drawing Title	Drawing Number	Received
Site Location Plan		7th January 2019
Indicative Site Plan Proposed in so far as it relates to access only	2361.45.010J	14th January 2019

Reason: To accord with the permission sought and granted.

3. As part of the first reserved matters application full details of the central Local Equipped Area of Play (LEAP) and areas of amenity open space within the site, including details of proposed arrangements for their future management and maintenance shall be provided. The open space areas shall thereafter be provided in accordance with the approved plans prior to the completion of the development and maintained in accordance with the approved management and maintenance details until such time as a private management and maintenance company has been established.

Reason: To ensure that the communal areas serving the development and landscaped areas are maintained to an acceptable standard in the interest of residential / highway safety.

4. Prior to the marketing of the site full details of the marketing documentation/ publications as far as it relates to the status of the central Local Equipped Area of Play (LEAP) shall be submitted to and approved in writing by the Local Planning Authority. This part of the marketing information shall include full details of the approved LEAP including an annotated plan detailing the approved siting. Prior to the occupation of the dwellings sited within 25 metres of the LEAP the future occupants shall be provided with a copy of marketing documentation detailing the approved siting and specification of the LEAP and evidence from the vendor shall be submitted to and approved in writing by the Local Planning Authority that the purchasers for each property within 25 metres of the LEAP are aware of the play space provision. Thereafter the LEAP shall be constructed and completed in accordance with the approved plans prior to the completion of the development.

Reason: To ensure the provision of equipped play space to benefit the future occupiers of the site

5. Any applications for approval of reserved matters shall be accompanied by a Materials Plan detailing all proposed materials to be used on the site (dwelling elevations, roofing materials, windows, heads, sills, doors, garage doors, rainwater goods, downspouts, and all external hard surfaces). The development thereafter shall be carried out in accordance with the approved materials

Reason: The application is in outline only and is not accompanied by detailed plans, and to ensure that the development is appropriate with regard to visual amenity.

6. Any applications for approval of reserved matters shall be accompanied by full details of existing and proposed ground levels and proposed building finished floor levels for the area covered by that application, the details shall include any changes in ground levels, earthworks and excavations (all relative to ground levels adjoining the site). The details shall include cross sections which show the relationship between the proposed dwellings and existing dwellings on Dark Lane and Queensway. The development shall only be carried out in conformity with the approved details.

Reason: The application is in outline only, and in the interests of visual and neighbour amenity.

7. The first reserved matters application shall be accompanied by a Site Investigation report. The investigation shall address the nature, degree and distribution of land contamination on site and shall include an identification and assessment of the risk to receptors focusing primarily on risks to human health and the wider environment. Where unacceptable risks are identified details of proposed remedial works shall be submitted to, and approved in writing by the Local Planning Authority. Such Remedial Works shall be incorporated into the development during the course of construction and completed prior to occupation of the development. Prior to first occupation a Verification Report shall be submitted to, and approved in writing by, the Local Planning Authority. The Verification Report shall validate that all remedial works undertaken on site were completed in accordance with those agreed by the Local Planning Authority.

Reason: To safeguard the health of future occupants of the land in the interests of public health and to safeguard watercourses.

8. The first reserved matters application shall be accompanied by a method statement detailing protection measures for Staghills Wood and for the trees along the boundary with Dark Lane from

accidental incursions by machinery, pollution, dust and debris. The development shall then be undertaken in accordance with the approved measures for the duration of the construction period.

Reason: To conserve and enhance biodiversity and to ensure that any bats are protected.

9. Prior to the felling of Tree T3 an inspection of the cavities of the tree shall be undertaken by a licensed bat ecologist immediately. The results shall be submitted to the Local Planning Authority and T3 shall not be felled until such time that written approval from the Local Planning Authority is given. Felling shall only take place under the supervision of the licensed ecologist.

Reason: To conserve and enhance biodiversity and to ensure that any bats are protected.

10. Prior to the demolition of the buildings/structures a further survey for the presence of bats shall be undertaken and the results of this (together with proposals for mitigation/compensation, if required) shall be submitted to, and approved in writing by, the Local Planning Authority. Any approved measures for the protection of bats shall be implemented in full.

Reason: To conserve and enhance biodiversity and to ensure that any bats are protected.

11. The first reserved matters application shall be accompanied by an updated badger survey of the site and within 30 metres of the southern and eastern boundaries. This shall be undertaken by an experienced ecological consultant and the report shall include full details of the findings and any necessary compensation or mitigation measures. The necessary compensation or mitigation measures shall thereafter be implemented in accordance with the approved details.

Reason: To conserve and enhance biodiversity and to ensure that any badger setts are protected.

12. No removal of or works to any vegetation or works to or demolition of buildings or structures that may be used by breeding birds shall take place during the main bird breeding season 1st March and 31st August inclusive, unless a competent ecologist has undertaken a careful, detailed check of vegetation for active birds' nests immediately before the vegetation is cleared and provided written confirmation that no birds will be harmed and/or that there are appropriate measures in place to protect nesting bird interest on site. Any such written confirmation should be submitted to the Local Planning Authority for approval.

Reason: To conserve and enhance biodiversity and to protect breeding birds.

13. The first reserved matters application shall be accompanied by a method statement detailing the eradication and/or control and/or avoidance measures for rhododendron and cotoneaster. The approved method statement shall be adhered to and implemented in full.

Reason: To conserve and enhance biodiversity.

14. The landscaping of the site shall be designed to incorporate the recommendations for biodiversity opportunities provided within the submitted Ecological Assessment dated January 2017 (points 5.9 to 5.13).

Reason: To conserve and enhance biodiversity.

15. As part of any reserved matters application or prior to the commencement of any development the following details shall be submitted to, and approved in writing by the Local Planning Authority, in consultation with the Lead Local Flood Authority:

A Surface water drainage scheme which as a minimum shall include:

- a) Information about the lifetime of the development design storm period and intensity (1 in 30 & 1 in 100 year + allowance for climate change - see EA advice 'Flood risk assessments: climate

change allowances'), discharge rates; and volumes (both pre and post development), temporary storage facilities, means of access for maintenance and easements where applicable, the methods employed to delay and control surface water discharged from the site, and the measures taken to prevent flooding and pollution of the receiving groundwater and/or surface waters, including watercourses, and details of floor levels in AOD;

- b) The drainage scheme should demonstrate that the surface water run-off will not exceed the existing greenfield rate. The scheme shall subsequently be implemented in accordance with the approved details before the development is completed.
- c) Any works required off-site to ensure adequate discharge of surface water without causing flooding or pollution (which should include refurbishment of existing culverts and headwalls or removal of unused culverts where relevant);
- d) Flood water exceedance routes, both on and off site;
- e) A timetable for implementation, including phasing where applicable;
- f) Details of water quality controls, where applicable.

The scheme shall be fully implemented and subsequently maintained, 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.

Reason: To prevent flooding by ensuring the satisfactory storage of/disposal of surface water from the site. To reduce the risk of flooding to the proposed development, elsewhere and to future users. To ensure that water quality is not detrimentally impacted by the development proposal.

16. No development hereby permitted shall be occupied until the sustainable drainage scheme for the site has been completed in accordance with the submitted details. The sustainable drainage scheme shall be managed and maintained thereafter in accordance with the agreed management and maintenance plan.

Reason: To ensure that the drainage for the proposed development can be adequately maintained. To ensure that there is no flood risk on- or off-the site resulting from the proposed development or resulting from inadequate the maintenance of the sustainable drainage system.

17. No development hereby permitted shall be occupied until details of an appropriate management and maintenance plan for the sustainable drainage system for the lifetime of the development have been submitted which, as a minimum, shall include:

- a) The arrangements for adoption by an appropriate public body or statutory undertaker, management and maintenance by a Residents' Management Company.
- b) Arrangements concerning appropriate funding mechanisms for its on-going maintenance of all elements of the sustainable drainage system (including mechanical components) and will include elements such as:
 - i. on-going inspections relating to performance and asset condition assessments,
 - ii. operation costs for regular maintenance, remedial works and irregular maintenance caused by less sustainable limited life assets or any other arrangements to secure the operation of the surface water drainage scheme throughout its lifetime;
- c) Means of access for maintenance and easements where applicable.

The plan shall be implemented in accordance with the approved details prior to first occupation of any of the approved dwellings, or completion of the development, whichever is the sooner. Thereafter the sustainable drainage system shall be managed and maintained in accordance with the approved details.

Reason: To ensure that appropriate and sufficient funding and maintenance mechanisms are put in place for the lifetime of the development. To reduce the flood risk to the development as a result of inadequate maintenance. To identify the responsible organization / body / company/undertaker for the sustainable drainage system.

18. Foul and surface water shall be drained on separate systems.

Reason: To secure proper drainage and to manage the risk of flooding and pollution.

19. Either with any reserved matters application or prior to the commencement of the development a Construction Method Statement shall be submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period and shall provide for:

- o the parking of vehicles of site operatives and visitors
- o hours of operation (including deliveries) during construction. These shall prevent HGV movements to and from the site between the hours of 8am and 9am and 2.30pm and 3.30pm Monday to Friday during term time to avoid school start and finish times
- o the loading and unloading of plant and materials
- o the storage of plant and materials used in constructing the development
- o the siting of cabins
- o the erection and maintenance of security hoardings including decorative displays and facilities for public viewing, where appropriate
- o wheel washing facilities
- o measures to control the emission of dust and dirt during construction
- o a scheme for recycling/disposing of waste resulting from demolition and construction works

Reason: In the interests of highway safety and to protect the amenities of the nearby residents.

20. Either with any reserved matters application or prior to the commencement of the development full details of the alignment, height and appearance of all fences and walls and gates to be erected on the site, including to the site boundaries along with a timetable for their erection shall have been submitted to and approved in writing by the Local Planning Authority. No dwelling shall be occupied until all fences and walls shown in the approved details to bound its plot have been erected in conformity with the approved details. Non-curtilage boundary treatments shall be completed in accordance with both the approved details and the approved timetable.

Reason: To ensure a visually satisfactory form of development and to provide reasonable standards of privacy to residents.

21. Either as part of the first reserved matters application or prior to the commencement of the development details of the proposed arrangements for future management and maintenance of the proposed streets within the development shall be submitted to and approved by the local planning authority. The streets shall thereafter be maintained in accordance with the approved management and maintenance details until such time as an agreement has been entered into under section 38 of the Highways Act 1980 or a private management and maintenance company has been established.

Reason: To ensure that the estate streets serving the development are maintained to an acceptable standard in the interest of residential/highway safety.

22. Either with the first reserved matters application or prior to the commencement of the development full engineering, drainage, street lighting and constructional details of the streets proposed for adoption shall be submitted to and approved in writing by the Local Planning Authority. These shall include footways on both sides of Dark Lane, traffic calming measures and a pedestrian link from the estate road to the rear of properties in Queensway. The streets shall be constructed in accordance with the approved details before any of the dwellings are first occupied and shall thereafter be satisfactorily retained at all times.

Reason: In the interest of highway safety; to ensure a satisfactory appearance to the highways infrastructure serving the approved development; and to safeguard the visual amenities of the locality and users of the highway.

23. Either with the first reserved matters application or prior to the commencement of the development full details of the proposed site accesses and off-site highway works shall be submitted to, and approved in writing by, the Local Planning Authority. These shall include for upgrades of the nearest bus stops on Stag Hills Road to Quality Bus Stop Standard. The approved measures shall be completed before the dwellings hereby approved are first occupied and shall thereafter be satisfactorily retained at all times.

Reason: In the interests of highway safety.

24. Either with the first reserved matters application or prior to the commencement of the development, details showing a secure cycle store and an electric vehicle charging point provided in conjunction with each of the dwellings, and a vehicle charging point provided in conjunction with every 10 spaces of communal parking area, shall be submitted to, and approved in writing by, the Local Planning Authority. The cycle stores and charging points shall be constructed in the approved positions and in accordance with the approved details before the dwelling/communal parking area to which they relate is first occupied/brought into use and shall thereafter be satisfactorily retained at all times.

Reason: In the interests of securing sustainable development.

25. Either with the first reserved matters application or prior to the commencement of the development, details of the proposed means of surfacing, sealing and draining of the parking areas for the dwellings shall be submitted to, and approved in writing by, the Local Planning Authority. The details shall show the parking areas constructed of a bound porous material. The approved parking spaces shall be constructed in accordance with the approved details, and in the approved positions, before the dwelling to which they relate is first occupied and shall thereafter be retained at all times solely for the parking of vehicles in conjunction with those dwellings.

Reason: In the interests of visual amenity and highway safety.

26. Either with the first reserved matters application or prior to the commencement of the development, a Residential Travel Plan shall be submitted to and approved in writing by, the local planning authority. The approved measures in the agreed Travel Plan shall thereafter be complied with in full.

Reason: In the interests of securing sustainable development.

INFORMATIVES

1. The grant of planning permission will require the applicants to enter into a Section 38/278 Agreement, with Lancashire County Council as Highway Authority. The Highway Authority hereby reserves the right to provide the highway works within the highway associated with this proposal. Provision of the highway works includes design, procurement of the work by contract and supervision of the works. The applicant should be advised to contact Lancashire County Council,

Highway Development Control email - lhscustomerservice@lancashire.gov.uk in the first instance to ascertain the details of such an agreement and the information to be provided.

2. The grant of planning permission does not entitle a developer to obstruct a right of way and any proposed stopping-up or diversion of a right of way should be the subject of an Order under the appropriate Act.

3. Whilst the buildings/structures to be demolished have been assessed as low risk for bats, the applicants are reminded that under the Habitat Regulations it is an offence to disturb, harm or kill bats. If a bat is found during demolition all work should cease immediately and a suitably licensed bat worker employed to assess how best to safeguard the bat(s).

4. Your attention is drawn to the attached comments from the Lancashire Fire and Rescue Service and the Police Architectural Liaison Officer.

Date:

Signed:

Development Control
First Floor
The Business Centre
Futures Park
Bacup
OL13 0BB

Mike Atherton
Planning Manager

Please note that this notice does not relieve the applicant from the need to ensure compliance with the appropriate provisions of the Building Act 1984 and the Building Regulations 2000.

IT IS IMPORTANT THAT YOU SHOULD READ THE NOTES ACCOMPANYING THIS NOTICE

**GUIDANCE NOTES FOR APPLICANTS
WHERE AN APPLICATION HAS BEEN APPROVED**

1. APPLICATIONS FOR PLANNING PERMISSION, APPROVAL OF RESERVED MATTERS, LISTED BUILDING CONSENT OR CONSERVATION AREA CONSENT.

If you object to the Local Planning Authority's decision to grant permission, approval or consent subject to conditions, you may appeal to the Secretary of State for the Environment under Section 78 of the Town and Country Planning Act 1990 within 12 weeks of the date of this notice. With regard to granted applications concerning listed buildings in a conservation area, you may appeal under Section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and Regulation 8 of the Planning (Listed Buildings and Conservation Areas) Regulations 1990.

Please make your appeal using a form from The Planning Inspectorate, Customer Support Unit, Room 3/15 Eagle Wing, Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN (Tel. 0117 372 6372) www.planning-inspectorate.gov.uk. The Secretary of State may allow a longer period for you to give notice of appeal, but will normally only do so if there are special circumstances that excuse the delay in giving notice of appeal. The Secretary of State need not consider an appeal if it appears that the Local Planning Authority could have granted permission for the proposed development only subject to the conditions it imposed, bearing in mind the statutory requirements, the development order, and any directions given under the order. In practice, the Secretary of State does not refuse to consider appeals solely because the Local Planning Authority made its decision on the grounds of a direction that he or she had given.

It may be that planning permission, conservation area consent or listed building consent is granted subject to conditions, whether by the Local Planning Authority or by the Secretary of State for the Environment; but you, as the landowner, claim that the land is no longer fit for reasonably beneficial use in its existing state and you cannot make it fit for such use by carrying out the permitted development. If so, you may serve a purchase notice on Rossendale Borough Council requiring the Council to buy your interest in the land. You can do this under the Town and Country Planning Act 1990 or Section 32 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and Regulation 9 of the Planning (Listed Buildings and Conservation Areas) Regulations 1990 in respect of listed buildings and buildings in conservation areas.

You may claim compensation against the Local Planning Authority if the Secretary of State has refused or granted permission subject to conditions, either on appeal or when the application was referred to her or him.

Compensation is payable in the circumstances set out in:

(a) Section 114 and Part II of Schedule 3 of the Town and Country Planning Act 1990; or (b) Section 27 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and Regulation 9 of the Planning (Listed Buildings and Conservation Areas) Regulations 1990 in respect of listed buildings.

2. ADDITIONAL NOTES ON LISTED BUILDING CONSENT

1 If you wish to modify the development referred to in your application or to vary it in any way, you must make another application.

2 This notice refers only to the grant of listed building consent and does not entitle you to assume that the City Council has granted its consent for all purposes:

- (a) If you have applied for planning permission under Section 57(1) of the Town and Country Planning Act 1990, we will send you a separate notice of decision;
 - (b) We will send you a separate notice about plans you have submitted under the Building Regulations 2000;
 - (c) If the development for which listed building consent has been granted includes putting up a building for which you have to submit plans under the Building Regulations 2000, you should not do any work connected with erecting that building until you have satisfied yourself that you have complied with Section 219 of the Highways Act 1980 or that they do not apply to this building.
- 3 Even if you have gained listed building consent, you must comply with any restrictive covenants that affect the land referred to in the application.

3. APPLICATION FOR CONSENT TO DISPLAY ADVERTISEMENTS

If the applicant is aggrieved by the decision of the Local Planning Authority to grant consent, subject to conditions, he or she may appeal to the Secretary of State for the Environment in accordance with Regulation 17 and Part 3 of Schedule 4 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 within eight weeks of the receipt of this notice. (Appeals must be made on a form which obtainable from The Planning Inspectorate, Customer Support Unit, Room 3/15 Eagle Wing, Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN (Tel. 0117 372 6372) www.planning-inspectorate.gov.uk).

IMPORTANT

Compliance with Planning Conditions

The Council's Planning Enforcement Team is responsible for monitoring the implementation of planning permissions. This includes ensuring that all relevant conditions have been complied with. Effective enforcement is important to:

- tackle breaches of planning control which would otherwise have unacceptable impact on the amenity of the area;
- maintain the integrity of the decision-making process;
- help ensure that public acceptance of the decision-making process is maintained.

Whilst the majority of developers/homeowners do comply with the requirements of planning permissions, there are a number who do not. Where any planning conditions are breached, the Council can take formal enforcement action without further notice. Enforcement action could include such measures as requiring remedial works, cessation of use, or complete demolition and can cause the developer/homeowner unnecessary expense, delay and frustration.

It is important that you read and understand the eight points below to avoid any potential breaches of planning control:

- 1) Please take some time to read through the conditions attached to the planning permission and their particular requirements.
- 2) All planning conditions and timeframes for their submission/implementation must be complied with in full, unless a subsequent application or appeal is made to vary or remove those conditions and is subsequently approved.
- 3) Applications to vary conditions attached to a planning permission can take up to 8 weeks to determine (13 weeks if relating to a major planning application). Appeals normally take much longer.

- 4) Applications for approval of details reserved by planning condition (more commonly referred to as condition discharge applications) can take approximately 8 weeks to determine.
- 5) Applicants should ensure that they submit any applications or appeals in good time, well in advance of any anticipated or scheduled start date for commencement of the development.
- 6) If any amendments are sought to the permission, either prior to commencement of development or during the development, the developer should contact the Planning Department at their earliest opportunity to establish what form of application will be required. Work should not continue until any amendments are approved in writing by the Local Planning Authority.
- 7) Fees are normally payable for applications for approval of details reserved by planning condition (condition discharge applications). The relevant application forms, associated fees and details of how to apply can be found on the Planning Portal: www.planningportal.gov.uk
- 8) Should you have any queries relating to any part of the Planning Process the Council's Duty Planning Officer is available Mondays, Wednesdays and Fridays between the hours of 0900-1200 and can be contacted during those times on 01706 217 777 (Option 4).

Mike Atherton
Planning Manager

THE FOURTH SCHEDULE

The Second Owner's Covenants to the Council

1. The Second Owner covenants with the Council as follows:

The Second Owner shall give notice in writing to the Council and the County Council of their intention to commence the Development fourteen (14) calendar days prior to Commencement of the Development and shall give notice in writing of the date of commencement of construction of each of the 50th and 70th Dwelling on Site within 7 calendar days of each date arising.

2. Payment of the contributions

The Second Owner will pay the Equipped Play Space Contribution, Playing Pitch Contribution and Replacement Pitch Contribution to the Council as follows:

- 2.1 On commencement of the construction of the 50th Dwelling pay 50% of the Equipped Play Space Contribution and 50% of the Playing Pitch Contribution. The Second Owner shall not occupy or cause or permit to be occupied the 50th Dwelling constructed on the Site until such payment has been made.
- 2.2 On commencement of the construction of the 70th Dwelling pay the remaining 50% of the Equipped Play Space Contribution and the remaining 50% of the Playing Pitch Contribution. The Second Owner shall not occupy or cause or permit to be occupied the 70th Dwelling constructed on the Site until such payment has been made.
- 2.3 Within 30 days of the Commencement Date pay the Replacement Pitch Contribution and the Second Owner shall not occupy or cause or allow to be occupied any Dwelling on the Site until the earlier of: (a) such date as the Replacement Pitch is completed and ready for use and (b) the date which is nine (9) months after payment of the Replacement Pitch Contribution has been received.

The Contributions shall be subject to annual review from the date of this Agreement in accordance with the RPIX up to the date of payment after the relevant annual review.

3. On Site Equipped Play Space

The Second Owner will:

- 3.1 Not Commence Development until the following has been submitted to and approved in writing by the Council:
 - (a) the specification for the Equipped Play Space;
 - (b) the date or other means of determining the commencement of the laying out of the Equipped Play Space;
 - (c) the period required to complete the laying out of the Equipped Play Space;
- 3.2 Lay out the On-site Equipped Play Area in accordance with the details required by Paragraph 3.1 of this Fourth Schedule (above) prior to the occupation of any of the Dwellings.
- 3.3 To ensure there is public access to the On-site Equipped Play Area in perpetuity free of charge.

- 3.4 To serve the On-site Equipped Play Area Completion Notice upon the Council upon the substantial completion of the area.
- 3.5 To carry out any reasonable additional works to the On-site Equipped Play Area as may reasonably be required by the Council to ensure compliance with the On-site Equipped Play Area and Woodland Management and Maintenance Plan to enable the Council to issue the On-site Equipped Play Area Final Certificate pursuant to paragraph 3.5 below and such additional works shall be completed to the Council's reasonable satisfaction
- 3.6 Following the issue of the On-site Equipped Play Area Final Certificate the Second Owner shall serve 14 Working Days' prior notice on the Council that the Second Owner will:
 - a) Transfer the On-site Equipped Play Area to a Management Company in accordance with the provisions of Clause 5 of this Fourth Schedule.

4. Woodland

The Owners will:

- 4.1 Not Commence Development until the following has been submitted to and approved in writing by the Council:
 - (a) an ecological enhancement plan for Staghills Wood to create a high value ecological habitat
- 4.2 Undertake the ecological enhancements in accordance with the details required by Paragraph 4.1 of this Fourth Schedule (above) prior to the occupation of any of the Dwellings.

5. Transfer to Management Company

The Owners will:

- 5.1 Not to Commence Development until the Second Owner has submitted and the Council has approved in writing as On-Site Equipped Play Area and Woodland Management and Maintenance Plan.
- 5.2 The On-Site Equipped Play Area and Woodland Management and Maintenance Plan to be submitted and approved pursuant to paragraph 4.1 of this Fourth Schedule above shall include *inter alia*:
 - 5.2.1 details of the proposed identify, structure and proposed establishment (including programme and timetable) of the Management and Maintenance Body including any draft memorandum and articles of association, references and financial information (including proposed sources of funding) and proposed roles and responsibilities regarding the Management and Maintenance of the On Site Equipped Play Area and the Woodland;
 - 5.2.2 Details of the legal warranties and covenants that will be given by the Second Owner to the Management and Maintenance Body, warranting the standard of the On-site Equipped Play Space and Woodland Works;
 - 5.2.3 A programme and timetable for the implementation of each element of the Woodland Management and Maintenance Plan;
 - 5.2.4 (if appropriate having regard to the structure of the Management and Maintenance Body) proposals for the imposition of a covenant in each freehold or leasehold transfer

- of the Dwellings to pay a service charge to the Management and Maintenance Body in order to fund the Management and Maintenance of the On-site Equipped Play Area and the Woodland in accordance with the terms of this Deed;
- 5.2.5 A full specification or specifications and all other details necessary in order to secure the short and long term establishment and Management and Maintenance of each and every part of the On-site Equipped Play Area and the Woodland by the Second Owner and the Management and Maintenance Body;
- 5.2.6 Proposals for regular monitoring and review of the operation of the On-site Equipped Play Area and the Woodland; and
- 5.2.7 Any other matters which the Council reasonable considers necessary in order to secure the short and long term establishment and Management and Maintenance of the On-site Equipped Play Area and the Woodland.
- 5.3 From the Commencement of the Development the Second Owner shall procure the implementation of the On-Site Equipped Play Area and Woodland Management and Maintenance Plan in accordance with the approved programme(s) and timetable(s) contained therein and take all steps required thereunder in accordance with the approved programme(s) and timetable(s) contained therein including all required steps relating to the establishment of the Management and Maintenance Body.
- 5.4 From the date of issue of the appropriate Confirmation(s) by the Councils for each and every part of the On-Site Equipped Play Area and Woodland Works in accordance with the provisions of this Fourth Schedule (above) the Second Owner shall manage and maintain the same.
- 5.5 The Second Owner shall not cause, suffer or permit the Occupation of More than 50 Dwellings until the Management and Maintenance Body has contracted with the Second Owner to Manage and Maintain the same such contract to contain a covenant so as to bind the On-site Equipped Play Space and Woodland into whatsoever hands the same may come to Manage and Maintain the same in perpetuity and not permit them to be used for anything other than public open space and to allow the public reasonable access thereto.
- 5.6 For the purposes of paragraph 5.5 of this Fourth Schedule (above) the Second Owner shall inform the Councils in writing of the completion of any such contract within 5 working days and simultaneously provide the Councils with a copy of the relevant contractual document.
- 5.7 Notwithstanding the provisions of Clause 5.8 of this Deed upon completion of the contract referred to in paragraph 5.5 of this Fourth Schedule (above) the Second Owner shall continue to remain liable under paragraph 5.4 of this of this Fourth Schedule (above) for the Management and Maintenance of the On-site Equipped Play Area and Woodland until such time as the Councils (acting reasonably) confirm in writing that it is reasonable satisfied that the Management and Maintenance Body alone is sufficiently well established and funded to Manage and Maintain the same.
- 5.8 Following the completion of any contract for the Management and Maintenance pursuant to paragraph 5.5 of this Fourth Schedule (above) responsibility for the Management and Maintenance of the On-site Equipped Play Area and Woodland shall not be at any time thereafter be transferred to an Alternative Management and Maintenance Body unless the Council has been given a minimum of 28 days advance written notice of the proposed transfer (such written notice to include full company details, memorandum and articles of association, references and financial information of the Alternative Management Body and

an updated On-site Equipped Play Area and Woodland Management and Maintenance Plan) and the Council (acting reasonably) have given written notification of their approval of the identity of the proposed Alternative Management and Maintenance Body and the updated On-site Equipped Play Area and Woodland Management and Maintenance Plan, such approval or notification that the Alternative Management and Maintenance Body is not approved to be given in one calendar month of receipt of the written notice of the proposed transfer.

- 5.9 In the event the Management Company (which for the purposes of this paragraph shall be deemed to include the Second Owner in the event the Management Company either does not exist) fails to comply with the objectives of the covenant referred to in paragraph 5.2 above the Council may serve notice ("the Default Notice") on the Management Company detailing any works which it considers to be reasonably required in accordance with paragraphs 3.1 of this Fourth Schedule and giving to the Management Company the required prior notice as will be set out in the relevant projected maintenance schedule which shall be at least four (4) weeks and subject always to the provisions of paragraph 5.10 below. If the Management Company fails to comply with the Default Notice by the expiry of the Default Notice then the Council may access the On-site Equipped Play Area with workmen, plant and machinery to carry out the works reasonably required to remedy the default and to recover its reasonable costs of carrying out such works from the Management Company.
- 5.10 In the event that the Management Company does not agree that it has failed to reasonably and properly maintain the On-site Equipped Play Area in accordance with the On-site Equipped Play Area Scheme as stated in the Default Notice or that the works specified in the Default Notice are outside the scope of the projected maintenance schedule in the On-site Equipped Play Area Scheme the Management Company and the Council shall use reasonable endeavours to agree the extent of the outstanding works required to be remedied (if any) within a further two (2) weeks of the expiry of the Default Notice failing which the Management Company and the Council shall refer the matter to an Expert in accordance with clause 8 of this Agreement and for the avoidance of doubt the Council shall not access the On-site Equipped Play Area to remedy the alleged default set out in the Default Notice in accordance with paragraph 5.9 above until the Expert has determined that the Management Company is in default of its obligations in accordance with paragraph 3.1 but such restriction shall be without prejudice to the Council exercising any of its statutory powers.

**THE FIFTH SCHEDULE
AFFORDABLE HOUSING**

The Second Owner hereby covenants with the Council as follows:

Part 1

1. To notify the Council in writing of the Commencement of the Development such notice shall be served on the Borough Council within fourteen (14) days.
2. Prior to Commencement of the Development the Second Owner shall submit to the Council for approval (not to be unreasonably withheld or delayed) a scheme for the provision of 100% Affordable Housing Units in accordance with the Seventh Schedule including by reference to a plan or plans of their location, plot boundaries and layout and including a programme and timetable for the provision of Affordable Housing Units and the 'Market Value Notice';
3. The Council will advise within 28 days of receipt of the Market Value Notice whether it approves the valuations, such approval not to be reasonably withheld or delayed, failing which the valuations provided in accordance with this paragraph shall be deemed to be approved by the Council.
4. Following approval of such scheme, the Second Owner shall lay out the Affordable Housing in full compliance with the approved scheme.
5. The Second Owner covenants with the Council not to Commence Development of any part of the Site unless a notice pursuant to paragraph 1 above has been served on the Council and the scheme referred to in paragraph 2 has been approved and the valuations have been approved or deemed approved in accordance with paragraph 3.

Part 2

A. Construction of the Affordable Housing Units

1. To construct and provide on the Site 100% of the Dwellings in accordance with the Seventh Schedule and as Affordable Housing Units as more particularly set out in this Agreement.
2. The Affordable Housing Units shall be used solely for the purpose of providing Affordable Housing to be occupied by Approved Persons as the sole residence of households in need of Affordable Housing within the Borough in accordance with this Agreement.
3. The Second Owner shall serve notice on the Council within fifteen [15] working days after the completion of construction of the Affordable Housing Units.
4. The Second Owner shall not occupy or allow more than 50% of the Dwellings to be Occupied until all of the Affordable Housing Units have been constructed in accordance with the Planning Permission (and for the avoidance of doubt construction of the Affordable Housing Units shall not be achieved unless all the services are connected and operating insofar as they relate to the Affordable Housing Units and the Affordable Housing Units are accessible by both vehicles and pedestrians) and until they have either:
 - 5.1 been transferred pursuant to paragraph 1 of Part 2B for Occupation by a person or persons who meet the Eligibility Criteria in accordance with Part 2B below: or
 - 5.2 been released from the Affordable Housing Provisions of this Agreement pursuant to paragraphs 8 or 9 of Part 2B; or
 - 5.3 an alternative scheme for providing Affordable Housing for Occupation by persons in Housing Need has been agreed pursuant to paragraph 8 of Part 2B.

B Transfer of the Affordable Housing Units

1. The Second Owner shall use reasonable endeavours to enter into a contract to dispose of a freehold or long leasehold interest in all the Affordable Housing Units to one Affordable Housing Provider unless otherwise agreed in writing with the Council. For the avoidance of doubt, such interest shall comprise the freehold interest by transfer or a term of years certain for at least 99 years by a long lease.
2. The agreement to dispose of any of the Affordable Housing Units to the Affordable Housing Provider must impose (inter alia) the following or equivalent terms:
 - 2.1 a restrictive covenant by the Affordable Housing Provider not to use the relevant Affordable Housing other than for residential purposes for those in Housing Need and in accordance with the terms of this Agreement; and
 - 2.2 that the transfer for a long lease as appropriate of the relevant Affordable Housing Units to the Affordable Housing Provider be free from any ground rent (other than a peppercorn) or encumbrances save for any existing encumbrances and such rights reservations and covenants as are necessary to enable the Owner to develop the Site in accordance with the Planning Permission and shall grant to the relevant Affordable Housing Provider such rights and covenants as are necessary to enable it to complete (and provide) the Affordable Housing Units; and
 - 2.3 the Second Owner shall not require the relevant Affordable Housing Provider to meet any of the Owner's legal or other conveyancing costs.
3. The Second Owner shall provide confirmation to the Council that an agreement of the transfer of the Affordable Housing Units to an Affordable Housing Provider has been entered into within ten [10] Working Days of it being entered into.
4. The Second Owner shall use reasonable endeavours to agree with the Council the identity of the Affordable Housing Provider to which the Affordable Housing Units are to be transferred (and the Council) shall respond to any request for such agreement within twenty one [21] Working Days.

Subject to compliance with paragraph 1 above,

5. In the event the Second Owner has neither:
 - 5.1 not been able to identify an Affordable Housing Provider which is acceptable to the Council in accordance with this Schedule and which is ready willing and able to exchange unconditional contracts on commercially acceptable terms to the Second Owner for the purchase of all of the Affordable Housing Units; or
 - 5.2 has identified an acceptable Affordable Housing Provider which was ready willing and able to exchange unconditional contracts for the purchase of the all of the Affordable Housing Units but such Affordable Housing Provider withdraw(s) from the transaction or otherwise indicates that it is unlikely that it is able or willing to purchase all of the Affordable Housing Units (including where contracts have been exchanged but not completed due to the default of the Affordable Housing Provider) in either case within six (6) months of the date of this Agreement then the provisions of the following paragraph shall apply.
6. Where the preceding paragraph applies, the Second Owner may at any time following the 6-month period referred to notify the Council that they have not exchanged contracts with an Affordable Housing Provider for the disposal of all of the Affordable Housing Units and the Council shall then use reasonable endeavours to identify a suitable Affordable Housing Provider which is ready able and willing to exchange contracts for the purchase of all of the

Affordable Housing Units (or such as remain unsold) and the provisions of the following paragraph shall apply.

7. In the event that either:
 - 7.1 the Council have not been able to identify an Affordable Housing Provider which is ready willing and able to exchange unconditional contracts for the purchase of all of the Affordable Housing Units from the Second Owner; or
 - 7.2 the Council had identified an Affordable Housing Provider which is ready and willing and able to exchange unconditional contracts for the purchase of all of the Affordable Housing Units from the Second Owner but such Affordable Housing Provider withdraw(s) from the transaction or otherwise indicates that it is unlikely that it is able or willing to purchase all of the Affordable Housing Units (including where contracts have been exchanged but not completed due to the default of the Affordable Housing Provider) in either case within six (6) months of the date upon which the Second Owner will notify the Council under paragraph 6 then the provisions of the following paragraph shall apply.
8. Subject to the Second Owner providing written evidence to the Council of Affordable Housing Provider engagement and reasons why the transfer to the Affordable Housing Provider have not moved forward, then the Council and the Second Owner (both acting reasonably) shall seek to agree an appropriate alternative scheme for providing Affordable Housing for Occupation by Approved Persons in Housing Need or as appropriate payment of a commuted sum for the provision of alternative Affordable Housing within the administrative area of the Council.
9. Where the Second Owner and the Council are not able to reach agreement in accordance with paragraph 8 above within one month of the Second Owner submitting such evidence, the Second Owner shall be entitled to dispose of the Affordable Housing Unit as an Market Unit, free from the restrictions within this Agreement, subject to payment of 55% of the Net Sales Proceeds for the Social Rented Properties to the Council as a commuted sum within 5 Working Days of legal completion, for the provision of alternative Affordable Housing within the administrative area of the Council
10. From the date of transfer of the Affordable Housing Units by the Second Owner to an Affordable Housing Provider the provisions of the Fifth and Sixth Schedules shall apply thereto and shall bind the Affordable Housing Units only.
11. The Affordable Housing Units shall be subject to the following:
 - 11.1 In respect of the Social Rented Units:
 - 11.1.1 that the Social Rented Units be available for Social Rent from an Affordable Housing Provider; and
 - 11.1.2 that the Social Rented Units shall be let via B-with-us or any subsequent Choice Best Lettings partnership the Council is a member at the time; and
 - 11.1.3 that the Social Rented Units shall be let to people with a local connection in accordance with Schedule 6 of this Agreement; and
 - 11.1.4 that the Council will have 100% nomination rights for first and subsequent lets; and
 - 11.1.5 that when the Social Rented Units are ready for Occupation or the date of their disposal to an Affordable Housing Provider (whichever is the later) they will be let to persons in Housing Need who meet the Eligibility Criteria; and
 - 11.1.6 The Second Owner agrees with the Council upon disposal of any Social Rented Units to the Affordable Housing Provider to use reasonable endeavours to

procure the execution by the Affordable Housing Provider and delivery to the Council of a Nomination Agreement substantially in the terms set out in Sixth Schedule to this Agreement in respect of the Social Rented Units.

11.1.7 There will be no changes to the Nomination Agreement without written authorisation from the Council. In the event that the Affordable Housing Provider reasonably requires variations to be made to the Nomination Agreement the Council will not unreasonably withhold or delay its decision regarding consent and/or approval of such variations.

12. The obligations in this Fifth Schedule and the Sixth Schedule shall:

- 12.1 not be binding on any Chargee or their successors;
- 12.2 cease to apply to any part or parts of the Property which are transferred or leased by any party referred to in paragraph 12.1 above;
- 12.3 cease to apply to any Dwelling on disposal to a Protected Tenant, their successors in title and or Chargees and their successors in title

13 If at any time after the transfer to a Registered Provider of any part of the Site the Council and the Registered Provider shall agree in writing that the Affordable Housing shall be held and made available on terms other than the tenure and/or mix outlines in the definitions to this Agreement then the tenure and/or mix shall be varied thereby without need for consent or agreement of any other person and this right to agree to vary the tenure and/mix of the Affordable Housing by agreement with the Registered Provider shall be exercisable by the Council more than once in respect of the Site if the Council shall see fit and as often as the Council shall see fit.

THE SIXTH SCHEDULE
ELIGIBILITY CRITERIA FOR THE AFFORDABLE/ SOCIAL RENTED UNITS

1. An Approved Person should meet the following Eligibility Criteria for the Affordable/ Social Rented Units:
 - 1.1 applicants must be deemed to be in Housing Need;
 - 1.2 applicants must have a local connection with the area in which they are seeking to live;
 - 1.3 applicants must be able to demonstrate a housing need for a property type.

2. For the avoidance of doubt local connection means (not in order of priority)
 - 2.1 applicants who have previously had their only or principal home in the Borough for 6 out of the last 12 months or 3 out of the last 5 years; or
 - 2.2 applicants who for a period of 12 months prior to proposed Occupation of an Affordable Housing Unit had their principal place of work within the Borough ; or
 - 2.3 applicants who have immediately prior to the proposed Occupation of an Affordable Housing Unit one or more of their parents children or siblings living within the Borough for a continuous period of five years.

3. For the avoidance of doubt applicants will be assessed on their current housing need.

4. For the avoidance of doubt the Affordable/ Social Rented must be the applicants sole or principle home.

5. Provided Always that notwithstanding the above the Council and Affordable Housing Provider may agree between themselves any amendment to the Eligibility Criteria where the Council shall deem it reasonable to do so and provided further that after such amendments are applied the applicant is able to demonstrate a housing need for a property type.

6. Upon allocation of the Affordable/ Social Rented Units for first lets and all subsequent lets the Affordable Housing Provider will confirm the details of each successful applicant detailing the criteria by which they qualify and the property address allocated to them and send this information to Rossendale Borough Council.

**THE SEVENTH SCHEDULE
AFFORDABLE HOUSING UNITS TENURE SPLIT**

The Affordable Housing Units shall be provided by the Owner in accordance with the Fifth Schedule (5) and the Plan and shall comprise of 100% Affordable Rented

THE EIGHTH SCHEDULE

Second Owner's Covenants to the County Council

The Second Owner covenants with the County Council as follows:

The Second Owner will pay the footpath contributions from site to to the County Council as follows:

- 1.1 On commencement of the construction of the 50th dwelling 50% of the Footpath 203 Contribution and 50% of the Informal Footpath link Contribution. The Second Owner shall not occupy or cause or permit to be occupied the 50th dwelling constructed on the site until such payment has been made.
- 1.2 On commencement of the construction of the 70th dwelling the remaining 50% of the Footpath 203 Contribution and the remaining 50% of the Informal Footpath link Contribution. The Second Owner shall not occupy or cause or permit to be occupied the 70th dwelling constructed on the site until such payment has been made.

The sums shall be subject to annual review from the date of this Agreement in accordance with the RPIX up to the date of payment after annual review.

THE NINETH SCHEDULE

The Council's Covenants

Contributions

1. To use all Contributions received from the Owner under the terms of this Agreement for the purposes specified in this Agreement for which they are to be paid and for no other purpose.
2. The Council covenants with the Second Owner that it will refund all such sums to the person who paid such sums received by the Council under this Agreement which has not been expended in accordance with the provisions in this Agreement (and money shall be deemed to have been expended if the Council has properly 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) within five years of the date of receipt by the Council of such sum together with Interest for the period from the date of payment to the date of actual refund.
3. When requested in writing the Council shall provide written confirmation of the discharge of obligations contained in this Agreement when reasonably satisfied that such obligations have been performed.
4. Following the performance and satisfaction of all the obligations contained in this Agreement, the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges held by the Council in respect of this Agreement.

THE TENTH SCHEDULE
The County Council's Covenants

1. To use the "Footpath from site to Footpath 203" and "Informal Footpath link" Contributions received from the Second Owner under the terms of this Agreement for the purposes specified in this Agreement for which they are to be paid and for no other purpose.
2. The County Council covenants with the Second Owner that it will refund all such sums to the person who paid such sums received by the County Council under this Agreement which has not been expended in accordance with the provisions in this Agreement (and money shall be deemed to have been expended if the County Council has properly 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) within five years of the date of receipt by the County Council of such sum together with Interest for the period from the date of payment to the date of actual refund.
3. When requested in writing the County Council shall provide written confirmation of the discharge of obligations contained in this Agreement when reasonably satisfied that such obligations have been performed.
4. Following the performance and satisfaction of all the obligations contained in this Agreement, the County Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges held by the Council in respect of this Agreement.

IN WITNESS whereof the Council, the County Council and the Second Owner have executed this Agreement as a Deed the date and year first before written.

No. IN SEAL REGISTER
115442

The Common Seal of **ROSSENDALE BOROUGH COUNCIL** was hereunto affixed to this Deed in the presence of:



The Common Seal of **LANCASHIRE COUNTY COUNCIL** was hereunto affixed to this Deed in the presence of:



28068

Executed as a deed by **CULZEAN DEVELOPMENTS LIMITED** acting by a director In the presence of:

Signature of Director: _____
Signature of witness: _____
Name (in BLOCK CAPITALS) _____
Address: _____

Executed as a deed by **LSC FINANCE LIMITED** acting by a director In the presence of:

Signature of Director: _____
Signature of witness: _____
Name (in BLOCK CAPITALS) _____
Address: _____

