

Note to Reader

The following is an outline Heads Of Terms, written as a S106, for the 26 apartment development at 113 Mill Street, Leek.

In summary, Barrington Developments own the site, with a mortgage from the Lancashire Mortgage Corporation Ltd

Barrington Developments are the Developer, and have sold all 26 apartments off plan to a Housing Association (Adactus Housing Ltd) and will release the units to Adactus Housing on their completion.

Adactus Housing (Nicolette Cullen) have been in liaison with Michelle Costello at Staffordshire Moorlands council, as Adactus want all 26 units available as Social Rent properties only.

As this entire site is being sold and then used as a socially rented housing, all concerned are asking that the site is exempt from any; Open Space Contribution, Education Contribution or Highways Contribution

The draft S106 follows below ...

Any questions, contact;

David Tresadern

**Construction Director
Barrington Developments Ltd,
Grosvenor House,
20 Barrington Road,
Altrincham,
Cheshire,
WA14 1HB**

Mobile 07866 587 824

DATED

2015

STAFFORDSHIRE MOORLANDS DISTRICT COUNCIL

and

LANCASHIRE MORTGAGE CORPORATION

and

BARRINGTON DEVELOPMENTS LIMITED

and

ADACTUS HOUSING ASSOCIATION LIMITED

Draft 1

AGREEMENT AND PLANNING OBLIGATION

Under Section 106 of the Town and Country
Planning Act 1990 relating to Mill Street, Leek

THIS AGREEMENT (executed as a Deed) is made
the _____ day of _____ Two thousand
and Fifteen

BETWEEN

1 STAFFORDSHIRE MOORLANDS DISTRICT COUNCIL

of Moorlands House, Stockwell Street, LEEK, Staffs ST136HQ
("the Council") and

2 BARRINGTON DEVELOPMENTS LIMITED (Company Registration
Number

07771653) whose registered office is situate at Barrington
Developments Ltd, Grosvenor House, 20 Barrington Road,
Altrincham, Cheshire, WA14 1HB ("the Developer")

3 ADACTUS HOUSING ASSOCIATION LTD (Company
Registration Number

IP16668R) whose registered office is Turner House, 56 King St,
Leigh,
Lancashire WN7 4LJ ("the Registered Social Landlord")

4 LANCASHIRE MORTGAGE CORPORATION

Lake View, Lakeside, Cheadle, SK8 3GW ("the Mortgage
Company")

WHEREAS

1. The Council is the Local Planning Authority for the purposes of
the Act for the area within which the Land is situated and by whom the
obligations in this Agreement are enforceable

2. The Owners warrant that the Land is vested in them for an estate
in fee simple in possession and the Owners covenants that there are no
other parties with a legal interest in the Land other than the Developer and
the Registered Social Landlord that should be a party to this Agreement
and be bound by its terms

3. The Planning Permission in respect of the Development on the
Land was granted by Staffordshire Moorlands Council subject to a
condition requiring the execution of this Agreement to provide for the
retention of the Development as affordable housing in perpetuity and for
the contribution of a financial sum in lieu of on site public open space

4. The Local Government (Structural Changes)(Transfer of Functions
Property Rights and Liabilities) Regulations 2008 provide for the functions
of Staffordshire Moorlands Council as local planning authority to become
the function of the Council from 1 April 2009

5 This Agreement shall be binding on the Land and on the Owners and on the Developer and on the Registered Social Landlord

NOW THIS DEED is made in pursuance of Section 106 of the Act and is a planning obligation for the purposes of the said Section 106 and insofar as any of the covenants and obligations contained in this Agreement are not planning obligations within the meaning of the Act they are entered into pursuant to Section 111 of the Local Government Act 1972 Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 and all other enabling powers.

IT IS HEREBY AGREED AND DECLARED as follows:-

1. **IN** this Deed the following words and expressions shall have the meanings respectively assigned to them unless the context requires otherwise:-

“Act”

the Town and Country Planning Act 1990 (as amended)

“the Socially Rented Dwellings”

All 26 dwellings at this development (100% of the development) are to be available as Socially Rented Dwellings only, and rented out by the Registered Social Landlord, and not for sale on the open market, or for sale at an affordable price

“Public Open Space Contribution”

subject to any increase in accordance with Clause 16 hereof, the sum of £0 (Zero) towards improvements to open space within a radius of one kilometre from the Land acquisition of the freehold reversion in it

“Education Contribution”

subject to any increase in accordance with Clause 16 hereof, the sum of £0 (Zero) education contributions within a radius of one kilometre from the Land acquisition of the freehold reversion in it

“Highways Contribution”

subject to any increase in accordance with Clause 16 hereof, the sum of £0 (Zero) highways contributions within a radius of one kilometre from the Land acquisition of the freehold reversion in it

“Approved Person”

a person who has reasonably demonstrated to the Council that having regard to house prices within Staffordshire Moorlands

Borough Council Area he/she is unable to afford market housing based on his/her earned income and any available capital and on the earned income and available capital of any person living with him or her which it would be reasonable to take into account and that he/she needs to live in Leek Town by reason of permanent employment in Leek Town or by reason of a Leek Town Family Connection

or

if no such person can reasonably be found then a person who has reasonably demonstrated to the Council that having regard to house prices within the Staffordshire Moorlands Council Area he/she is unable to afford market housing based on his/her earned income and any available capital and on the earned income and available capital of any person living with him or her which it would be reasonable to take into account and that he/she needs to live in the Staffordshire Moorlands Council Area by reason of permanent employment in the Former Leek Borough Council Area or by reason of a Leek Borough Family Connection

or

if no such person can reasonably be found then a person who has reasonably demonstrated to the Council that having regard to house prices within the Staffordshire Moorlands Council Area he/she is unable to afford market housing based on his/her earned income and any available capital and on the earned income and available capital of any person living with him or her which it would be reasonable to take into account and that he/she needs to live in the Borough of Leek by reason of permanent employment in that Borough or by reason of a Borough Family Connection.

or

if no such person can reasonably be found then a person who has reasonably demonstrated to the Council that he/she needs to live in Leek Town by reason of permanent employment in Leek Town or by reason of a Leek Town Family Connection

or

if no such person can reasonably be found then a person who has reasonably demonstrated to the Council that he/she needs to live in the Staffordshire Moorlands Council Area by reason of permanent employment in the Leek Borough Council Area or by reason of a Leek Borough family connection

or

if no such person can be found, then a person who has reasonably demonstrated to the Council that he/she needs to live in the Borough of Cheshire East by reason of permanent employment in that Borough or by reason of a Borough Family Connection.

or

if no such person can be found, then any person

“Borough of Staffordshire Moorlands”

the administrative area of the Council

“Borough Family Connection”

a person who has a father, mother, stepfather, stepmother, son, daughter, stepson, stepdaughter, grandmother, grandfather, grandson or granddaughter brother or sister who is ordinarily resident in the Borough of Cheshire East

“Commencement of Development”

the carrying out as part of the Development of a material operation (within the meaning ascribed in Section 56 of the Act) other than

- (a) an operation in connection with site clearance
- (b) demolition
- (c) archaeological investigation
- (d) investigation for the purposes of assessing contamination
- (e) remedial action in respect of contamination
- (f) diversion of and laying of services, and
- (g) the erection of means of enclosure for the purpose of site security and/or the display of advertisements

“Leek Town”

that part of the Borough of Cheshire East shown edged red on Plan 2

“Leek Town Family Connection”

a person who has a father, mother, stepfather, stepmother, son, daughter, stepson, stepdaughter, grandmother, grandfather, grandson or granddaughter brother or sister who is ordinarily resident in Leek Town

“Leek Borough Family Connection”

a person who has a father, mother, stepfather, stepmother, son, daughter, stepson, stepdaughter, grandmother, grandfather, grandson or granddaughter brother or sister who is ordinarily resident in the Staffordshire Moorlands Council Area

“Development”

use of the Land in pursuance of and as permitted by the Planning Permission

“Staffordshire Moorlands Council Area”

the administrative area of the former Leek Borough Council

“Index”

the “Retail Prices Index (RPI) All Items” index published from time to time by the Office of National Statistics or such other body from time to time replacing them

“Interest”

interest at 4 per cent above the base lending rate of the Royal Bank of Scotland PLC from time to time

“Land”

land situated at Mill Street Leek and shown edged red on Plan 1 and Plan 2 and registered under freehold title numbers SF534404 and SF534291 at H M Land Registry

“Obligations”

the covenants and obligations on the part of the Owners Developer and Registered Social Landlord contained in Schedules 2 and 3

“Only or Principal Home”

a dwelling occupied by an individual for more than nine months in any one calendar year

“Planning Permission”

planning permission granted

“Practical Completion”

The issue of a certificate of practical completion by the Owners’ or the Developer’s architect [as the case may be]

2. **THE** Owners Developer and Registered Social Landlord covenant with the Council to perform the restrictions covenants and the obligations in this Agreement
3. **THE** Owners Developer and Registered Social Landlord covenant that if the Development is undertaken it will be carried out in conformity with the Planning Permission and that the Land and all buildings or erections to be made thereon under the Planning Permission shall be

used in strict accordance with the Planning Permission and not otherwise

4. **THIS** Agreement is a planning obligation made pursuant to Section 106 of the Act and all other enabling powers with the intent that the obligations herein shall run with the land
5. **THE** expressions "the Council" "the Owners" "the Developer" and "the Registered Social Landlord" shall include their successors in title and assigns
6. **NO** person shall be liable for breach of a restriction covenant or obligation contained in this Agreement after they shall have parted with all interest in the Land or the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest
7. **SAVE** as regards Clauses 8 to 13 inclusive which shall have immediate effect the restrictions covenants and obligations contained in this Agreement shall take effect on the Commencement of Development
8. **IF** the Planning Permission shall expire before the Commencement of Development or shall at any time be revoked this Agreement shall forthwith determine and cease to have effect and the Council will remove any registration relating to it from the register of Local Land Charges
9. **ANY** notice decision direction approval authority permission or consent required to be given or served hereunder shall be sufficiently served on any of the parties hereto if forwarded by registered or recorded delivery post to it at (if a company or corporation) its registered or principal office or (if an individual) at his last known place or abode or business of one of them and a notice so sent by post shall be deemed to be given at the time when it ought in due course of post to be delivered at the address to which it is sent
10. **THE** Owners Developer and Registered Social Landlord agree to pay on completion of this Agreement the Council's reasonable costs incurred in preparing this Agreement
11. **NO** provision of this Agreement is intended to create any rights or benefits enforceable by third parties under the Contracts (Rights of Third Parties) Act 1999
12. **THIS** Agreement shall be registered in the register of Local Land Charges maintained by the Council
13. **IT** is hereby agreed and declared between the parties hereto that this Agreement is without prejudice to and shall not be construed as derogating from or fettering or restricting any of the rights powers and

duties of the Council pursuant to any of its statutory functions under the Act or otherwise or in any other capacity

14. **FOR** the purposes of such part of this Agreement as may be subject to the law against perpetuities this Agreement shall remain in force for the period of eighty years from the date hereof or (if sooner) as long as any of the covenants conditions stipulations and agreements herein may not have been performed
15. **FOR** the purposes of the payment to be made in accordance with Schedule 2 the Contribution shall be increased by a proportionate amount equivalent to the proportionate increase (if any) in the Index occurring during the period commencing with (and referable to the Index for) November 2006 and ending with (and referable to the Index for) the month in which such sum is payable
16. **IF** any payment due under this Agreement is paid late then Interest will be payable from the date the payment is due to the date of payment
17. **THE** Council covenants that it will comply with its obligation in Schedule 5 to this Agreement

IN WITNESS whereof these presents have been duly executed as a Deed by the parties hereto the day and year first before written

SCHEDULE 1

The Planning Permission

SCHEDULE 2

1. The Owners Developer and Registered Social Landlord covenant with the Council to serve written notice upon the Council within ten (10) Working Days of the Commencement of Development confirming that the Development has begun

2. The Owners Developer and Registered Social Landlord covenant with the Council to pay to the Council the Public Open Space Contribution not later than 7 days after occupation of the seventh Affordable Dwelling

3 The Owners Developer and Registered Social Landlord covenant with the Council to provide relevant information to the Council in writing within ten days of receiving a request from the Council for relevant information in relation to the Development in order for the Council to ascertain whether the terms of this Agreement are being complied with

SCHEDULE 3

1.General

1.1 The Owners and Developer hereby covenant with the Council not to Dispose of the Rented Dwellings and the Shared Ownership Dwellings to any person or body other than the Registered Social Landlord.

2. Socially Rented Dwellings

2.1 The Owners Developer and the Registered Social Landlord hereby covenant with the Council that there shall be no Disposal of a Socially Rented Dwelling otherwise than pursuant to any statutory duty which obliges the Registered Social Landlord to allow a tenant to purchase a Socially Rented Dwelling

2.2 The Owners Developer and Registered Social Landlord hereby covenant with the Council that they will not allow any person to occupy a Socially Rented Dwelling except:

2.2.1 a person who has been selected from the Council's waiting list for housing accommodation or through the choice based lettings system or through any such similar mechanism which might replace choice based lettings, or

2.2.2 where there has been a disposal of a Socially Rented Dwelling pursuant to a statutory duty as aforesaid, an Approved Person as his/her Only or Principal Home

2.3 . The Owners Developer and Registered Social Landlord covenant with the Council that any Surplus RTB Money received by the Registered Social Landlord during the period of **xxx** years from the date hereof shall be utilised during the period of **xxx** years from the date hereof for the purposes of financial support for a viable social affordable housing scheme of the Registered Social Landlord within the Borough of Cheshire East

SCHEDULE 4

HM LAND REGISTRY LAND REGISTRATION ACTS 1925 – 1986

COUNTY AND DISTRICT : STAFFORSHIRE MOORLANDS
TITLE NUMBER : CH
PROPERTY :

THIS DEED is made the day of 20
BETWEEN:-

(1)

("the Existing Owner")

(2) **CHESHIRE EAST BOROUGH COUNCIL** of Westfields Middlewich Road
Sandbach CW11 1HZ ("the Council")

(3)

("the Purchaser")

NOW THIS DEED WITNESSETH as follows:

1. Definitions

In this Deed unless the context otherwise requires the following words and expressions shall have the following meanings:

1.1 "the Property" is the freehold land and dwellinghouse known as
Leek and registered with absolute freehold title under
title number CH

1.2 "Covenants" means those covenants and conditions relating to affordable
housing contained in Schedules and of a Transfer
dated referred to in the Charges Register of the Title to the
Property

2. The Purchaser hereby covenants with the Council and with the intention of
binding the Property and each and every part of it into whosoever hands the
same may come that the Purchaser will observe and perform the Covenants
and will indemnify the Existing Owner against any breach thereof and for the
avoidance of doubt warrants that he has paid £ for the Property
which sum the Council acknowledges to be in accordance with the Covenants

3. The Purchaser covenants with the Council not to transfer the Property nor to
grant a Lease of the Property for a term in excess of three years nor to
transfer the Purchaser's freehold estate in the Property or any other estate or
interest in it to any other person firm or company without first ensuring that
such person firm or company has contemporaneously executed a deed with
the Council containing the Covenants and other provisions of this Deed and

including this present covenant in substantially the form hereof or such other form as may be agreed from time to time by the Council

4. The parties apply to the Chief Land Registrar to enter upon the Proprietorship Register of the title for the Property a restriction in the following terms:

Except under an Order of the Registrar no disposition or dealing by the Proprietor is to be registered unless there is furnished to the Registrar a Certificate from the Council that the provisions of this Deed have been complied with

5. In this Deed where the context so requires or admits words importing the masculine gender only include the feminine gender and words importing the singular number only include the plural number and vice versa and where there are two or more persons included in the expression "the Purchaser" the covenants on the Purchaser's part herein contained should be deemed to be entered into by such persons jointly and severally

IN WITNESS whereof the parties hereto have executed this Deed the day and year first before written

SIGNED as a Deed by
the Existing Owner
in the presence of:-

SIGNED as a Deed by
the Purchaser
in the presence of:-

THE COMMON SEAL of
STAFFORSHIRE MOORLANDS DISTRICT COUNCIL
COUNCIL
was hereunto affixed in the
presence of:-

Authorised Signatory

SCHEDULE 5

The Council covenants with the Owners and the Developer that in the event that the Public Open Space Contribution or any part or parts thereof is not expended within ten years of the date of payment then the unexpended balance shall be repaid to the person who paid the Contribution or its nominee.

THE COMMON SEAL of
STAFFORDSHIRE MOORLANDS DISTRICT COUNCIL
was hereunto affixed in the presence of:-

Borough Solicitor

EXECUTION BY OWNERS

EXECUTION BY DEVELOPER