

**Dated**

7 February

2020

**AMBER VALLEY BOROUGH COUNCIL**

**- and -**

**DERBYSHIRE COUNTY COUNCIL**

**-and-**

**CLOWES DEVELOPMENTS (UK) LIMITED**

**PLANNING OBLIGATION**

**under Section 106 of the Town and Country Planning Act 1990  
relating to land at Ashbourne Road, Mackworth  
AVA/2018/0178**

THIS DEED is made the 7 day of February 2020

**BETWEEN:-**

1. **THE COUNCIL OF THE BOROUGH OF AMBER VALLEY** of Town Hall, Market Place, Ripley, Derbyshire DES 3BT (the "Council"); and
2. **DERBYSHIRE COUNTY COUNCIL** of County Hall, Matlock, Derbyshire DE4 3AG (the "County Council"); and
3. **CLOWES DEVELOPMENTS (UK) LIMITED** (Company Registration Number 819793) whose registered office is situate at Ednaston Park, Painters Lane, Ednaston, Derbyshire, DE6 3FA (the "Owner") herein called collectively the "**Parties**".

**WHEREAS:**

- (1) The Council is the local planning authority for the purposes of the 1990 Act in respect of the area within which the Land is situated.
- (2) The County Council is the education authority and a local planning authority in respect of the area within which the Land is situated.
- (3) The Owner is the freehold owner of the Land registered with title numbers DY189024 and DY194116.
- (4) The Application has been submitted to the Council for the Development.
- (5) The Council has resolved to grant the Planning Permission provided that the Owner enters into this Agreement.
- (6) The Owner by entering into this Agreement does so to create planning obligations in respect of the Land in favour of the Council and the County Council.

**NOW THIS DEED WITNESSES** as follows:

1. In this Agreement the following words and expressions shall where the context so requires or admits have the following meaning:

**1.1 Definitions:**

**"Affordable Housing"**

means:

- (a) housing provided to eligible households whose needs are not met by the market and eligibility is determined with regard to local incomes and local house prices in accordance with the National Planning Policy Framework 2018 (or any future guidance or initiative that replaces or supplements it); or
- (b) housing which can be accessed by households with an income that is on or below the median income of all households within the administrative area of the Council subject to the additional requirement that households who fall into this category should not spend over 25% of their income on housing;

**"Affordable Housing  
Commuted Sum"**

means the sum of £34,647.00 (thirty four thousand six hundred and forty seven pounds) to be applied by the Council towards the provision of Affordable Housing in the administrative district of the Council in lieu of part provision of Affordable Dwellings on the Application Site;

**"Affordable Housing Scheme"** means a scheme relating to the provision of the Affordable Dwellings on the Land which has been approved by the Council and providing details of the following:

1. the location of the Affordable Dwellings on the Land by reference to a plan;
2. the house types, mix (which will comprise 1, 2 and 3 bed units only (unless otherwise agreed with the Council) and specification of each Affordable Dwelling;
4. the layout of each Affordable Dwelling including the number of habitable rooms proposed for each Affordable Dwelling, together with the gross internal floorspace of each of the Affordable Dwelling;
5. how the Affordable Dwellings will be allocated to Eligible Persons including details of the order or priority in which Eligible Persons will be allocated that Affordable Dwelling and the qualifying criteria potential occupants must meet in order to qualify as an Eligible Person,

PROVIDED THAT the Affordable Housing Scheme may (at the absolute discretion of the Council) be varied by agreement between the Owner and the Council;

**"Affordable Dwellings"** means six (6) of the Dwellings (unless otherwise agreed in writing by the Council) to be provided as Affordable Housing comprising Intermediate Housing (unless otherwise agreed

in writing with the Council) and **"Affordable Dwelling"** shall be construed accordingly;

**"Application"**

means the application for planning permission for the Development made by or on behalf of the Owner and now under the Council's reference AVA/2018/0178;

**"Commencement of Development"**

means beginning to carry out of a "material operation" as defined by the provisions of Section 56(4) of the 1990 Act pursuant to the Planning Permission (excluding any operations in connection with the construction and erection of the MOT garage) SAVE FOR operations in connection with any work of or associated with demolition site clearance, remediation works, environmental investigations, site archaeological investigation and soil surveys, diversion and laying of services, erection of contractors work compound, erection of fencing to site boundary or other means of enclosure, the temporary display of site notices or advertisements and **"Commence Development"** and **"Commence"** and **"Commenced"** shall be construed accordingly;

**"Completed"**

means the stage when a Dwelling can be used for the purpose and operate in the manner for which it was designed and fitted out so that it is available for Occupation;



**"Development"**

means the development of the Land pursuant to the Planning Permission by the demolition of single dwelling, existing cafe, petrol station and MOT service garage, construction of new MOT service garage and 22 new dwellings;

**"Dwellings"**

means all dwellings to be constructed on the Land as part of the Development pursuant to the Planning Permission to include the Market Dwellings and the Affordable Dwellings and **"Dwelling"** shall be construed accordingly;

**"Education Sum"**

means the sum of £115,752.45 pounds (One Hundred Fifteen Thousand Seven Hundred Fifty Two Pounds and Forty Five Pence);

**"Eligible Person"**

means a person and their household who are in need of Affordable Housing as may be further defined by the Affordable Housing Scheme and **"Eligible Persons"** shall be construed accordingly;

**"Homes and Communities Agency"**

means the Homes and Communities Agency (now trading as Homes England) or any successor to its function within the meaning of Part I of the Housing and Regeneration Act 2008 (or as redefined by any amendment, replacement or re-enactment of such Act);

**"Interest"**

means interest at 4 per cent above the base lending rate of the Bank of England from time to time;

**"Intermediate Housing"**

means homes for sale and rent provided at a cost above social rent but below market levels subject to the criteria as set out in the definition of Affordable Housing to include shared equity (shared ownership and equity loans) starter homes for first time buyers other low cost homes for sale and intermediate rent and **"Intermediate Housing Unit(s)"** shall be construed accordingly;

**"Land"**

means the land at Ashbourne Road, Mackworth shown for the purposes of identification only edged red on the Plan

**"Market Dwelling"**

means any Dwelling constructed on the Land as part of the Development for sale on the open market which is not an Affordable Dwelling and **"Market Dwellings"** shall be construed accordingly;

**"Market Value"**

means a figure to be agreed between the Owner and the Council calculated having regard to the estimated amount for which a relevant Dwelling should exchange on the date of valuation between a willing buyer and a willing seller in an arm's length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion and based upon evidence of sales of market dwellings of a similar type / size to those on the Land;

**"Occupation"**

means occupation for the purposes permitted by the Planning 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 and **"Occupy"** and **"Occupied"** shall be construed accordingly;

**"Plan"**

means the plan marked "Plan" annexed hereto;

**"Planning Permission"**

means a planning permission to be granted by the Council pursuant to the Application;

**"Public Open Space Contribution"**

means sum of £39,068 pounds (Thirty Nine Thousand and Sixty Seven Pounds) to be applied to Kirk Langley Parish Council's - GB Barrington Playing fields;

**"Registered Provider"**

means a registered provider as defined by and registered under the provisions of the Housing and Regeneration Act 2008 or any company or other body as may be proposed by the Owner and approved by the Council;

**"Section 73 Permission"**

means a planning permission granted pursuant to an application under Section 73 of the 1990 Act and made in respect of the Development and the Planning Permission;

**"Sub-Market Price"**

means the price equal to the Market Value of a Market Dwelling less a discount equal to 20% of the Market Value at the date an Affordable Dwelling is transferred to an Eligible Person;

**"Utilities"**

means gas water electricity telephone foul



drainage surface water drainage (including such legal rights as the County Council considers necessary for the discharge of surface water over adjoining land) and ducting for broadband with appropriate rights to use all relevant delivery infrastructure;

**"Working Day"**

means a day that is not a Saturday or Sunday, Christmas Day, Good Friday a bank holiday; and

**"1990 Act"**

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

**1.2 Where the context so requires:**

1.2.1 clause and paragraph headings and any contents list are for reference only and shall not affect the construction of this Agreement;

1.2.2 where more than one person is included in the expressions "the Council" and "the County Council" and "the Owner", agreements and obligations expressed to be made or assumed by such party are made or assumed and are to be construed as made or assumed by all such persons jointly and each of them severally;

1.2.3 any covenant by the Owner not to do any act or thing shall be deemed to include a covenant not to cause permit or suffer the doing of that act or thing;

1.2.4 the masculine and the feminine and neuter gender include each of the other genders and the singular includes the plural and vice versa;

1.2.5 a reference to a clause, sub-clause, schedule, paragraph or recital (or any part of them) shall (unless the context otherwise requires) be references

to a clause, sub- clause, schedule, paragraph or recital contained in this Agreement; and

1.2.6 unless this Agreement states otherwise, any reference to any legislation (whether specifically named or not) includes any modification, extension, amendment or re- enactment of that legislation for the time being in force and all instruments, orders, notices, regulations, directions, byelaws, permissions and plans for the time being made, issued or given under that legislation or deriving validity from it.

## **2. STATUTORY PROVISIONS**

### **2.1 This Agreement:**

2.1.1 is made pursuant to the provisions of Section 106 of the 1990 Act and to the extent that any of the obligations contained in this Agreement are not planning obligations within the meaning of the 1990 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 powers so enabling;

2.1.2 is a planning obligation for the purposes of the Section 106 of the 1990 Act;

2.1.3 is made by the Owner to bind the Owner and the Land;

2.1.4 shall be enforceable by the Council and County Council as local authorities; and

2.1.5 is executed by the Parties as a deed.

2.2 In this Agreement the expression "*Owner*" shall where the context so admits include and bind the Owner's successors in title and assigns and those deriving title from the Owner.

## **3 COVENANTS**

3.1 The Owner covenants with the Council that it will comply with the obligations contained in Schedules 1, 2 and 4.

3.2 The Owner covenants with the County Council that it will comply with the obligations contained in Schedules 1 and 3.

3.3 This Agreement takes effect from the date hereof SAVE THAT (except where otherwise specifically stated in this Agreement) the covenants contained in this Agreement on behalf of the Owner are conditional upon the issue by the Council of the Planning Permission and the Commencement of Development.

3.4 The Council covenants with the Owner to comply with the covenants contained in Schedule 5; and

3.5 The County Council covenants with the Owner to comply with the covenants contained in Schedule 6.

#### **4 AGREEMENTS AND DECLARATIONS**

4.1 No person shall be liable for any breach of the restrictions and obligations contained in this Agreement after that person has parted with all interest in the Land or the part in respect of which the breach occurs but without prejudice to any liability for any breach committed prior to such parting.

4.2 No owner of an interest in, or an occupier of, any part of the Land who occupies that part as their residence shall be treated as a person deriving title from the Owner for the purposes of Section 106(3) of the 1990 Act.

4.3 No person shall be liable for breach of the covenants contained in this Agreement if he or it shall be an occupier or tenant or a purchaser of a site or sites required for statutory undertaker infrastructure purposes in relation to the Development.

4.4 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Agreement.



4.5 In this Agreement the expressions "*the Council*" and "*the County Council*" shall include their respective successors as local planning authority or other public authority.

4.6 If the Planning Permission shall expire before the Commencement of Development or shall at any time be modified (without the consent of the Owners), quashed or revoked this Agreement shall terminate and cease to have effect.

4.7 Nothing in this Agreement shall be construed as restricting the exercise by the Council or County Council of any power or discretion exercisable by it under the 1990 Act or under any other Act of Parliament or as prejudicing or affecting the Council's or County Council's rights, powers, duties and obligations in any capacity as a local or public authority.

4.8 Wherever this Agreement requires the approval, agreement, determination or consent of the Council or the County Council or the Owner such approval, agreement, determination or consent must be in writing and (save where provided otherwise) shall not to be unreasonably withheld or delayed.

4.9 No person who is not a party to this Agreement may enforce any terms hereof pursuant to the Contracts (Right of Third Parties) Act 1999.

## **5 CHANGE IN OWNERSHIP**

5.1 The Owner agrees with the Council and the County Council to give the Council and the County Council immediate written notice of any change in ownership in any of its interests in the Land occurring before all the obligations under the Agreement have been discharged with such notice giving details of the transferee's full name and address (and address of the registered office if applicable) together with the area of the Land by reference to a plan PROVIDED THAT the provisions of this Clause will not apply to individual disposals of Dwellings or disposals to statutory undertakers.

## **6 INDEXATION**

6.1 The Affordable Housing Commuted Sum, the Education Contribution and the Public Open Space Contribution shall be increased by the amount by which the Index for the month preceding the date on which each such contribution is paid exceeds the Base Figure where:

6.1.1 "*Index*" means the Construction Materials Price Index published by the Department for Business Innovation and Skills for the Education Contribution and the All Items Index of Retail Prices for the Public Open Space Contribution and the Affordable Housing Commuted Sum or during any period when no such index exists the index which replaces it or is the nearest equivalent to it and;

6.1.2 "*Base Figure*" is the Index Figure at the date of the grant of Planning Permission

PROVIDED THAT if the basis of computation of the Index is changed or if publication of the Index is permanently discontinued an alternative method of fixing the sum of the contribution may be agreed between the Council and the Owner to ensure as nearly as possible that such shall fluctuate (but in an upwards direction only) in accordance with the general level of retail prices and any dispute as to such method shall be determined in accordance with the provisions of clause 10.

## **7 INTEREST**

7.1 If any payment due to the Council or the County Council under this Agreement is not paid by the date it is due Interest will be payable from the due date to the date of payment.

## **8 REGISTRATION**

8.1 This Agreement shall be registered by the Council as a local land charge in the Register of Local Land Charges maintained by the Council.



## **9 NOTICES**

9.1 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 special or recorded delivery post to the party to be delivered at its address herein specified or such other address as may from time to time be notified for the purpose by notice served under this Agreement specifically referring to this clause and the intention of the notice to notify an address thereunder.

9.2 Notices or other written communication to be served on the County Council in respect of education matters should be addressed to the Executive Director of Children's Services.

## **10 DISPUTE RESOLUTION**

10.1 In the event of any dispute or difference arising between any of the parties to this Agreement in respect of any matter contained in this Agreement which cannot be resolved by prior agreement between the parties such dispute or difference shall be referred to an independent and suitable person (the "Expert") holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in England with experience of resolving such matters as may be in dispute and such person shall act as an expert whose decision shall be final and binding on the parties in the absence of manifest error and any costs shall be payable by the parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the parties in equal shares.

10.2 In the absence of an agreement as to the appointment or suitability of the person to be appointed pursuant to Clause 10.1 or as to the appropriateness of the professional body then such question may be referred by either party to the president for the time being of the Law Society for him to appoint a solicitor to

determine the dispute such solicitor acting as an expert and his decision shall be final and binding on all parties in the absence of manifest error and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties in equal shares.

10.3 Any Expert howsoever appointed shall be subject to the express requirement that a decision was reached and communicated to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than 28 (twenty-eight) Working Days after the conclusion of any hearing that takes place or 28 (twenty-eight) Working Days after he has received any file or written representation.

10.4 The Expert shall be required to give notice to each of the said parties requiring them to submit to him within 10 (ten) Working Days of notification of his appointment written submissions and supporting material and the other party will be entitled to make a counter submission within a further 10 (ten) Working Days.

## **11 SECTION 73**

11.1 Subject to the proviso to this clause if any Section 73 Permission is granted after the date of this Agreement:

11.1.1 the obligations in this Agreement shall relate to and bind such Section 73 Permission; and

11.1.2 the definitions of Application, Development and Planning Permission (other than for the purposes of clause 1) shall be construed to include reference to (respectively) the planning application for the Section 73 Permission the development permitted by the Section 73 Permission and the Section 73 Permission itself;

### **PROVIDED THAT:**

11.2 to the extent that any of the obligations in this Agreement have already been discharged at the date that a Section 73 Permission is granted they shall remain discharged for the purposes of the Section 73 Permission; and

11.3 the Council or the Owners reserve the right to insist upon the completion of a separate planning obligation by deed of agreement in connection with any Section 73 Permission if either party (acting reasonably) considers it desirable to do so.

## **SCHEDULE 1 - GENERAL COVENANTS**

1. In addition to the specific covenants set out in the following schedules the Owner covenants that it will:

- 1.1 pay to the Council upon the Commencement of Development an amount for the monitoring of this Agreement in the sum of £100.00 (One Hundred Pounds);
- 1.2 pay to the Council on completion of this Agreement an amount for its legal costs properly and reasonably incurred in the negotiation, preparation, execution and registration of this Agreement; and
- 1.3 pay to the County Council on completion of this Agreement an amount for its legal costs properly and reasonably incurred in the negotiation, preparation, execution and registration of this Agreement.

## **SCHEDULE 2 - AFFORDABLE HOUSING**

The Owner hereby covenants with the Council as follows:

- 1. No part of the Development shall be Commenced unless and until an Affordable Housing Scheme has been submitted to and approved by the Council (such approval not to be unreasonably withheld or delayed).
- 2. The Owner shall construct the Affordable Dwellings in accordance with the Planning Permission and the terms of the Approved Affordable Housing Scheme.
- 3. No Dwelling shall be Occupied unless and until the Owner has paid to the Council the Affordable Housing Commuted Sum.
- 4. The Affordable Dwellings shall be Completed before the Occupation of 50% of the Market Dwellings.
- 5. The Affordable Dwellings shall not be used for any purpose other than Affordable Housing and in accordance with the Affordable Housing Scheme (unless otherwise specified in this Agreement).



6 No Market Dwelling shall be Occupied unless and until the Owner has transferred the Affordable Dwellings to a Registered Provider, such transfer to include the following:

6.1 the grant by the Owner to the Registered Provider of all rights of access and passage of services and other rights of entry reasonably necessary for the purposes of the Affordable Dwellings;

6.2 a reservation of all rights of access and passage of services and rights of entry reasonably necessary for the purposes of the Affordable Dwellings; .  
and

6.3 a covenant by the Registered Provider with the Owner not to use or dispose of the Affordable Dwellings otherwise than in accordance with the provisions of this Schedule

PROVIDED THAT In the event that the Registered Provider declines or is unable to accept the transfer of the Affordable Dwellings on the terms of this Agreement THEN no more than 50% of the Market Dwelling shall be Occupied unless and until all the Affordable Dwellings shall have been sold and transferred at the Sub-Market Price.

7. The covenants in this Schedule shall not be binding upon:

7.1 a tenant of an individual Affordable Dwelling exercising a right to buy or right to acquire pursuant to any statutory right to acquire or any purchaser from or successor acquiring from such tenant;

7.2 any mortgagee, receiver, manager, administrative receiver or chargee (or howsoever appointed) in possession exercising a power of sale over any of the individual Affordable Dwelling under their mortgage or any person appointed under any security documentation to enable such to realise its security or its successors in title or any person deriving title from therefrom ;  
or

7.3 any person who has acquired an Affordable Dwelling by staircasing up to 100% equity in respect of the relevant Affordable Dwelling including any mortgagee of any such Affordable Dwelling.



### **SCHEDULE 3 - EDUCATION MATTERS**

1. The Owner hereby covenants with the County Council to pay the Education Contribution to the County Council on Commencement of Development.
2. No part of the Development shall be Commenced unless and until the Education Contribution has been paid to the County Council.
3. The Education Contribution shall be used as follows:
  - £45,596.04 for the provision of 4 primary places at Kirk Langley CE Voluntary Controlled Primary School towards Project A: 3 classroom extension and internal alterations; and
  - £70,156.41 for the provision of 3 secondary places (£51,528.51) and 1 post 16 place (£18,627.90) at The Ecclesbourne School towards Project C: additional teaching and support space.

### **SCHEDULE 4 - PUBLIC OPEN SPACE**

1. No Dwelling shall be Occupied unless and until the Owner has paid to the Council the Public Open Space Contribution.
2. The Public Open Space Contribution shall be used by the Kirk Langley Parish Council (The Parish Council) for the future maintenance of the Barrington Playing Fields. The Parish Council will not apply the Public Open Space Contribution for any other purpose and the Parish Council shall (on the reasonable request of the payee or the payee's nominee) provide evidence that the monies have been so applied.

### **SCHEDULE 5 - COUNCIL'S COVENANTS**

The Council covenants with the Owner as follows:

1. To use all sums received under the terms of this Agreement for the purposes specified in this Agreement for which they are to be paid and not to expend the sums for any other purposes and the Council shall (on the reasonable request of the payer or the payer's nominee) provide evidence that the monies have been so applied.

2 To pay to the Owner (or the payer if not the Owner) such amount of any payment made to the Council under this Agreement which has not been expended or allocated in accordance with the provisions of this Agreement within five years of the date of receipt, or if applicable the date of receipt of the final instalment, by the Council of such payment.

3. That it will following receipt of the written request of the Owner at any time or times after any of the obligations in this Agreement have been discharged issue written confirmation thereof as soon as reasonably practicable or if the Planning Permission has expired or been quashed or revoked will cancel all relevant entries in the Register of Local Land Charges as soon as reasonably practicable.

#### **SCHEDULE 6 - COUNTY COUNCIL'S COVENANTS**

The County Council covenants with the Owner as follows:

1. To use all sums received under the terms of this Agreement for the purposes specified in this Agreement for which they are to be paid and not to expend the sums for any other purposes EXCEPT THAT it is agreed that the County Council may use public funds to carry out the purposes specified in this Agreement in advance of receiving the sums from the Owner and may then apply the sums received towards offsetting the amount spent from public funds and the County Council shall (on the reasonable request of the payer or the payer's nominee) provide evidence that the monies have been so applied.

2. To pay to the Owner (or the payer if not the Owner) such amount of any payment made to the County Council under this Agreement which has not been expended or allocated in accordance with the provisions of this Agreement within five years of the date of receipt, or if applicable the date of receipt of the final instalment, by the County Council of such payment .

IN WITNESS whereof the parties hereto have hereunto set their hands and seals the day and year first before written

The Common Seal of

AMBER VALLEY BOROUGH COUNCIL

was hereunto affixed in the presence of:

[Redacted]

Mayor

Authorised Officer

[Redacted]

Executive Director (Resources)

The Common Seal of

DERBYSHIRE COUNTY COUNCIL

was hereunto affixed in the presence of:

[Redacted]

Director of Legal Services

Number in Seal  
Book

2020/11/5

EXECUTED as a DEED by

CLOWES DEVELOPMENTS (UK) LIMITED

acting by a Director:

[Redacted]

in the presence of:

Signature of witness

[Redacted]

Name:

[Redacted]

Address:

[Redacted]



"Plan"



