

Dated

6 April

2018

**NORTH DEVON DISTRICT COUNCIL**

and

**DEVON COUNTY COUNCIL**

and

**GEOFFREY RICHARD COX**

**AGREEMENT**

under section 106 of the

Town and Planning Act 1990

relating to land at

Butts Close, Witheridge, Tiverton EX16 8AJ

Legal Services

(Corporate & Community)

North Devon Council

Lynton House

Commercial Road

Barnstaple

Devon EX31 1EA

Planning Application Ref: PD/JW/62777

Legal File Ref: LS/DH/14001

**THIS AGREEMENT** is made the 6<sup>th</sup> day of April Two Thousand and Eighteen

Between

- (1) **NORTH DEVON DISTRICT COUNCIL** of Lynton House, Commercial Road, Barnstaple, Devon, EX31 1DG ("the Council");
- (2) **DEVON COUNTY COUNCIL** of County Hall, Topsham Road, Exeter, EX2 4QD ("the County Council");
- (3) **GEOFFREY RICHARD COX** of Cannington Farm, Witheridge, Tiverton, Devon EX16 8PT ("the Developer");

### **Introduction**

- 1. The Council is the Local Planning Authority for the purposes of the 1990 Act for the area in which the Site is situated.
- 2. The County Council is the Highways and Education Authority, and the Council and the County Council are the Local Planning Authorities by whom the obligations imposed by this Agreement shall be enforceable.
- 3. The Developer is the registered proprietor of land with Title Absolute under Title Number DN558771 of which the Site forms a part subject to the entries disclosed on the Charges Register of the said Title but otherwise free from incumbrances.
- 4. The Developer has submitted the Application to the Council for planning permission for the Development.
- 5. The parties have agreed to enter into this Agreement in order to secure the planning obligations contained in it.
- 6. In exercise of its powers under the 1990 Act, the Council has resolved to grant Planning Permission for the Development subject to completion of this Agreement.

7. The Council and the County Council confirm that the obligations and contributions secured by this Agreement are compliant with the requirements of Regulation 122 and 123 of the Community Infrastructure Levy Regulations 2010 (as amended) and in the event that following the grant of the Planning Permission any contribution contained in this Deed requires funding or provision towards a project or towards a type of Infrastructure where the Council and/or the County Council have entered into five (5) or more Relevant Agreements which provide for the funding or provision towards the same project or towards that type of infrastructure then the relevant covenants and contributions on the part of the Owner herein shall not apply and shall cease to have effect and shall not be enforceable by the Council or the County Council

**NOW THIS DEED WITNESSES** as follows:-

**1. Definitions**

For the purposes of this Agreement, the following expressions shall have the following meanings, unless the context requires otherwise:

<b>“1990 Act”</b>	the Town and Country Planning Act 1990 (as amended);
<b>“Application”</b>	the application for outline planning permission with all matters reserved save for access submitted to the Council for the Development, registered by the Council on 16 March 2017 and allocated reference number 62777;

**“Bus Stop and Shelter Scheme”**

the creation of a bus layby and shelter on Fore Street with the exact location to be agreed by the County Council and the Developer both acting reasonably;

**“Bus Stop and Shelter Scheme Contribution”**

the sum no greater than £30,000 (thirty thousand pounds) payable to the County Council for the provision of the Bus Stop and Shelter Scheme;

**“Council”, “County Council”, and “Developer”**

the parties to this Agreement which shall respectively include their successors and assigns;

**“Commencement of Development”**

the date on which any material operation (as defined in section 56(4) of the 1990 Act) forming part of the Development begins to be carried out, other than (for the purposes of this Agreement and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, erection of any temporary means of enclosure, the temporary display of site notices or advertisements, diversion and laying of services and similar expressions such as “Commence the Development” shall be interpreted in the same way;

**“Development”**

the development of the Site by the erection of up to 65 dwellings as set out in the Application;

**“District”**

means the administrative area of North Devon District Council;



<b>“Dwelling”</b>	a building or part of a building forming part of the Development and designed for residential occupation by a single household;
<b>“Education Transport Contribution”</b>	the sum of £24,700 (twenty four thousand seven hundred pounds) index linked towards the transport of pupils from the Development to Chulmleigh Community College;
<b>“Interest Rate”</b>	the Law Society’s Interest Rate calculated on a day to day basis being 4% above Barclays Base Rate or such other rate as the Law Society shall prescribe;
<b>“Obligations”</b>	the planning obligations contained in the Schedules;
<b>“Plan”</b>	the plan attached to this Agreement detailing the location of the Site;
<b>“Planning Permission”</b>	the outline planning permission with all matters reserved save for access issued by the Council pursuant to the Application and substantially in the form attached to this Agreement at Annex 1;
<b>“Proper Officer”</b>	means the officer who may be nominated from time to time by the Council and the County Council to perform the functions required by this Agreement;
<b>“Public Open Space”</b>	The on-site public open space as more particularly set out in Schedule 2 Part 2;

<b>“Public Open Space Sports and Recreation Contribution”</b>	a sum to a maximum of £190,788 (one hundred and ninety thousand seven hundred and eighty eight pounds) index linked towards the refurbishment of the adventure playground adjacent to the Site; Enhancement of Witheridge Village Hall and Enhancement of Witheridge Tennis Club.
<b>“Reserved Matters Approval”</b>	means the approval of reserved matters pursuant to an application (or applications) for approval of reserved matters under the Planning Permission;
<b>“School Crossing Scheme”</b>	a scheme to provide a new pedestrian crossing on Fore Street between its two junctions with Butts Close;
<b>“School Crossing Scheme Advertisement Contribution”</b>	the sum of £400 (four hundred pounds) payable to the County Council for the advertisement of the School Crossing Scheme;
<b>“School Crossing Contribution”</b>	the sum no greater than £80,000 (eighty thousand pounds) index linked towards the School Crossing Scheme;
<b>“Site”</b>	the land at Butts Close, Witheridge, Tiverton EX16 8PT shown for identification purposes only edged red on the attached Location Plan in Annex 2 which forms part of the land registered at HM Land Registry under title number DN558771, being the land against which this Agreement may be enforced;

**“Thirty MPH Contribution”** the sum no greater than £60,000 (sixty thousand pounds) payable to the County Council for the extension of the existing Fore Street 30mph limit;

## **2. Construction of this Agreement**

- 2.1 Where in this Agreement reference is made to any clause, paragraph, schedule or recital, such reference (unless the context otherwise requires) is a reference to a clause, paragraph, schedule or recital in this Agreement.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeably in that manner.
- 2.4 Where more than one person is obliged to observe or perform an obligation, the obligation can be enforced against all such persons jointly and against each individually unless there is an express provision otherwise.
- 2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that Act or deriving validly from it.
- 2.6 References to any party to this Agreement shall include the successors in title to that party and to any deriving title through or under that party, and in the case of the Council and the County Council shall include the successors to its various statutory functions.
- 2.7 Any covenant in this Agreement, whereby a party is not to do any act or thing, shall be deemed to include an obligation not to permit or suffer such act or thing to be done.

- 2.8 The clause headings contained in this Agreement are indicative of the meaning and intent of the clauses to which they respectively refer, and are intended to assist in the interpretation of this Agreement and may be taken into account accordingly.

### **3. Legal basis**

- 3.1 This Agreement is made as a Deed pursuant to Section 106 of the 1990 Act and, save as this Agreement may be modified or discharged pursuant to Section 106A of the 1990 Act, all other enabling powers.
- 3.2 The covenants, restrictions and requirements imposed upon the Developer under this Agreement are planning obligations pursuant to section 106 of the 1990 Act and are enforceable by the Council and the County Council as local planning authorities.

### **4. Conditionality**

This Agreement is conditional upon:

- (i) the grant of the Planning Permission; and
- (ii) the Commencement of Development

save for the provisions of Clauses 6.1, 7, 8, 9, 12, 13, 14 and 15 which shall come into effect immediately upon completion of this Agreement.

### **5. The covenants**

- 5.1 The Developer covenants with the Council and with the County Council to observe and perform the Obligations contained in the First and Second Schedules and otherwise to comply with the provisions of this Agreement.
- 5.2 The Council and the County Council covenant with the Developer to observe and perform the Obligations contained in the Third Schedule and otherwise to comply with the provisions of this Agreement.

## **6. Miscellaneous**

- 6.1 Upon the completion of this Agreement, the Developer shall pay the reasonable legal costs of the Council and the County Council incurred in the negotiation, preparation and execution of this Agreement.
- 6.2 No provisions of this Agreement are intended to or will operate to confer any benefit pursuant to the Contracts (Rights of Third Parties) Act 1999 on a person who is not named as a party to this Agreement, except that the application of that Act shall not prevent all or any of the future successors in title or to the statutory functions of any of the parties to this Agreement from being able to benefit from or to enforce any of the obligations in this Agreement.
- 6.3 This Agreement shall be registrable as a local land charge by the Council.
- 6.4 Where the agreement, approval, consent or expression of satisfaction is required by one party from another party under the terms of this Agreement, such agreement, approval, consent or expression of satisfaction shall not be unreasonably withheld or delayed, and (if given) shall be given in writing (and shall be of no effect unless given in writing).
- 6.5 Any such agreement, approval, consent or expression of satisfaction shall unless otherwise stated in this Agreement be given on behalf of the Council and the County Council by the Proper Officer.
- 6.6 Any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party.
- 6.7 The Council will upon the written request of the Developer at any time after the obligations of the Developer under this Agreement have been fulfilled issue written confirmation of compliance.

- 6.8 Insofar as any clause or clauses of this Agreement are found (for whatever reason) to be invalid, illegal or unenforceable, then such invalidity, illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Agreement.
- 6.9 This Agreement shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Developer) it is modified by any statutory procedure or expires prior to the Commencement of Development.
- 6.10 No person shall be liable for any breach of any of the Obligations after it shall have parted with its entire interest in the Site or any part of it but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 6.11 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 or any approval of Reserved Matters pursuant to the Planning Permission) granted (whether or not on appeal) after the date of this Agreement.
- 6.12 Nothing contained or implied in this Agreement shall prejudice or affect the rights discretions powers duties and obligations of the Council and/or the County Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their respective functions as a local authority and nothing herein contained or implied shall be taken to be a covenant or warranty or representation on the part of the Council and/or the County Council that the Applicant's proposals are lawful.
- 6.11 No compensation shall be payable by the Council and/or the County Council in respect of any provision of this Agreement.
- 6.12 Nothing in this Agreement is or amounts to or shall be construed as a planning permission within the meaning of Section 336 of the 1990 Act.

- 6.13 No individual owner, occupier, Affordable Housing Provider or mortgagee or chargee or any successors in title to the same of a single Dwelling nor any statutory undertaker or other utilities body shall be liable for any breach of the obligations contained in this Agreement (except for in the case of an Affordable Dwelling for a breach the obligations contained in Schedule 1 to this Agreement where the breach relates to their Affordable Dwelling).
- 6.14 Nothing (contained or implied) in this Agreement shall fetter or restrict the statutory rights, powers, discretions and responsibilities of the Council and/or the County Council.

## **7. Change in Ownership**

- 7.1 The Developer agrees with the Council and the County Council to give the Council and/or the County Council reasonable written notice of any change in ownership of any of its or their interests in the Site (other than the sale of individual Dwellings) occurring before all the obligations under this Agreement have been discharged, such notice to give details of the transferee's full name and registered office (if a company) or usual address (if not) together with the area of the Site or unit of occupation purchased by reference to a plan.

## **8. Settlement of Disputes**

- 8.1 Any dispute arising out of the provisions of this Agreement shall be referred to a person having appropriate qualifications and experience in such matters ("the Expert") for the determination of that dispute PROVIDED THAT the provisions of this clause shall be without prejudice to the right of any party to seek the resolution of any dispute arising out of the provisions of this Agreement by referring the matter to the courts or to the right of the Council to take action in accordance with Section 106(6) of the 1990 Act, and the referral of any such dispute to the Expert shall not prejudice prevent or delay the recourse of any party to the courts or to the provisions of Section 106 (6) of the 1990 Act for the resolution of any dispute arising out of the provisions of this Agreement.

- 8.2 The Expert shall be appointed jointly by the relevant parties to the dispute or in default of agreement then by a person nominated by the President for the time being of the Royal Institution of Chartered Surveyors on the application of any of the parties.
- 8.3 The decision of the Expert shall be final and binding upon the relevant parties (subject to the right of the relevant parties to refer the matters to the court) and the following provisions shall apply: -
- 8.4 The charges and expenses of the Expert shall be borne equally between the relevant parties unless the Expert shall otherwise direct.
- 8.5 The Expert shall give the relevant parties an opportunity to make representations and counter-representations to the Expert before the Expert shall make their decision.
- 8.6 The Expert shall be entitled to obtain opinions from others if the Expert so wishes.
- 8.7 The Expert shall make their decision within the range of any representations made by the relevant parties themselves.
- 8.8 The Expert shall comply with any time limit or other directions agreed by the relevant parties on or before the appointment of the Expert.

**9. Compliance Monitoring Contribution**

The Developer shall, on the execution of this Agreement, pay to the District Council the sum of £600.00 as a contribution towards the District Council's costs of monitoring the implementation of this Agreement.

**10. Waiver**

No waiver (whether express or implied) by any party to this Agreement of any breach or default in performing or observing any of the provisions of this Agreement by any other party shall constitute a continuing waiver, and no such waiver shall prevent the party granting it (or implied to have done so) from enforcing any of the relevant provisions or from acting upon any subsequent breach or default.



## **11. Indexation**

All sums of money payable to the Council or to the County Council under this Agreement (excepting any sums payable towards legal fees and monitoring) shall be increased (as at the date or dates on which each payment is made) in accordance with the following formula:-

$$C = \frac{\pounds Y \times B}{A}$$

where :

- A** is the value of the index specified in the provision concerned or, if none is specified, the Retail Price Index, last published before the date of this Agreement;
- B** is the value of such index last published before the date on which the payment in question is made;
- C** is the sum in question after application of this formula; and
- £Y** is the sum to which this formula is applied;

provided that if the said index shall cease to exist, there shall be substituted such other index of building costs as shall be specified by the Council, or by the County Council where it is the recipient of the payment in question, in either case acting reasonably, and provided further that if the application of this calculation produces a reduction in the sum in question, such sum shall remain unchanged.

## **12. VAT**

All sums payable under this Agreement shall be deemed to be exclusive of Value Added Tax where applicable, and except where otherwise stated, the party liable to make the payment shall also be liable to pay any Value Added Tax due.

**13. Interest**

If any payment due by the Developer under this Agreement is paid late, interest will be payable from the date payment is due to the date of payment, at the Interest Rate.

**14. Jurisdiction**

This Agreement is governed by and interpreted in accordance with the law of England and the parties submit to the exclusive jurisdiction of the courts of England.

**15. Delivery**

The provisions of this Agreement (other than this clause which shall be of immediate effect) shall be of no effect until this Agreement has been dated.

**I N W I T N E S S** of which the parties hereto have executed this document as a deed the day and year first before written

EXECUTED AS A DEED by )  
affixing THE COMMON SEAL of )  
NORTH DEVON DISTRICT COUNCIL )  
in the presence of: )

  
Authorised Signatory



EXECUTED AS A DEED by )  
affixing THE COMMON SEAL of )  
DEVON COUNTY COUNCIL )  
in the presence of: )

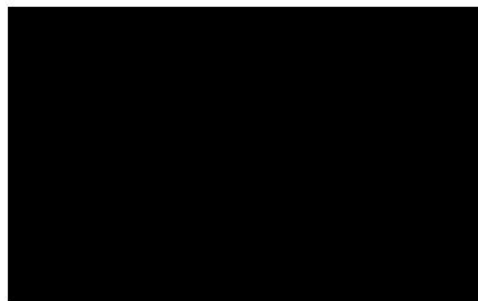
  
~~Assistant County Solicitor~~ ELIZABETH  
BRYANT



Document no: 48888

### A Duly Authorised Officer

SIGNED as a DEED by )  
GEOFFREY RICHARD COX )  
acting in the presence of )



Witness Signature:  
Name:  
Address:

Occupation:

## **THE OBLIGATIONS**

### **SCHEDULE 1**

#### **Affordable Housing**

##### **Part A - Definitions:**

For the purposes of this Agreement the following expressions shall have the following meanings:

**“Adjoining Parishes”**

the parishes of Rackenford, Rose Ash, East Worlington, Meshaw, Cruys, Morchand Thelbridge and Templeton;

**“Affordable Dwelling”**

a Dwelling which is part of the Affordable Housing within the Development, together where applicable with its curtilage and any parking space or garage allocated to it;

**“Affordable Housing”**

housing within the meaning of affordable housing as defined by Annex 2 of the NPPF to meet the needs of eligible households whose needs are not met by the open market (and comprising Social Rented Dwellings or Intermediate Dwellings);

**“Affordable Housing Land”**

means the land or any part thereof on which the Affordable Dwellings are to be constructed;

**“Affordable Housing Allocation Scheme”**

(a) an allocation scheme set up pursuant to Part VI of the Housing Act 1996;

or, in the event that the statutory basis for such a scheme is removed:-

(b) such replacement scheme as the Council may reasonably put in place to secure that Affordable Housing is allocated to persons nominated by the Council by virtue of them being in Housing Need;

and for the avoidance of doubt, at the date of this Agreement the Affordable Housing Allocation Scheme operated in North Devon is the “Devon Home Choice” choice-based letting scheme and Help to Buy South West;

**“Affordable Housing Provider”**

means a social landlord which is an RP or such other body or organisation established for the provision and management of Affordable Housing as may be agreed in writing by the Proper Officer;

**“Affordable Housing Scheme”**

means a written scheme for the provision of Affordable Housing as part of the Development, such scheme to be submitted to the Proper Officer in accordance with paragraph 4 of Part B;

**“Ceiling Rent”**

the rent for a Social Rented Dwelling calculated in accordance with the HCA’s Target Rent regime in force from time to time (or any replacement regime for calculating rents for social rented housing implemented by or on behalf of HM Government from time to time), together with any service charge not exceeding the maximum amount which an occupier of the Social Rented Dwelling would be entitled to claim in respect of service charge under the Local Housing Allowance (or equivalent) regulations in force from time to time;

**“Designated Person”**

means a person in Housing Need or such other person as may be approved in writing by the Proper Officer as being in need of Affordable Housing;

**“Devon Home Choice”**

means the method or body agreed by the Council for the allocation of Affordable Housing to a Designated Person in the District;

**Discounted Sale Dwelling**

means an Affordable Dwelling where 100% of the equity is to be sold at the Initial Sale Price on the first disposal and the Discounted Price set at any other time;

**Discounted Price**

means a price to be calculated by multiplying the Open Market Value of the Discounted Sale Dwelling as at the date of the offer for sale by:

43.4% in respect of the 2 bedroom Affordable Dwellings

40.5% in respect of the 3 bedroom Affordable Dwellings

**“Help to Buy South West”**

means the method or body agreed by the Council for the allocation of Shared Ownership Dwellings and Discounted Sale Dwellings to a Designated Person in the administrative district of North Devon;

**“Homes and Communities Agency (HCA)”**

means the central government agency (formerly the Housing Corporation) which provides funding to and regulates registered housing providers and shall include any successor in function howsoever named or any organisation which is performing a similar function;

**"Housing Need"**

means the circumstances where a household is currently occupying accommodation that is sub-standard or unsuitable for its requirements and which has an income that is too low either to buy or rent accommodation appropriate to their circumstances on the Open Market;

**Initial Sale Price**

A price which does not exceed the sum of £91,068 on the first disposal of the Discounted Sale Dwelling regardless of whether they are 2 bedroom Dwellings or 3 bedroom Dwellings.

**"Intermediate Dwelling"**

an Affordable Dwelling to be disposed of (or having been disposed of) by an Affordable Housing Provider or the Developer by sale including Shared Ownership Dwellings or Discounted Sale Dwellings.;



**"Local Housing Allowance"**

means the flat rate rental allowance providing financial assistance towards the housing costs of low income households for different rental market area and property types set out and reviewed by the Valuation Office Agency under a framework introduced by the Department for Work and Pensions or such similar framework that may replace it;

**"Mortgagee in Possession"**

means any mortgagee or chargee (including a successor in title) of the Affordable Housing Provider or owner (as the case may be) of any Affordable Housing Dwellings and includes any receiver or manager or administrator (including any receiver appointed pursuant to the Law of Property Act 1925) or a housing administrator or any person appointed under any security documentation to enable such mortgagee or chargee to realise its security;

**"NPPF"**

the National Planning Policy Framework published on 27<sup>th</sup> March 2012 as amended from time to time;

**“Occupation”**

means occupation of a Dwelling or part of a Dwelling for residential purposes and “Occupant”, “Occupy”, “Occupier” and “Occupied” shall be construed similarly

**“Occupation Criteria”**

means the requirements for occupation set out in Schedule 1 Part G

**“Open Market”**

means an open market for the sale or rent of real property assuming willing sellers and buyers and assuming that none of the obligations or restrictions contained in this Agreement applies

**“Open Market Dwellings”**

the Dwellings comprised in the Development other than the Affordable Housing, and Open Market Dwelling means one such Dwelling;

**“Open Market Value”**

the price that a willing purchaser would be willing to pay for a Dwelling if this Agreement had not been made;

**“Parish”**

means the parish of Witheridge

**“Registered Provider (RP)”**

means a registered provider of social housing (as defined in Section 80 of the Housing and Regeneration Act 2008) registered with the Home and Communities Agency (or successor body) as a non-profit organisation in accordance with section 115 (1) (a) of that Act, nominated by the Developer and notified to the Proper Officer in writing within the Affordable Housing Allocation Scheme

**“Shared Ownership Dwelling”**

means an Affordable Dwelling within the meaning of intermediate housing as defined by Annex 2 of the NPPF disposed of by way of a Shared Ownership Lease;

**“Shared Ownership Lease”**

a lease of an Affordable Dwelling in the form as published by the HCA as amended to comply with this Agreement under which a Specified Eligible Person:

(i) purchases a lease of a percentage of the equity of the Affordable Dwelling with the right to purchase an increased percentage up to 80% of the equity unless or until the Designated Protected Area restriction is removed or waived following the submission of a Designated Protected Area waiver application or application to remove by the Council ; and

pays a rent to the freehold owner in proportion to the share of the equity retained by that owner;

**“Social Rented Dwelling”**

an Affordable Dwelling within the meaning of social rented housing as defined by Annex 2 of the NPPF to be let (or having been let) by an Affordable Housing Provider on a weekly or monthly periodic assured or secure tenancy or a fixed-term tenancy (including a fixed-term introductory/probationary tenancy) granted to a Specified Eligible Person at a Ceiling Rent;

**“Specified Eligible Person”**

any person:-

a) whose eligibility to be allocated a particular Affordable Dwelling has been established through the operation of the Affordable Housing Allocation Scheme; or

b) who is otherwise identified in writing by the Proper Officer as being in Housing Need; and

in the case of an Intermediate Dwelling, who is on the register of applicants maintained by the Zone Agent, whose eligibility to be allocated an Intermediate Dwelling has been agreed by the Zone Agent and the Proper Officer and in accordance with the HCA's and the Council's allocation priorities, and whose financial assessment has been undertaken by an independent financial advisor approved by the Zone Agent;

**“Zone Agent”**

Help to Buy South West of Hatfield House, Hatfield Road, Torquay, TQ1 3HF, being the HomeBuy agent appointed by the government for the area which includes the Site (or any successor to that function appointed by the government).

**Part B - Provision of Affordable Housing**

1. Seventeen per cent (17%) and being 11 Dwellings out of the total number of Dwellings to be constructed pursuant to the Planning Permission and which shall be provided as Affordable Housing and which unless otherwise stated in this Agreement shall not be Occupied other than as Affordable Housing and by Specified Eligible Persons in accordance with the provisions of this Schedule, with at least seventy per cent (70%) of the Affordable Housing to be Social Rented Dwellings and the remainder to be Intermediate Dwellings unless otherwise agreed in writing by the Proper Officer
2. Unless otherwise agreed in writing by the Proper Officer, the Affordable Dwellings within the Reserved Matters Approval for the whole of the Development shall comprise:
  - a. 7 x 2-bedroom 4-person houses – 5 Social Rented Dwellings and 2 Intermediate Dwellings;
  - b. 3 x 3-bedroom 5- or 6-person houses – 2 Social Rented Dwellings and 1 Intermediate Dwelling
  - c. 1 x 4-bedroom 6- or 7-person house as a Social Rented Dwelling

3. The Affordable Dwellings shall be distributed throughout the Site in clusters of no more than eleven Affordable Dwellings, the clusters separated from each other by Open Market Dwellings or the Public Open Space.

4. As part of the first application for Reserved Matters Approval, the Developer shall submit to the Council the following matters (collectively referred to as "the Affordable Housing Scheme"):

4.1 by plot number - the tenure, the size (including number of bedrooms / persons) internal floor space, anticipated start dates, anticipated completion dates and the Open Market Values and the Discounted Price of any Discounted Sale Dwellings but excluding the rent levels, service charges and the Open Market Values/sold equity percentage/service charges of any Shared Ownership Dwellings which shall be provided to the Council once a contract has been entered into with an RP or an Affordable Housing Provider.

4.2 a proposed layout for the Development including whether the Affordable Dwellings have parking spaces or garages; and floor layouts; and

4.3 which of the Affordable Dwellings are to be Social Rented Dwellings and which are to be Intermediate Dwellings in accordance with paragraph 1 of this Part; and the Developer shall not Commence the Development until the Details have been approved by the Council as part of the Reserved Matter Approval in accordance with this paragraph;

PROVIDED THAT if the Council shall have given to the Developer agreement in writing to the Development being carried out in phases, this paragraph 4 shall have effect as requiring the Affordable Housing Scheme for each phase to be submitted as part of the first application for Reserved Matters Approval in respect of that phase, and shall prevent Commencement of the Development of that phase until those Details have been approved as part of that Reserved Matters Approval.

FURTHER PROVIDED THAT in the event that following approval of the Affordable Housing Scheme and despite using reasonable endeavours an RP or an Affordable Housing Provider cannot be found to take on the Shared Ownership Dwellings then the Developer shall submit a revised Affordable Housing Scheme for approval by the Council acting reasonably providing for the Shared Ownership Dwellings to be delivered as Discounted Sale Dwellings

5. The Affordable Dwellings shall be designed and constructed so as to be indistinguishable (in terms of design concept and general appearance) from the Open Market Dwellings, and employing so far as is practicable the same internal and external materials as are employed for the Open Market Dwellings.

6. Where applicable the Discounted Sale Dwellings shall be constructed and completed to the same internal and external base specifications as an equivalent type of Open Market Dwelling

### **Part C - Phasing of the Development and disposal of the Affordable Housing**

1. The Developer shall not Commence the Development until:

(a) the Developer has notified the Council in writing of the date of anticipated commencement of construction of Dwellings; and

(b) the Developer has notified the Proper Officer in writing of the preferred Affordable Housing Provider(s) for the Development nominated by the Developer; and

(c) the Affordable Housing Provider(s) thus notified has/have confirmed to the Council in writing that it has/they have agreed terms with the Developer for the acquisition of the Affordable Dwellings, or that it/they anticipate(s) doing so in the near future.



PROVIDED THAT if the Council shall have given to the Developer its agreement in writing to the Development being carried out in phases, this paragraph 1 shall have effect as if reference in this paragraph to "Commence the Development" were reference to Commencement of Development of a phase as so agreed; and reference in this paragraph to "the Affordable Dwellings" were reference to the Affordable Dwellings comprised within such a phase.

2. No more than fifty per cent (50%) of the Open Market Dwellings shall be sold or occupied until:

2.1 one hundred per cent (100%) of the Affordable Dwellings comprised in the Development are completed in accordance with the Affordable Housing Scheme, connected to mains services and available and fit for residential occupation; and

2.2 the Developer has transferred one hundred per cent (100%) of the Affordable Dwellings to the Affordable Housing Provider(s) in accordance with paragraph 4 below;

PROVIDED THAT if the Council shall have given to the Developer its agreement in writing to the Development being carried out in phases, this paragraph 2 shall have effect as if reference in this paragraph to "the Development" were reference to a phase of the Development as so agreed; and reference in this paragraph to "the Affordable Dwellings" were reference to the Affordable Dwellings comprised within such a phase.

3. The transfer of the Affordable Dwellings to an Affordable Housing Provider(s) pursuant to paragraph 2 above shall be on the following terms:

3.1 the transfer shall be of the unencumbered freehold of the Affordable Dwellings and their curtilages free from encumbrances (save for any encumbrances (not being financial charges) existing prior to the date of this Agreement) with full title guarantee and vacant possession;

3.2 the transfer or lease shall grant all rights and easements (if any) as are required to give pedestrian and vehicular access between the Affordable Dwellings and the public highway and as are required to connect all sewers, drains, pipes, cables and other conducting media serving the Affordable Dwellings.

4. Once fifty per cent (50%) of the Open Market Dwellings have been disposed of, under contract to be sold or occupied, the Developer shall not market, or otherwise invite or seek offers for, any of the remaining twenty per cent (50%) of Open Market Dwellings (or the site of any such Dwelling) if at the time of such marketing or invitation or seeking of offers the requirements of sub-paragraphs 2.1 and 2.2 of this Part have not been complied with, unless the Developer notifies prospective purchasers in writing (i) of the requirements of this Part and (ii) that such requirements have not at that time been complied with.

5. The Developer shall give the following notice in writing to the Proper Officer of the date on which each Affordable Dwelling will be available for first occupation, namely:

5.1 a minimum of four months' notice in the case of an Intermediate Dwelling; and

5.2 a minimum of six weeks' notice in any other case.

6. The Developer shall give written notice to the Council upon the occupation of forty per cent (40%) of the Open Market Dwellings.

7. Any Shared Ownership Dwellings within the Development shall not be occupied except pursuant to a Shared Ownership Lease granted by an Affordable Housing Provider, which Shared Ownership Lease shall unless otherwise agreed in writing with the Council:

7.1 be substantially in the form of the HCA's model form (if any) as most recently published from time to time, and including all provisions as the HCA specifies as mandatory for such leases;

7.2 provide for the lessee to acquire an initial share of the equity in the Affordable Dwelling having a value between twenty-five to seventy-five per cent (25-75%) at that time (the "Maximum Initial Share") with the opportunity (but no obligation) for the purchaser to acquire additional equity shares;

7.3 the maximum amount of equity in a Shared Ownership Unit that may be purchased shall be restricted to 80% unless or until the Designated Protected Area restriction is removed or waived following the submission of a Designated Protected Area waiver application or application to remove by the Council

7.4 provide for an initial rent payable that does not exceed two point seven five per cent (2.75%) of the Open Market Value of the equity retained by the landlord, which rent may be increased no more than annually and by not more than the corresponding increase in the Retail Price Index plus 0.5% or as indicated in the latest national housing legislation, with any service charge not exceeding the maximum amount which an occupier of the Affordable Dwelling would be entitled to claim in respect of service charge under the Local Housing Allowance (or equivalent) regulations in force from time to time;

7.5 provide for the Intermediate Dwellings to be advertised and allocated to a Specified Eligible Person by the Zone Agent at the Owner's cost.

8. The Social Rented Dwellings shall not be occupied except pursuant to a weekly or monthly periodic tenancy or a fixed-term tenancy (including a fixed term introductory or probationary tenancy) granted by the Affordable Housing Provider to a Specified Eligible Person.

9. Social Rented Dwellings shall only be let at a Ceiling Rent for the Dwelling in question with any service charge not exceeding the maximum amount which an occupier of the Affordable Dwelling would be entitled to claim in respect of service charge under the Local Housing Allowance (or equivalent) regulations in force from time to time.

## **10. Discounted Sale Dwellings**

10.1 Where applicable no Affordable Dwelling identified within the Affordable Housing Scheme as a Discounted Sale Unit shall be sold or disposed of for a consideration that:

10.1.1 exceeds the Initial Sale Price on the first disposal of the Discounted Sale Unit; or

10.1.2 exceeds the Discounted Price set at any other time.

10.2 Where applicable on any sale of a Discounted Sale Unit, the Owner will require any purchaser to enter into a restrictive covenant to comply with 10.1 above.

## **Part D – Allocation and Occupation of Affordable Dwellings**

1 Subject to 1.2 and 1.3 below no person shall Occupy an Affordable Dwelling unless that person:

1.1.1 fulfils the Occupation Criteria; and

1.1.2 shall have been nominated through Devon Home Choice or Help to Buy South West in accordance with the Affordable Housing Allocation Scheme; and

1.1.3 occupies the Affordable Dwelling as his or her sole or main residence; and

1.1.4 was a Designated Person in Housing Need at the time of their first occupation of the Affordable Dwelling; or

1.1.5 is a member of the household of and living with a person who was a Designated Person in Housing Need at the time of their first occupation of the Affordable Dwelling

(but nothing in this paragraph shall require any person who satisfied such a requirement when they first occupied an Affordable Dwelling to vacate the Affordable Dwelling if they cease to qualify under this Paragraph 1.1.5 of this Schedule 1 by virtue of the death or hospitalisation of, or the breakdown of a relationship with, the person who qualified under Paragraph 1.1.1, 1.1.2, 1.1.3 and 1.1.4 of this Schedule.

- 1.2 Where the owner of an Affordable Dwelling is an RP the Affordable Dwelling may also be occupied in accordance with any nomination and management agreement in effect between the Council and that RP

- 1.3 In the event that:-

1.3.1 no willing purchaser or tenant who complies with the Occupation Criteria in respect of the Parish can be found after actively marketing the Affordable Dwelling for a period of one month in respect of an Affordable Dwelling for rent, or two months in respect of an Intermediate Dwelling calculated from the date of first advertising the availability for sale or rent at a price to reflect the restrictions imposed by this Agreement, then the requirements of 1.1.1 above shall not preclude the sale, letting other disposition or occupation of the Affordable Dwelling to a person who meets the Occupation Criteria in respect of the Adjoining Parishes.

1.3.2 no willing purchaser or tenant who complies with the Occupation Criteria in respect of the Parish or adjoining Parishes can be found after actively marketing the Affordable Dwelling for a further period of one month in respect of an Affordable Dwelling for rent and a further period of two months in respect of an Intermediate Dwelling at a price to reflect the restrictions imposed by this Agreement, then the requirements of 1.1.1 above shall not preclude the sale, letting other disposition or occupation of the Dwelling to a person who meets the Occupation Criteria in respect of any parish within the District.

## **Part E - Mortgagee in possession**

1.1 In relation to any interest in an Affordable Dwelling which is owned by any person (including a lessee under a Shared Ownership Lease) other than an Affordable Housing Provider:

1.1.1 where a mortgagee or chargee intends to exercise a power of sale or where a mortgagee or chargee has appointed a receiver under the mortgage or charge, the mortgagee or chargee shall notify the Proper Officer and the Affordable Housing Provider in writing 28 (twenty eight) days prior to offering any Affordable Dwelling for sale that it is their intention to so offer any Affordable Unit for sale or within 28 (twenty eight) days of appointing a receiver under the mortgage or charge that they have done so as appropriate.

1.1.2 where an Affordable Dwelling is offered for sale by a mortgagee or chargee or where a mortgagee has appointed a receiver under the mortgage or charge it shall be offered for sale only on the basis that it shall first be offered by the mortgagee or chargee or the Receiver to the Affordable Housing Provider, the District Council or persons or groups nominated within the Affordable Housing Allocation Scheme.

1.1.3 If within 12 (twelve) weeks of a mortgagee or chargee first notifying the Proper Officer that it intends to exercise a power of sale referred to above the Affordable Housing Provider or the District Council has not entered into a contract to purchase the Affordable Dwelling or has not introduced a purchaser who has been able to complete a transfer of the Affordable Dwelling (or the relevant equity share in that Dwelling) the mortgagee or chargee or the receiver may sell the Dwelling (or share in it) to any person who requires it as their sole or main residence provided that during the 12 week period the mortgagee has used reasonable endeavours to co-operate with the District Council to assist in the disposal of the Affordable Dwelling.

1.2 In relation to any interest in an Affordable Dwelling or the Affordable Housing Land (or any part thereof) which is owned by an Affordable Housing Provider the provisions of this Deed shall not be binding upon the mortgagee or chargee or any receiver (including administrative receiver) of an Affordable Dwelling or the Affordable Housing Land (or any part thereof) or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a "Receiver") of the whole or any part of the Affordable Dwellings and the provisions of this Deed shall cease to apply to any part or parts of the Affordable Dwellings but only if:

1.2.1 the mortgagee chargee or Receiver first gives written notice to both the District Council and the HCA that it is seeking a purchaser for the Affordable Dwelling(s) or the Affordable Housing Land concerned; and

1.2.2 the mortgagee chargee or receiver shall have used reasonable endeavours over a period of 12 (twelve) weeks from the date of the written notice to compete a disposal of the Affordable Dwelling(s) or the Affordable Housing Land concerned to another Affordable Housing Provider or to the District Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all principal monies; interest and costs and expenses.

1.3 If the disposal referred to in paragraph 1.2 of this Schedule has not completed within the 12 (twelve) week period the mortgagee chargee or Receiver shall be entitled to dispose of the Affordable Dwellings free from the provisions of this Agreement which provisions shall determine absolutely.



## **Part F – Council's right to information**

1. The Council may at any time serve notice on the owner or any occupier for the time being of an Affordable Dwelling, requiring that person to provide information as to the ownership and/or occupation of the Affordable Dwelling and to produce any evidence reasonably required to satisfy the Council that the Affordable Dwelling is occupied by a Specified Eligible Person.

2. Any request for information served under the above paragraph shall be deemed to be made under the provisions of Section 330 of the 1990 Act and the provisions of that section shall apply to any refusal to provide information so required or false statements made in reply thereto.

## **Part G – Occupation Criteria**

1. The Occupation Criteria shall be deemed to be satisfied either by a person who:-

A Can demonstrate one or more of the following:-

(a) minimum continuous period of residence of five years in the Parish (or Adjoining Parishes or the District as the case may be) immediately prior to the intended disposal, or

(b) employment in the Parish (or Adjoining Parishes or the District as the case may be) for a continuous period of at least five years; or

(c) current employment in the Parish (or Adjoining Parishes or the District as the case may be) in an agricultural related activity, the emergency services, as a professional healthcare or social worker or as a qualified primary or secondary school teacher; or

(d) strong established and continuous links with the Parish (or Adjoining Parishes or the District or the adjacent administrative district as the case may be) by reason of birth or family and in addition still having a parent or guardian living there despite the person having moved away from the Parish.

OR

B is a dependant, spouse or bona fide partner of such a person OR

C any other person approved in writing by the Council.



## **SCHEDULE 2**

### **The Developer's obligations**

#### **Part 1 – The contributions, School Crossing Scheme, Bus Stop and Shelter Scheme and Thirty MPH Works**

1. The Developer hereby covenants:

- a. Subject to paragraph 2 of this Part 1, to pay the Council the Public Open Space Sports and Recreation Contribution as follows:
  - i. 50% of the said Contribution to be paid before the occupation of the 20<sup>th</sup> (Twentieth) Dwelling, and
  - ii. 50% to be paid before the occupation of the 40<sup>th</sup> (Fortieth) Dwelling
- b. Before the occupation of the first Dwelling to pay to the County Council the Education Transport Contribution.
- c. in the event that the Developer elects pursuant to this Part to provide the School Crossing Scheme and/or the Bus Stop and Shelter Scheme at its own expense the Developer shall agree with the County Council the details of the School Crossing Scheme and the Bus Stop and Shelter Scheme prior to commencement of the approved works
- d. in the event that the Developer elects pursuant to this Part to provide the School Crossing Scheme at its own expense the Developer shall pay the School Crossing Scheme Advertisement Contribution to the County Council prior to commencement of the approved works
- e. Subject to paragraph 3 of this Part 1, before the occupation of the 15<sup>th</sup> (Fifteenth) Dwelling to pay to the County Council the School Crossing Contribution.
- f. Subject to paragraph 4 of this Part 1, before the occupation of the 15<sup>th</sup> (Fifteenth) Dwelling to pay the Bus Stop and Shelter Scheme Contribution
- g. Prior to the first Occupation of the first Dwelling to pay to the County Council the Thirty MPH Contribution

2. The amount of the Public Open Space Sports and Recreation Contribution shall be calculated in accordance with the development approved under Reserved Matters Application and the Provision of Public Open Space, Sport and Recreation Code of Practice Adopted March 2004 or such other document replacing or amending the same PROVIDED THAT such sum payable shall not exceed a maximum of £190,788 index linked.
3. At the Developer's discretion to provide at the Developer's expense the School Crossing Scheme. The said Scheme shall be submitted to and approved in writing with the Proper Officer of the County Council prior to the commencement of the approved works and shall be completed in accordance with the approved scheme before the occupation of the 15<sup>th</sup> (Fifteenth) Dwelling. In the event that the Developer elects pursuant to this paragraph to provide the School Crossing Scheme at its own expense the obligation to pay the School Crossing Contribution will not arise provided the said Scheme has been completed in accordance with this Paragraph or such other Scheme as may have been approved in writing with the Proper Officer of the County Council.
4. At the Developer's discretion to provide at the Developer's expense the Bus Stop and Shelter Scheme. The specification for the said Works shall be submitted to and approved in writing with the Proper Officer of the County Council prior to the commencement of the approved works and shall be completed in accordance with the approved works before the occupation of the 15<sup>th</sup> (Fifteenth) Dwelling. In the event that the Developer elects pursuant to this paragraph to provide the Bus Stop and Shelter Scheme at its own expense the obligation to pay the Bus Stop and Shelter Scheme Contribution does not arise provided the said Works have been completed in accordance with this Paragraph or such other works as may have been approved in writing with the Proper Officer of the County Council.

## **Part 2 On-Site Public Open Space**

For the purposes of this Agreement, the following expressions shall have the following meanings:

<b>“Managing Body”</b>	means the body who will responsible for the management of the Public Open Space which will either be the Management Company or a Public Body
<b>“Management Company”</b>	means a company whose purpose is or includes the acquisition and management of the Public Open Space;
<b>“Public Open Space Maintenance Contribution”</b>	means the payment of a sum calculated at a rate of £6.03/m2 in respect of the Public Open Space to be maintained by the Public Body such contribution not to exceed £ 11,276.10
<b>“Parish Council”</b>	means Witheridge Parish Council
<b>“Public Body”</b>	The Council or the Parish Council
<b>“SUDS”</b>	the sustainable urban drainage system for the Development;

<b>“Transfer”</b>	a freehold transfer (or the making of a freehold transfer) of land with full title guarantee and vacant possession and free from encumbrances (save for any encumbrances existing prior to the date of this Agreement) and “Transferred” shall be construed accordingly;
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1. The following areas of the Development shall be provided and maintained as Public Open Space in accordance with the provisions of this Schedule, of the size and in the positions as determined by the Reserved Matters Approval, which shall be as follows unless stated otherwise in the said Approval or otherwise agreed in writing with the Council:

- a. In the vicinity of the current playground/BMX track to the north of the Site, an area of open space no less than 1870 square metres (“**the Northern POS**”), and
- b. At the south of the Site an area of open space of no less than 6535 square metres (“**the Southern POS**”).

2. Prior to the Commencement of Development the Developer shall submit to the Council for approval:

- a. a specification for the laying out and subsequent maintenance of the Public Open Space, including those elements which will form part of the SUDS; and

- b. details of the arrangements to be put in place for the Transfer or lease of that part of the Public Open Space to be managed by the Management Company to a Management Company and for the recovery by that Management Company of service charge contributions from the owners of the Dwellings towards the upkeep and maintenance of the Public Open Space and the arrangements for the Transfer of that part of the Public Open Space (if any) to be managed by the Public Body to that Public Body.

FOR THE AVOIDANCE OF DOUBT the specification submitted by the Developer in accordance with this Paragraph in respect of the Northern POS shall detail only the laying out levelling and seeding of the Northern POS and shall not include any specifications relating to equipment or facilities.

3. The Developer shall not commence the construction of any Dwelling until the specification for the Northern POS has been approved by the Council pursuant to Paragraph 2 of this Schedule PROVIDED THAT where such approval is not provided within 28 Working Days of submission of the specification approval shall be deemed to have been given.
4. The Developer shall not commence the construction of more than 20 Dwellings until the specification for the Southern POS has been approved by the Council pursuant to Paragraph 2 of this Schedule PROVIDED THAT where such approval is not provided within 28 Working Days of submission of the specification approval shall be deemed to have been given.

5. The Developer shall lay out the Northern POS in accordance with the approved specification, and shall complete the same prior to the Occupation of the 20<sup>th</sup> (Twentieth) Dwelling.
6. The Developer shall lay out the Southern POS in accordance with the approved specification and shall complete the same prior to the Occupation of the 40<sup>th</sup> (Fortieth) Dwelling.
7.
  - a. Where the Managing Body is the Management Company paragraphs 8 to 11 shall apply
  - b. Where the Managing Body is a Public Body paragraphs 12 to 15 shall apply
8. The Developer shall:
  - a. set up, constitute or otherwise incorporate the Management Company;  
and
  - b. enter into a contract with the Management Company to Transfer that part of the Public Open Space to be managed by the Management Company to the Management Company in accordance with the provisions of Paragraph 11 of this Schedule within 12 months of the completion of the Public Open Space

9. The Developer shall not sell or otherwise dispose of any Dwelling without requiring the purchaser of that Dwelling and its successors in title to become a member of the Management Company and to enter into a covenant to contribute a service charge towards the costs of the Management Company discharging its functions towards the management of the that part of the Public Open Space to be managed by the Management Company, together with provisions for recovery of those contributions
10. Following their completion and before the Transfer of the Public Open Space in accordance with Paragraph 11 of this Schedule the Developer shall at all times maintain (in accordance with the specification approved under Paragraph 2(a) of this Schedule) the Public Open Space (including all grass cutting, weed and pest control, watering, tending and pruning of plants and shrubs and litter removal) in good and safe condition for enjoyment by the public at large, and shall at all times maintain the SUDS in good working order.
11. Prior to the sale or Occupation of the final Dwelling on the Development to be Occupied for residential purposes the Developer shall Transfer that part of the freehold of the Public Open Space to be managed by the Management Company to the Management Company subject to a covenant by the Management Company to maintain that part of the Public Open Space and where applicable the SUDS so as to comply with the provisions of this Part. The Developer shall not sell, occupy or permit Occupation of that final Dwelling for residential purposes until that part of the Public Open Space has been transferred to the Management Company.
12. Where the Managing Body is a Public Body the Developer shall enter into a contract with the Public Body to Transfer that part of the Public Open Space to be managed by the Public Body to the Public Body in accordance with the provisions of Paragraph 13 of this Schedule within 12 months of the completion of the Public Open Space.

13. Prior to the sale or Occupation of the final Dwelling on the Development to be occupied for residential purposes the Developer shall Transfer that part of the freehold of the Public Open Space to be managed by the Public Body to the Public Body for £1.00 consideration (if demanded), subject to a covenant by the Public Body to maintain that part of the Public Open Space and where applicable the SUDS so as to comply with the provisions of this Part. The Developer shall not sell, occupy or permit Occupation of that final Dwelling for residential purposes until that part of the Public Open Space has been transferred to the Public Body
14. Where the Public Open Space or any part of it is transferred to a Public Body the Developer hereby covenants to pay the Public Open Space Maintenance Contribution in respect of that part of the Public Open Space to be transferred upon legal completion of the Transfer to the Public Body.
15. The Public Open Space shall be used only as an area of open space for free public recreation and enjoyment for the lifetime of the Development.



## **SCHEDULE 3**

### **REPAYMENT OF CONTRIBUTIONS**

Obligation on the Council

#### **Repayment of contributions**

- 1 The Council hereby covenants with the Developer to use all sums received from the Developer under the terms of this Agreement for the purposes specified in this Agreement for which they are to be paid
- 2 The Council covenants with the Developer that it will pay to the Developer such amount of any payment made by the Developer to the Council under this Agreement which has not been expended in accordance with the provisions of this Agreement (and money shall be deemed to be 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 ten years of the date of receipt by the Council of such payment.
- 3 The Council shall provide to the Developer such evidence, as the Developer shall reasonably require in order to confirm the expenditure of the sums paid by the Developer under this Agreement.

## Obligation on the County Council

### **Repayment of contributions**

- 1 The County Council hereby covenants with the Developer to use all sums received from the Developer under the terms of this Agreement for the purposes specified in this Agreement for which they are to be paid
- 2 The County Council covenants with the Developer that it will pay to the Developer such amount of any payment made by the Developer to the County Council under this Agreement which has not been expended in accordance with the provisions of this Agreement (and money shall be deemed to be 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 ten years of the date of receipt by the County Council of such payment.
- 3 The County Council shall provide to the Developer such evidence, as the Developer shall reasonably require in order to confirm the expenditure of the sums paid by the Developer under this Agreement.

## ANNEX 1

### Planning Permission

**DRAFT DECISION (SUMMARY OF CONDITIONS / REASONS / REFUSALS / INFORMATIVES):-**

(1) a) In the case of any reserved matter application for approval must be made not later than the expiration of three years beginning with the date on which this permission is granted ; and

b) The development to which the permission relates must be begun not later than whichever is the later of the following dates :

(I) the expiration of three years from the date on which this permission is granted; or

(II) the expiration of two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.

**Reason:**

The time limit condition is imposed in order to comply with the requirements of Section 92 of the Town and Country Planning Act 1990.

(2) The development hereby permitted shall be carried out in accordance with the principles and indicative details contained within the attached plans and documents list (unless varied during the S38/S278 process or in response to the discharge of the following conditions or to address other issues that arise due the course of construction).

**Reason:**

The Local Planning Authority is satisfied on balance that the principles on the indicative drawings propose a form of development that delivers economic benefits and meets the housing needs of the district and which addresses design, amenity, landscape, highway and infrastructure issues in a manner which is visually appropriate and sustainable and will adequately inform a reserved matters submission.

(3) Approval of the details of the layout/scale/appearance and the landscaping of the site (hereinafter called the 'reserved matters') shall be obtained from the Local Planning Authority in writing before any development is commenced and shall be carried out as approved.

**Reason:**

To ensure adequate information is available for the proper consideration of the detailed proposals.

(4) The reserved matters shall indicate the siting, design and external appearance, including materials of construction of all walls, fences and other means of enclosure to be used in the development and shall be carried out as approved. NOTE A close boarded fence will be required along any garden boundary which adjoins the BMX track and a new boundary treatment around the extended area of open space will need to be provided. The Parish Council have recommended that this be in the form of railings.

**Reason:**

To ensure adequate information is available for the proper consideration of the detailed proposals and that the amenity and security of the site and areas of open space are maintained.

(5) As part of the reserved matters application, scaled drawing(s) showing existing levels on the site and proposed finished floor levels of the proposed dwellings shall be submitted to and approved in writing by the Local Planning Authority. The development shall be undertaken in accordance with such drawings.

**Reason:**

To ensure that the amenities of the area are not adversely affected by reason of the size and scale of the proposed development

(6) Provision, implementation and maintenance of detailed landscape proposals

i) No development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the Local Planning Authority and these works shall be carried out as approved. These details shall include proposed finished levels or contours; means of enclosure; car parking layouts; other vehicle and pedestrian access and circulation areas; hard surfacing materials; minor artefacts and structures (e.g. furniture, play equipment, refuse or other storage units, signs, lighting etc.); proposed and existing functional services above and below ground (e.g. drainage power, communications cables, pipelines etc. indicating lines, manholes, supports etc.); retained historic landscape features and proposals for restoration, where relevant.

ii) Soft landscape works shall include planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants (noting species, plant sizes and proposed numbers/densities); implementation and management programme. The scheme shall provide:

- New native tree and shrub planting on the fringes of the proposed development, to help supplement the existing tree and hedgerow/hedge bank vegetation and retain and strengthen the boundaries.
- New landscape buffer to the south of the proposed development. Planted with native trees and shrubs, with areas of rough grassland,
- New street and ornamental tree planting and hedgerow, shrub and ground cover planting within the proposed development and
- Bird and bat boxes to be placed on the existing retained trees and log pile/reptile refugia to be created in the landscape buffer area to the south to improve biodiversity.

Reason:

To assimilate the development into the landscape and to safeguard the appearance and character of the area.

Drainage Conditions

(7) No part of the development hereby permitted shall be commenced until a programme of percolation tests has been carried out in accordance with BRE Digest 365 Soakaway Design (2016), and the results approved in writing by the Local Planning Authority, in consultation with Devon County Council as the Lead Local Flood Authority. A representative number of tests should be conducted to provide adequate coverage of the site, with particular focus placed on the locations and depths of the proposed infiltration devices.

Reason:

To ensure that surface water from the development is discharged as high up the drainage hierarchy as is feasible.

(8) No part of the development hereby permitted shall be commenced until the detailed design of the proposed permanent surface water drainage management system has been submitted to, and approved in writing by, the Local Planning Authority, in consultation with Devon County Council as the Lead Local Flood Authority. The design of this permanent surface water drainage management system will be informed by the programme of approved BRE Digest 365 Soakaway Design (2016) percolation tests and in accordance with the principles set out in the Flood Risk Assessment (Ref: 0291, Rev. B, dated March 2017) together with Drawing No. 0291-PDL-102-3 (Rev. C, dated 05/05/2017) and Drawing No. 0291-PDL-100-C (Rev. C, dated 05/05/2017).

Reason:

To ensure that surface water runoff from the development is discharged as high up the drainage hierarchy as is feasible, and is managed in accordance with the principles of sustainable drainage systems.

Advice: Refer to Devon County Council's Sustainable Drainage Guidance.

(9) No part of the development hereby permitted shall be commenced until the detailed design of the proposed surface water drainage management system which will serve the development site for the full period of its construction has been submitted to, and approved in writing by, the Local Planning Authority, in consultation with Devon County Council as the Lead Local Flood Authority. This temporary surface water drainage management system must satisfactorily address both the rates and volumes, and quality, of the surface water runoff from the construction site.

Reason:

To ensure that surface water runoff from the construction site is appropriately managed so as to not increase the flood risk, or pose water quality issues, to the surrounding area.

Advice: Refer to Devon County Council's Sustainable Drainage Guidance.

(10) No part of the development hereby permitted shall be commenced until the full details of the adoption and maintenance arrangements for the proposed permanent surface water drainage management system have been submitted to, and approved in writing by, the Local Planning Authority, in consultation with Devon County Council as the Lead Local Flood Authority.

Reason:

To ensure that the development's permanent surface water drainage management systems will remain fully operational throughout the lifetime of the development

Contaminated Land Phase 1 Condition

(11) Prior to the commencement of any site clearance, groundworks or construction, the local planning authority shall be provided with the results of a phase one (desktop) survey for potential ground contamination. The report shall be prepared by a suitably qualified person and be sufficient to identify any and all potential sources of ground contamination on any part of the development site. Thereafter, depending on the outcome of phase one, a proposal for any phase two (intrusive) survey that may be required shall be presented to and agreed with the planning authority.

Reason:

To ensure that risks from land contamination to future users of the land and neighbouring land, together with those to controlled waters, property and ecological systems are identified and, where necessary, remediated in accordance with the National Planning Policy Framework.

Contaminated Land Reactive Condition

(12) Should any contamination of soil or groundwater not previously identified be discovered during development of the site, the Local Planning Authority should be contacted immediately. Site activities within that sub-phase or part thereof, should be temporarily suspended until such time as a procedure for addressing such contamination, within that sub-phase or part thereof, is agreed upon with the Local Planning Authority or other regulating bodies

Reason:

To ensure that any contamination existing and exposed during the development is identified and remediated



## Construction Management Plan Condition

(13) Prior to the commencement of development, including any site clearance, groundworks or construction within each sub-phase (save such preliminary or minor works that the Local Planning Authority may agree in writing), a Construction Management Plan (CMP) to manage the impacts of construction during the life of the works, shall be submitted to and approved in writing by the Local Planning Authority. For the avoidance of doubt and where relevant, the CMP shall include:-

- (a) measures to regulate the routing of construction traffic;
- (b) the times within which traffic can enter and leave the site;
- (c) the importation and removal of spoil and soil on site;
- (d) the removal /disposal of materials from site, including soil and vegetation;
- (e) the location and covering of stockpiles;
- (f) details of measures to prevent mud from vehicles leaving the site and must include wheel-washing facilities
- (g) control of fugitive dust from earthworks and construction activities; dust suppression
- (h) a noise control plan which details hours of operation and proposed mitigation measures;
- (i) details of any site construction office, compound and ancillary facility buildings
- (j) specified on-site parking for vehicles associated with the construction works and the provision made for access thereto;
- (k) a point of contact (such as a Construction Liaison Officer/site manager) and details of how complaints will be addressed

The details so approved and any subsequent amendments as shall be agreed in writing by the Local Planning Authority shall be complied with in full and monitored by the applicants to ensure continuing compliance during the construction of the development.

### Reason:

To minimise the impact of the works during the construction of the development in the interests of highway safety and the free-flow of traffic, and to safeguard the amenities of the area. To protect the amenity of local residents from potential impacts whilst site clearance, groundworks and construction is underway.

## Construction Times Condition

(14) During the construction phase no machinery shall be operated, no process shall be carried out and no deliveries taken at or dispatched from the site outside the following times:

- (a) Monday - Friday 08.00 - 18.00,
- (b) Saturday 09.00 - 13.00
- (c) nor at any time on Sunday, Bank or Public holidays.

### Reason:

To minimise the impact of the works during the construction of the development.

## Highways Conditions

(15) The site access and visibility splays shall be constructed, laid out and maintained for that purpose in accordance with drawings to be submitted for approval where the visibility splays provide intervisibility between any points on the X and Y axes at a height of 1.05 metres above the adjacent carriageway level and the distance back from the nearer edge of the carriageway of the public highway (identified as X) shall be 2.4 metres and the visibility distances along the nearer edge of the carriageway of the public highway ( identified as Y ) shall be 58 metres in a northerly direction and 51 metres in the other direction.

### Reason:

To provide a satisfactory access to the site and to provide adequate visibility from and of emerging vehicles

(16) As the first phase of development the site access road shall be hardened, surfaced and drained for a distance of not less than 15 metres back from its junction with the public highway

Reason:

To prevent mud and other debris being carried onto the public highway

(17) In accordance with details that shall previously have been submitted to, and approved by, the Local Planning Authority, provision shall be made within the site for the disposal of surface water so that none drains on to any County Highway

Reason:

In the interest of public safety and to prevent damage to the highway

(18) The proposed estate road, cycleways, footways, footpaths, verges, junctions, street lighting, sewers, drains, retaining walls, service routes, surface water outfall, road maintenance/vehicle overhang margins, embankments, visibility splays, accesses, car parking (two spaces per dwelling) and street furniture shall be constructed and laid out in accordance with details to be approved by the Local Planning Authority in writing before their construction begins. For this purpose, plans and sections indicating, as appropriate, the design, layout (including points of connection to adjoining land) levels, gradients, materials and method of construction shall be submitted to the Local Planning Authority.

Reason:

To ensure that adequate information is available for the proper consideration of the detailed proposals.

(19) The occupation of any dwelling in an agreed phase of the development shall not take place until the following works have been carried out to the written satisfaction of the Local Planning Authority:

(a) The spine road and cul-de-sac carriageway including the vehicle turning head within that phase shall have been laid out, kerbed, drained and constructed up to and including base course level, the ironwork set to base course level and the sewers, manholes and service crossings completed;

(b) The spine road and cul-de-sac footways and footpaths which provide that dwelling with direct pedestrian routes to an existing highway maintainable at public expense have been constructed up to and including base course level;

(c) The cul-de-sac visibility splays have been laid out to their final level;

(d) The street lighting for the spine road and cul-de-sac and footpaths has been erected and is operational;

(e) The car parking and any other vehicular access facility required for the dwelling by this permission has/have been completed;

(f) The verge and service margin and vehicle crossing on the road frontage of the dwelling have been completed with the highway boundary properly defined;

(g) The street nameplates for the spine road and cul-de-sac have been provided and erected.

Reason:

To ensure that adequate access and associated facilities are available for the traffic attracted to the site

(20) When once constructed and provided in accordance with condition 19 above, the carriageway, vehicle turning head, footways and footpaths shall be maintained free of obstruction to the free movement of vehicular traffic and pedestrians and the street lighting and nameplates maintained to the satisfaction of the Local Planning Authority

Reason:

To ensure that these highway provisions remain available



(21 )Within twelve months of the first occupation of the first dwelling in an agreed phase of the development, all roads, footways, footpaths, drainage, statutory undertakers' mains and apparatus, junction, access, retaining wall and visibility splay works shall be completed in accordance with the approved details.

Reason:

To ensure that the access arrangements are completed within a reasonable time in the interests of safety and the amenity of residents

(22) A lighting scheme shall be submitted to and approved in writing by the Local Planning Authority before the road is constructed past base course level and shall thereafter be carried out on site in accordance with the approved details and shall be completed before the access road is first used. This scheme shall be designed taking full regard of the recommendations in respect of protecting the foraging areas for bats as set out in Ecological Appraisal October 2015.

Reason:

To safeguard the ecological interest of the locality

(23) Provision, Implementation and Maintenance of Landscape and Ecological Management Plan (LEMP)

No development shall take place until a detailed landscape and ecological management plan (LEMP) has been submitted to and approved in writing by the Local Planning Authority and these works shall be carried out as approved. The content of the LEMP will address the implementation and management of all landscape and biodiversity avoidance, mitigation and enhancement measures of the development as set out within the Ecological Appraisal October 2015 and shall include:

- 1.A description and evaluation of landscape and ecological features to be created managed and ecological trends and constraints on site that might influence management
- 2.Aims and objectives of management
- 3.Appropriate management options for achieving aims and objectives
- 4.Prescriptions for management action
- 5.Preparation of a work schedule (including an annual work plan capable of being rolled forward over a 10- year period)
6. Details of the body or organization responsible for implementation of plan
- 7.Ongoing landscape and ecological monitoring and implementation of any necessary remedial measures
- 8.Means of reporting of landscape and ecological monitoring results to the Local Planning Authority and provisions for seeking written agreement to any changes to the management actions and prescriptions that may be necessary to ensure effective delivery of the aims and objectives of the LEMP over time.

The LEMP shall also include details of the mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery. The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning landscape and biodiversity objectives of the scheme. The development shall be implemented in accordance with the approved details.

Reason:

To safeguard the ecological interest of the locality

#### NOTES TO APPLICANT

1. This permission is accompanied by a s106 agreement which secures the delivery on affordable housing and contributions to infrastructure and is dated \*\*\*\*

## 2 Planning Practice Guidance defines reserved matters as:

'Appearance' - the aspects of a building or place within the development which determine the visual impression the building or place makes, including the external built form of the development, its architecture, materials, decoration, lighting, colour and texture.

'Landscaping' - the treatment of land (1) for the purpose of enhancing or protecting the amenities of the site and the area in which it is situated and includes: (a) screening by fences, walls or other means; (b) the planting of trees, hedges, shrubs or grass; (c) the formation of banks, terraces or other earthworks; (d) the laying out or provision of gardens, courts, squares, water features, sculpture or public art; and (e) the provision of other amenity features;

'Layout' - the way in which buildings, routes and open spaces within the development are provided, situated and orientated in relation to each other and to buildings and spaces outside the development.

'Scale' - the height, width and length of each building proposed within the development in relation to its surroundings.

3. The above consent requires the submission of further details to be approved either before works commence or at identified phases of construction.

To discharge these requirements will mean further formal submissions to the Authority on the appropriate forms, which can be completed online via the planning Portal [www.planningportal.gov.uk](http://www.planningportal.gov.uk) or downloaded from the Planning section of the North Devon Council website, [www.northdevon.gov.uk](http://www.northdevon.gov.uk).

A fee may be required [dependent on the type of application] for each separate submission [if several or all the details are submitted together only one fee will be payable].

Further details on this process are available on the Planning section of the Council's website or by contacting the Planning Unit at Lynton House, Commercial Road, Barnstaple.

4. Please note the following initial advice and recommendations from a designing out crime, fear of crime, antisocial behaviour [ASB] and conflict perspective:-

- The proposed 'car-free frontage and the pedestrian access to/from the development onto the public right of way and into Butts Close is a concern. This leaves current and proposed dwellings immediately adjacent to the path, vulnerable to crime and anti-social behaviour. Ideally, the proposed path could be diverted through the development and the 4 properties and associated parking most effected rotated so the rear gardens occupy where the path is currently proposed adjacent to the existing recreation and play area.

- The parking courts immediately on the right hand side as you enter the development appear not to be that well overlooked. There may be housing adjacent, but in some cases there is no direct frontage or windows directly looking over these spaces. If these plots were turned to face onto this space that would be ideal.

- Natural surveillance of these spaces could also be improved by incorporating gable end windows in the adjacent plots. It should be noted that natural or casual surveillance cannot be solely relied on to deter crime; regrettably, there is overwhelming evidence to suggest that unless a crime directly involves a member of the public, many will not report it for fear of repercussions.

- Footpaths or space that the public have access to should not be positioned to the rear or side of dwellings as this has proven to increase crime, fear of crime and complaints arising from noise and nuisance, all of which can easily impact on quality of life issues for residents and instigate conflict.

- Additional appropriate defensive planting should also be implemented along the front, side and rear boundaries of any plots adjacent to areas of open space and access paths.

- Ideally hedges that are to be retained should not act as boundary treatments to dwellings due to maintenance issues and potential conflict with neighbours. Residents will have varying levels of commitment and standards with regard to maintenance and as such may result in all kinds of unacceptable material being erected to avoid having to maintain them, especially given in parts they exceed 2m. It is recommended that a secured managed maintenance strip is incorporated and the plots are given their own boundary treatment of 1.8m. This will ensure a consistent level of maintenance for the hedges, reduce opportunities for conflict and create secure rear gardens. However, if existing hedgerow is likely to comprise new rear garden boundaries as appears will be the case then it must be fit for purpose. They should be of sufficient height and depth to provide both a consistent and effective defensive boundary as soon as residents move in. If additional planting will be required to achieve this then temporary fencing may be required until such planting has matured. Any hedge must be of a type which does not undergo radical seasonal change which would affect its security function.

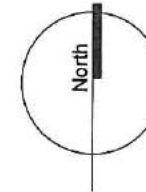
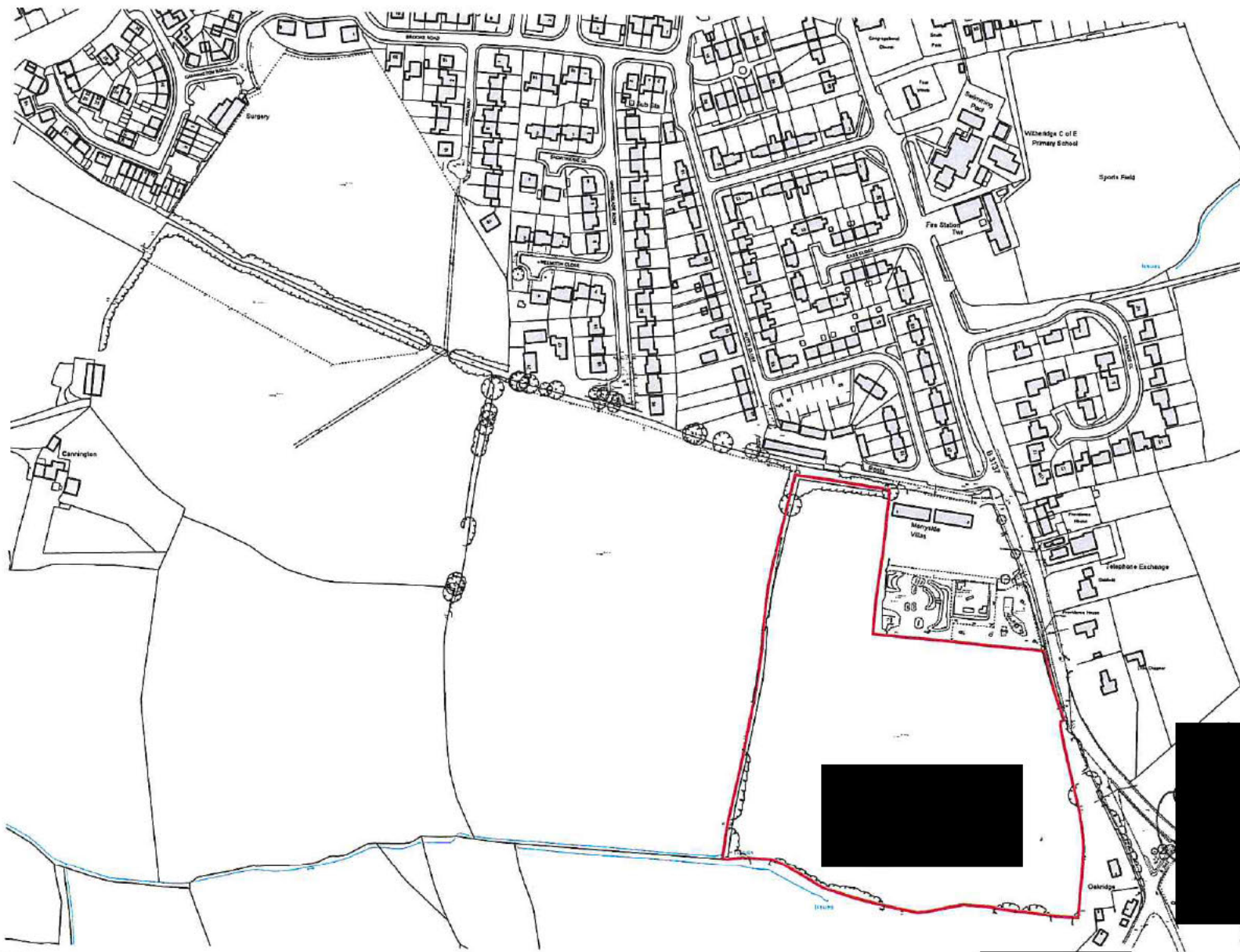
- Pedestrian access routes on/off the site must be well overlooked and feel safe to use.

In accordance with paragraphs 186 and 187 of the National Planning Policy Framework the Council has worked in a positive and pro-active way with the Applicant and has negotiated amendments to the application to enable the grant of planning permission. This has included securing the delivery of infrastructure to support the development.

**End of Draft Decision**

**Annex 2**  
**Location Plan**





PLANNING DRAWING

Client: Mr G. Cox  
 Drawing Title: **Site Location Plan**  
 Drg. No. **ACL.1012.001**  
 Rev.  
 Scale: 1:2,500 @ A3  
 Date: October 2015  
 Job: Residential Development at Land South of Butts Close, Witheridge EX16 8AW  
 Drawn by: DL

Date	Revision
06.03.17	Issued for Outline Planning Application
02.10.15	Issued for Pre-Application Enquiry

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