



DATED 6<sup>th</sup> JANUARY 2016-2017

Ref: 2051.535/RM/FW

(1) LIVERPOOL CITY COUNCIL

and

(2) PLUS DANE (CHESHIRE) HOUSING ASSOCIATION LIMITED

and

(3) REDROW HOMES LIMITED

and

(4) LIVERPOOL CITY COUNCIL

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S.106 Agreement

RE: Planning Application Ref: 16F/0083

The former Ernest Cookson School, Mill Lane West Derby Liverpool L12 7JA

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J McLoughlin

City Solicitor

Liverpool City Council

THIS DEED is made the 6<sup>th</sup> day of JANUARY 2017 ~~2016~~

**BETWEEN:**

**Parties**

1. Liverpool City Council of Municipal Buildings, Dale Street, Liverpool, L2 2DH ("the Council")
2. Plus Dane (Cheshire) Housing Association Limited a community benefit society registered under the Co-operative and Community Benefit Societies Act 2014 (30489R) whose registered office is at Baltimore Buildings 13-15 Rodney Street Liverpool L1 9EF ("Plus")
3. Redrow Homes Limited (company number: 01990710) whose registered office is at Redrow House, St David's Park, EWloe, Flintshire, CH5 3RX ("the Developer")
4. Liverpool City Council of Municipal Buildings, Dale Street, Liverpool, L2 2DH ("the Mortgagee")

**INTRODUCTION**

- 1 The Council is the local planning authority for the purposes of the Act for the area in which the Land is situated.
- 2 The Council is the freehold owner of that part of the Land registered with the Land Registry under title number MS568624.
- 3 Plus is the freehold owner of that part of the Land registered with the Land Registry under title number [ ]
- 4 The Mortgagee has the benefit of a first Legal Charge over the that part of the Land registered to Plus dated the 29<sup>th</sup> August 2016 and have entered into this Deed to give their consent to the same
- 5 The Developer has applied to the Council for permission to develop the Land in the manner and for the uses set out in the Application and in the plans specifications and particulars deposited with the Council and forming part of the Application more particularly set out therein.
- 6 The Developer has an interest in the Land pursuant to a Development Agreement dated the 16th June 2016 ("the Development Agreement") and made between the Council (1) and the Developer (2)
- 7 The Developer intends to develop the Land
- 8 The Council has decided to grant permission for the Development in accordance with the Application subject to the making of this Deed without which the planning permission for the Development would not have been granted.

NOW THIS DEED WITNESSES AS FOLLOWS:

**OPERATIVE PART**

**1 DEFINITIONS**

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

<b>“Act”</b>	the Town and Country Planning Act 1990.
<b>“Application”</b>	full planning permission registered by the Council on 22nd January 2016 and allocated reference number 16F/0083.
<b>“Commencement of Development”</b>	the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and for no other purpose) operations consisting of any operation in relation to the demolition of existing buildings or clearance of the Land or archaeological investigations or ecological mitigation works or soil sampling or other ground investigations or the diversion and/or laying of services temporary works including the erection of temporary fencing and hoardings, the temporary display of site notices or advertisements and a sales cabin and “Commence Development” shall be construed accordingly.
<b>“Development”</b>	the development of the Land for 22 dwelling houses with associated landscaping and access road as set out in the Applications.
<b>“Land”</b>	the land at the former Ernest Cookson School Mill Lane West Derby Liverpool L12 7JA being part of the land registered at HM Land Registry under Title Number MS568624 and part of the land registered at HM Land Registry under Title Number [ ] against which this Deed may be enforced shown for identification edged in red on the attached Plan at Schedule 1.
<b>“Occupation” and “Occupied”</b>	occupation for the purposes permitted by the Planning Permission but not including occupation by persons engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations
<b>“Plan”</b>	the plan attached to this Deed at the Third Schedule.

## **2 CONSTRUCTION OF THIS DEED**

- 2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.

- 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 interchangeable in that manner.
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and severally 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 validity from it.
- 2.6 References to any party to this Deed shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the Council the successors to their respective statutory functions.
- 2.7 The headings are for reference only and shall not affect construction.

### **3 LEGAL BASIS**

- 3.1 This Deed is made pursuant to section 111 of the Local Government Act 1972 and 106 of the Town and Country Planning Act 1990 and all other powers enabling which may be relevant for the purpose of giving validity hereto or facilitating the enforcement of the covenants herein contained with intent to bind the Developer and the Council to observe and perform the obligations or their respective parts as hereinafter contained.
- 3.2 Nothing in this Deed restricts or is intended to restrict the proper exercise at any time by the Council of any of its statutory powers, functions or discretions in relation to the Site or otherwise.

### **4 CONDITIONALITY**

This Deed is conditional upon the Commencement of Development save for the provisions of Clauses 7.13, 9, 11, 12, 13 and 14 which shall come into effect immediately upon completion of this Deed.

### **5 THE DEVELOPER'S COVENANTS**

- 5.1 The Developer covenants with the Council as set out in the First Schedule.

### **9 THE COUNCIL'S COVENANTS**

- 6.1 The Council covenants with the Developer as set out in the Second Schedule.

**7 MISCELLANEOUS**

- 7.1 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999
- 7.2 Where the agreement, approval, consent or expression of satisfaction is required by the Developer from the Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction shall be given and 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.
- 7.3 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.
- 7.4 Insofar as any clause or clauses of this Deed 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 Deed.
- 7.5 This Deed 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.
- 7.6 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Land but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 7.7 This Deed shall not be enforceable against owner-occupiers or tenants of dwellings constructed pursuant to the Planning Permission nor against those deriving title from them.
- 7.8 This Deed shall not be enforceable against any statutory undertakers, service companies or other entities to whom any part of the Land may be transferred, let or otherwise disposed of for the provision of service media, electricity substations, pumping stations, gas governor stations or similar matters.
- 7.9 Nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.
- 7.10 Nothing contained or implied in this Deed shall prejudice or affect the rights discretions powers duties and obligations of the Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority.
- 7.11 The Developer shall give to the Council not less than 14 days prior written notice of the Intended Commencement of the Development.

7.12 The Developer shall give to the Council not less than 14 days prior written notice of the Intended first Occupation of the Development.

7.13 On completion of this Deed the existing deed relating to this Land and made pursuant to sections 111 of the Local Government Act 1972 and all other enabling powers dated the 24<sup>th</sup> March 2016 and made between the same parties hereto shall cease to have any effect

## **8 WAIVER**

8.1 No waiver (whether expressed or implied) by the Council of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

## **9 CHANGE IN OWNERSHIP**

9.1 The Developer agrees with the Council to give the Council immediate written notice of any change in ownership of the interests in the Land before all the obligations have been discharged so that the local authority can trace successors in title. The written notice should give details of the transferee's name and address, together with details of the land or unit to which the interest applies.

## **10 NOTICES**

10.1 Any notice, demand or any other communication served under this Deed will be effective only if delivered by hand or sent by pre-paid first class post, or recorded delivery.

10.2 Any notice, demand or any other communication served is to be sent to the address of the relevant party set out at the beginning of this Deed or to such other address as one party may notify in writing to the others at any time as its address for service.

10.3 Any notice, demand or any other communication to be served on the Council is to be sent for the attention of the Planning Manager at Municipal Buildings, Dale Street, Liverpool L2 2DH quoting the Planning Application reference.

10.4 Where proceedings have been issued in the Courts of England and Wales, the provisions of the Civil Procedure Rules must be complied with in respect of the service of documents in connections with those proceedings.

## **11 Mortgagees**

11.1 The Mortgagee acknowledges and declares that this Deed has been entered into with its consent and that part of the Land subject to the Legal Charge dated the 29th August 2016 as aforesaid shall be bound by the obligations contained in this Deed and further that the Mortgagee acknowledges and declares that the security of the Mortgagee over that part the Land subject to the Legal Charge dated the 29th August 2016 shall take effect subject to this

Deed provided that the Mortgagees shall otherwise have no liability under this Deed unless they take possession of that part of the Land subject to the Legal Charge dated the 29th August 2016 in which case they will be bound by the obligations as if they were a person deriving title from Plus.

**12. DISPUTE PROVISIONS**

- 12.1 In the event of any dispute or difference arising between the parties to this Deed in respect of any matter contained in this Deed, at the agreement of all parties, such dispute or difference shall be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in England with such matters as may be in dispute and such person shall act as an expert whose decision shall be final and binding on the parties in the absence of manifest error and any costs shall be payable by the parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the parties in equal shares.
- 12.2 In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to Clause 12.1 or as to the appropriateness of the professional body then such question may be referred by either part to the president for the time being of the Law Society for him to appoint a solicitor to determine the dispute such solicitor acting as an expert and his decision shall be final and binding on all parties in the absence of manifest error and his costs shall be payable by the parties in equal shares.
- 12.3 Any expert howsoever appointed shall be subject to the express requirement that a decision was reached and communicated to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty-eight working days after the conclusion of any hearing that takes place or twenty-eight working days after he has received any file or written representation.
- 12.4 The expert shall be required to give notice to each of the said parties requiring them to submit to him within ten working days of notification of his appointment written submissions and supporting material and the other party will be entitled to make a counter written submission within a further ten working days.
- 12.5 The provisions of this clause shall not affect the ability of the Council to apply for and be granted any of the following: declaratory relief, injunction, specific performance, payment of any sum, damages, any other means of enforcing this Deed and consequential and interim orders and relief.
- 12.6 This clause 12 does not apply to disputes in relation to matters of law or the construction or interpretation of this Deed which will be subject to the jurisdiction of the courts.

**13 JURISDICTION**

13.1 This Deed is to be governed by and interpreted in accordance with the law of England and Wales.

**14 DELIVERY**

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

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

## First Schedule

### The Developer's Covenants with the Council

#### 1. Defined Terms

- "Commuted Sum"** the amount of £22,000 (Twenty Two Thousand Pounds) for the provision or enhancement of public open space or public realm works within 800m (10 minute walking distance) of the Land and/or within Croxteth Park
- "Street Tree Sum"** the amount of £12,000 (TWELVE THOUSAND POUNDS) in respect of the provision and maintenance of street trees in the vicinity of the Land

#### 2 Payment of Contributions

2.1 The Developer shall pay to the Council the Commuted Sum as follows:

- (a) as to 50% thereof prior to the Commencement of Development; and
- (b) as to 50% prior to the first occupation of any residential dwelling on the Land

2.2 The Developer shall pay to the Council the Street Tree Sum as follows:

- (a) as to 50% thereof prior to the Commencement of Development; and
- (b) as to 50% prior to the first occupation of any residential dwelling on the Land

## **Second Schedule**

### **Council's Covenants**

1. The Council hereby covenants with the Developer to use all sums received from the Developer under the terms of this Deed for the purposes specified in this Deed for which they are to be paid or for such other purposes for the benefit of the Development as the Developer and the Council shall agree.
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 Deed which has not been expended in accordance with the provisions of this Deed (and money shall be deemed to be expended if the council has properly entered into a contract for the expenditure of the money) within five years of the date of receipt by the council of such payment.

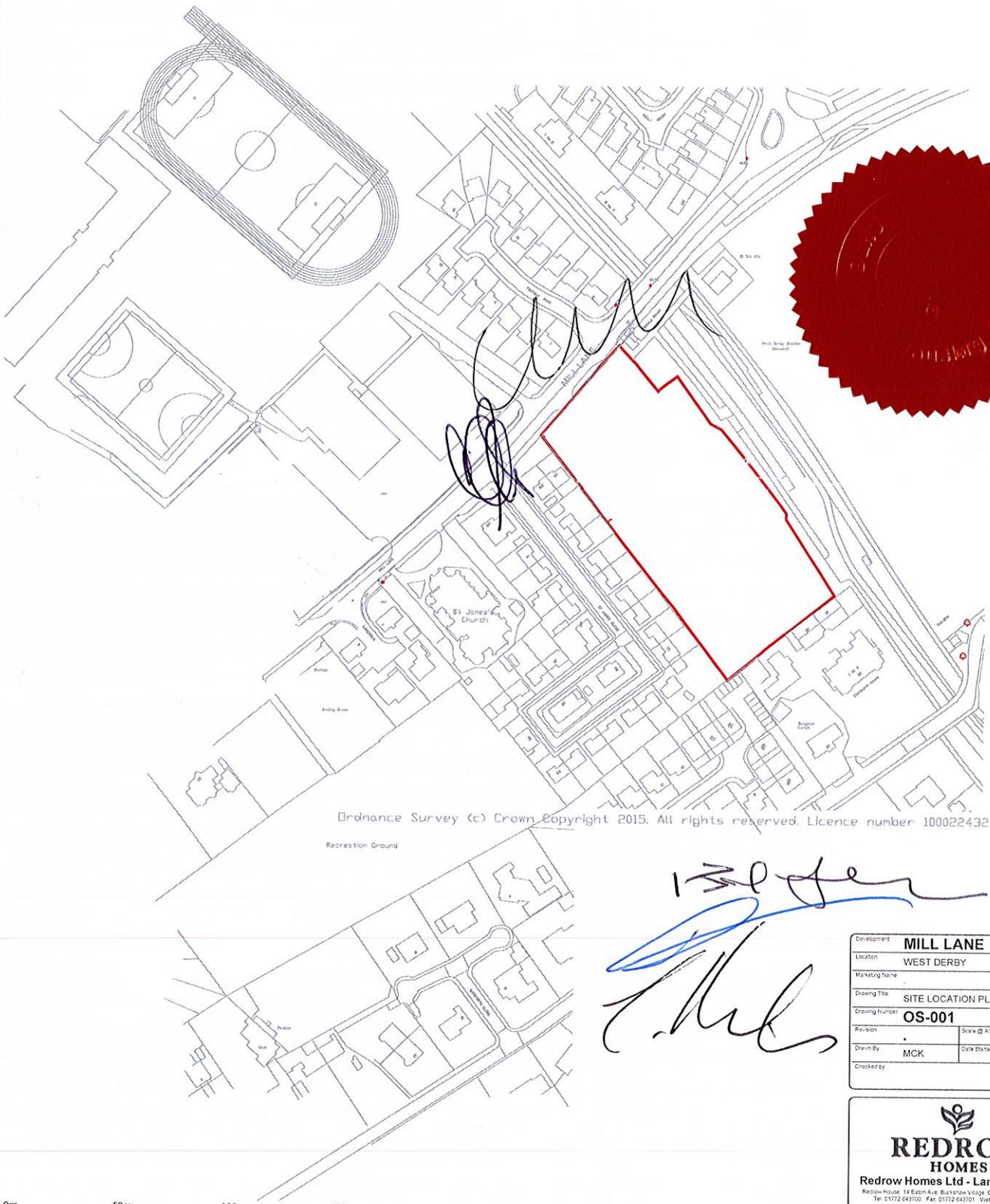
**Third Schedule**

**Plan**

Survey Information

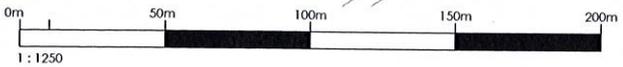


# Mill Lane, West Derby.



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Development	<b>MILL LANE</b>	
Location	WEST DERBY	
Marketing Name		
Drawing Title	SITE LOCATION PLAN	
Drawing Number	<b>OS-001</b>	
Revision	Scale @ A1	1:1250
Drawn By	MCK	Date Started 07.12.15
Checked by		Date

**REDROW HOMES**  
 Redrow Homes Ltd - Lancs Division  
 Redrow House 11 Easton Road, Buckton Village, Chorley, Lancs PR67 7HA  
 Tel 01772 643700 Fax 01772 643701 Web www.redrow.co.uk

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This layout has been designed for the consideration of our Client & Contractors Plan

THE COMMON SEAL of the  
LIVERPOOL CITY COUNCIL  
was hereunto affixed:-

)  
)  
)

*Principal*  
Assistant City Solicitor



Seal No.  
148.17

THE COMMON SEAL of  
PLUS DANE (CHESHIRE) HOUSING ASSOCIATION  
LIMITED

was hereunto affixed in the presence of

Authorised Signatory



244

Authorised Signatory

SIGNED as a DEED by *STEWART GREENHATTON*  
as attorney for

REDROW HOMES LIMITED

in the presence of: -

as attorney for REDROW HOMES  
LIMITED

Signature of witness ..... *S Stewart*  
Name (in BLOCK CAPITALS) ..... S STEWART  
Address ..... 16 REDROW HOMES LIMITED  
..... ST DAVID'S PARK, FLINT, FLINTSHIRE, CH5 3RX

SIGNED as a DEED by KARL LONGWORTH

as attorney for

**REDROW HOMES LIMITED**

in the presence of: -

[Handwritten Signature]

as attorney for **REDROW HOMES LIMITED**

Signature of witness ..... [Handwritten Signature] .....

Name (in BLOCK CAPITALS) ..... STEWART .....

Address..... 10 REDROW HOMES LIMITED .....

..... ST DAVID'S PARK, EWLOE, .....

..... FLINTSHIRE, CH5 3RX .....

THE COMMON SEAL of the )  
LIVERPOOL CITY COUNCIL )  
was hereunto affixed:- )



[Handwritten Signature]

Principal  
Assistant City Solicitor