



DATED *30<sup>th</sup> January* 2014  
Ref: LS/2051.353/RM

LIVERPOOL CITY COUNCIL

And

REDROW HOMES LIMITED

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S.106 Agreement

RE: Planning Application Ref: 13F/1823  
Former Site of New Heys School, Heath Road, Liverpool L19 4TN

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J McLoughlin  
Interim City Solicitor  
Liverpool City Council

THIS DEED is made the 30<sup>th</sup> day of January

2014

BETWEEN

Parties

1. Liverpool City Council of Municipal Buildings, Dale Street, Liverpool, L2 2DH ("The Council")
2. REDROW HOMES LIMITED (Company Registration 01990710) whose registered office is at Redrow House, St David's Park Flintshire CH5 3RX ("The Developer")

RECITALS

- 1 The Council is the Local Planning Authority for the purposes of this Deed for the area in which the land described in the First Schedule ("the Land") is situated and by whom the obligations contained in this Deed are enforceable.
- 2 The Council is the owner in fee simple in possession of the Land.
- 3 The Developer is a person interested in the Land pursuant to an agreement to purchase the Land dated the 19<sup>th</sup> July 2013 and made between the Liverpool City Council and Redrow Homes Limited
- 4 The Developer has by application referenced 13F/1823 ("the Planning Application") applied to the Council for permission to develop the Land in the manner and for the uses set out in the Planning Application and in the plans specifications and particulars deposited with the Council and forming part of the Planning Application more particularly set out in the Second Schedule ("the Development").
- 5 The Council has decided to grant planning permission the draft form of which is annexed to this Deed at the Sixth Schedule ("the Planning Permission") for the Development in accordance with the Planning Application subject to the making of this Agreement without which the planning permission for the Development would not have been granted.

NOW THIS DEED is made in pursuance of section 106 of the Town and Country Planning Act 1990 and is a planning obligation for the purposes of that section and WITNESSES as follows:

1. The Developer covenants with the Council to observe the restrictions specified in the Third Schedule
2. The Developer covenants to perform the obligations or activities specified in the Fourth Schedule
3. The Council covenants with the Developers as set out in the Fifth Schedule hereto
4. It is agreed and declared as follows:
  - 4.1. The expression "the Council", and "the Developer" shall include their successors in title and assigns.
  - 4.2. No person shall be liable for breach of a covenant contained in this Agreement after he shall have parted with all interest in the Land or the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest.
  - 4.3. The covenants contained in this Agreement shall take effect upon the date of this Agreement.
  - 4.4. Words denoting an obligation on the Developer to do any act, matter or thing include an obligation to procure that it be done and words placing the Developer under a restriction include an obligation not to cause or permit or suffer any infringement of the restriction.
  - 4.5. If the permission granted pursuant to the Planning Application shall expire before the development is begun as defined above or shall at any time be revoked this Agreement shall forthwith determine and cease to have effect.
  - 4.6. Nothing in this Agreement shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than one relating to the Development as specified in the Planning Application) granted (whether or not on appeal) after the date of this Agreement.
  - 4.7. The Council will upon the written request of the Developer at any time after the obligations of the Developer under the Agreement have been fulfilled issue written confirmation thereof and thereafter cancel all related entries in the Register of Local Land Charges.

- 4.8. This Agreement is a local land charge and shall be registered as such.
- 4.9. This Agreement shall not be binding upon: -
- 4.9.1. the owners occupiers or tenants of individual dwellings (including a house apartment or maisonette) to be constructed pursuant to the Planning Permission; or
- 4.9.2. an occupier or tenant or a purchaser of a site or sites required for statutory infrastructure purposes in relation to the Development.
- 4.10. The Council hereby consents to its freehold interest in the Land being subject to the obligations contained in the Third Schedule PROVIDED THAT the Council shall not itself be bound by the obligations contained in the Third Schedule and shall otherwise unless expressly stated have no liability under the Third Schedule
- 4.11. 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 Developers and the Developer) it is modified by any statutory procedure or expires prior to the Commencement of Development.
- 4.12. 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.

## **5. CONDITIONALITY**

Save for the obligations numbered 5, 6, 9 and 10 at the Fourth Schedule this Deed is conditional upon:

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

## **6. DISPUTES**

6.1 If agreed in writing by both parties then any dispute or difference arising between the Parties to this Deed in respect of any matter contained in this Deed (save for a matter of law) and which is to be resolved under this Clause shall be referred by any Party to a person who shall have a minimum of 10 years relevant experience in such matters ("Expert") nominated by agreement between the Parties hereto or in default of agreement by such a person nominated by the President for the time being of the Royal Institution of Chartered

Surveyors on the application of any Party who shall act as an expert  
(and not an arbitrator)

- 6.2. The Expert shall require the Parties to make written submissions to him with regard to the nature dispute
- 6.3. The Parties shall exchange such written submissions and shall have the right to comment upon the written submissions of the other
- 6.4. If any Party shall require the Expert shall hold a hearing at which the Parties shall be entitled to give and call evidence as to the nature of the dispute
- 6.5. The Expert shall give written detailed reasons for his award
- 6.6. The Expert shall make his award within 6 weeks of the date of his appointment
- 6.7. the Expert's costs shall be borne as such Expert shall award

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

FIRST SCHEDULE

"The Land"

Former Site of New Heys School, Heath Road, Liverpool L19 4TN registered at the Land Registry with title number MS 564826 and shown edged red on the attached plan.

SECOND SCHEDULE

"The Development"

To erect 119 dwellinghouses and layout associated infrastructure and landscaping.

### THIRD SCHEDULE

#### Restriction

The Developer shall not begin the Development within the meaning of section 56 of the Town and Country Planning Act 1990 until it has performed the obligations or activities specified in the Fourth Schedule.

## FOURTH SCHEDULE

### Developer Obligations

In this Schedule the following words and phrases shall have the following meanings:

"Local Nature Reserve Sum" means the amount of £8,000.00 (EIGHT THOUSAND POUNDS) if paid within one year after the date of this agreement or the amount as calculated in accordance with the following formula:

£8,000.00 multiplied by the Index for the month immediately preceding the date of payment and divided by the Index for the month immediately preceding the date of this agreement

"Index" means the all items index figure of the Index of Retail Prices published by the Office for National Statistics or any successor, Ministry or Department

"Commutated Sum" means the amount of £119,000.00 (ONE HUNDRED AND NINETEEN THOUSAND POUNDS) if paid within one year after the date of this agreement or the amount as calculated in accordance with the following formula:

£119,000.00 multiplied by the Index for the month immediately preceding the date of payment and divided by the Index for the month immediately preceding the date of this agreement

"Sports Contribution" means the amount of £100,000.00 (ONE HUNDRED THOUSAND POUNDS) if paid within one year after the date of this agreement or the amount as calculated in accordance with the following formula:

£100,000.00 multiplied by the Index for the month immediately preceding the date of payment and divided by the Index for the month immediately preceding the date of this agreement

"Public Art Contribution" means the amount of £4,047.60 (FOUR THOUSAND AND FORTY SEVEN POUNDS AND SIXTY PENCE) if paid within one year after the date of this agreement or the amount as calculated in accordance with the following formula:

£4,047.60 multiplied by the Index for the month immediately preceding the date of payment and divided by the Index for the month immediately preceding the date of this agreement

"Tree Phasing Plan" – means a plan showing how the trees within Site shall be removed during the Development PROVIDED ALWAYS that such plan shall provide that until the Local Nature Reserve Sum has been expended by the Council or the date which is 12 from receipt by the Council of the Local Nature Reserve Sum (whichever is the earlier) 5 (five) trees shall remain on the Site

"Local Employment and Training Strategy" means a strategy that will seek to secure the following objectives:

- (i) training schemes to equip local people for employment for the construction process;

- (ii) (ii) a scheme for advertising jobs locally, including initially for the construction/start up of the development, and thereafter for all available posts that arise, to maximise local recruitment which will include all of the following: local newspapers, local employment agencies and local job centres;
- (iii) (iii) a scheme to monitor annually the number of persons employed on the construction who are resident within the local area and to report annually thereon to the Council for the duration of the build.

- 1 The Developer shall pay to the Council the Local Nature Reserve Sum to fund works at the Eric Hardy Local nature Reserve.
- 2 The Developer shall pay to the Council the Commuted Sum in lieu of on-site provision of open space by the Development at the Land.
- 3 The Developer shall pay to the Council the Sports Contribution.
- 4 The Developer shall pay to the Council the Public Art Contribution.
- 5 The Developer shall pay to the Council upon the signing of this agreement the sum of £1000 (ONE THOUSAND POUNDS) for the Council's Legal Department's costs in preparation, execution and monitoring thereof.
- 6 The Developer shall pay to the Council upon the signing of this agreement the sum of £4,047.60 (FOUR THOUSAND AND FORTY SEVEN POUNDS AND SIXTY PENCE) for the Council's Planning Department's costs in preparation, execution and monitoring thereof.
- 7 The Developer shall agree the Tree Phasing Plan in writing with the Council and will carry out the Development in accordance with that plan as agreed.
- 8 The Developer shall agree a Local Employment and Training Strategy in writing with the Council and will and will carry out the Development in accordance with that plan as agreed
- 9 The Developer shall give immediate written notice of any change in ownership of the interests in the site 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 site or unit to which the interest applies.
- 10 On taking ownership of the site the Developer will immediately enter into a further agreement under s106 of the Act in the form set out in the Seventh Schedule

## FIFTH SCHEDULE

### Council Covenants

#### **Repayment of payments**

1. The Council hereby covenants with the Developers to use all sums received from the Developers 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 Developers and the Council shall agree.
2. The Council covenants with the Developers that it will pay to the Developers such amount of any payment made by the Developer pursuant to the Second Schedule of this Deed to the Council which has not been expended in accordance with the provisions of this Deed within five years of the date of receipt by the Council of the final such payment due to be paid to the Council under this Deed together with any interest actually accrued thereon from the date of payment to the date of refund.
3. The Council shall provide to the Developers such evidence, as the Developers shall reasonably require in order to confirm the expenditure of the sums paid by the Developers under this Deed and further the Council will if so requested in writing by the Developers provide a written report on an annual basis detailing such expenditure.

#### **Discharge of obligations**

4. At the written request of the Developers the Council shall provide written confirmation of the discharge of the obligations contained in this Deed when satisfied that such obligations have been performed.
5. 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.

SIXTH SCHEDULE

Draft Planning Permission

<b>Ward:</b>	<b>Allerton and Hunts Cross</b>		
<b>Site:</b>	<b>Former site of New Heys Community Comprehensive School Heath Road Liverpool L19 4TN</b>		
<b>Proposal:</b>	<b>To erect 119 dwellinghouses and layout associated infrastructure and landscaping. *Amended Plans Received*</b>		
<b>Applicant:</b>	<b>Redrow Homes NW</b>		
<b>Application No.:</b>	<b>13F/1823</b>	<b>Date Valid:</b>	<b>21/08/2013</b>
<b>D.C. Team:</b>	<b>City South</b>		
<b>Recommendation:</b>	<b>Approve with Conditions</b>		

### Case Officer Report

#### **Site Description**

The application site consists of almost 6 hectares of land within the south of the city, bound by the highways of Mather Avenue , Heath Road and Allerton Road to the south, east and north respectively, with established residential development to the west. Whilst the wider surrounding area is primarily residential in character; a mixture of post-war, interwar and more modern properties, there is a listed building to the north-west, which is also in residential use. Directly to the north of the site, beyond Allerton Road , is Allerton Golf Course. The character of this, combined with the wide avenues of Heath Road and Mather Avenue , with their grassed side/ central verges, give the area a very open character.

The site is currently vacant although it was until recently occupied by Enterprise South Liverpool Academy (formerly known as New Heys) prior to its amalgamation with St Benedict's at Garston. Since then the buildings, situated to the north of the site, have been demolished, and the playing fields (approximately 3.7ha of the site) to the south have been largely unused.

The site has a number of trees, many of which are mature, and there are also well established street trees within 2 of the immediately adjacent highways.

#### **Development Proposal**

The application proposes the erection of a residential development comprising 119 detached executive homes, 90 of which would have 4 bedrooms and 32 of which would have 5 bedrooms. It is proposed that the site would have two distinct character areas hence two vehicular entrances are proposed, one from Allerton Road and the other from Heath Road. There is a pedestrian link proposed between these two areas for easy access from the south of the site up to the greenspace to the north and from the north of the site to shopping and transport amenities located on Mather Avenue. It is proposed that the development would be outward facing where it immediately abuts the highway.

Each dwelling would benefit from off-street car parking and a front and rear garden although no community open-space would be provided on site.

The application makes provision for the associated electricity substation, which it is proposed would be located centrally within the site adjacent to the pedestrian linkage so as to allow it be accessible whilst not detracting from the form of the development from the main highways.

### **Consultation**

The application was advertised by means of neighbour notification letter, press notice and site notice. As a result 10 letters have been received, which object to the proposal for the following reasons:

- The high density of housing on this piece of land calls in to question its quality. This green triangle is one of the nicest areas in Liverpool and development should not be allowed on it. If it is, it should be better quality and lower density.
- Against development on playingfields and greenspace
- There is a shortage of land for children and adults to pursue outdoor activities.
- The number of proposed houses will have an adverse impact on those houses within the locality.
- The area does not need any more residential properties as there is already an abundance of houses, flats and bungalows.
- Removal of trees on Mather Avenue reducing the leafy appearance of the area.
- Concern regarding future removal of trees that are shown to be retained within the application (covered by a TPO) based on annotations on the submitted plans and Redrow's previous discussions with local residents.
- Impact of tree loss on squirrels, birds and wildlife.
- Separation distance to neighbouring properties (with specific reference to 51 Ambleside Road)
- The roads in the surrounding area are already in a poor condition and the development will hasten this condition.
- Old Allerton Road is too narrow to accommodate the development
- Proposed landlevels are not clear within the application. Care needs to be taken that resultant land levels would not adversely impact upon the privacy of adjacent neighbours.
- Fencing is required between the new properties and those existing. This should be classed as a shared fence.
- Request for an additional tree (covered by a Tree Preservation Order) in a neighbouring garden is also removed at the same time as other tree works and that this is included within the application.
- Request that money is set aside from the application for investment in to problems centering around the Mather Avenue / Heath Road junction including graffiti, broken pavement slabs, vacant retail units and illegal parking.
- Decrease in surrounding house prices as a result of loss of greenspace/ loss of trees and busy highways.

- The land should be reserved for education purpose to accommodate the increase in population expected in the next 10-20 years. The proposal will lead to an over subscription to nursery and primary schools.
- The consultation period should have been longer.
- This application has the feel of a done deal. Assurances sought that this is not the case.
- This would be a good, sustainable location for the relocation of Arch Bishop Blanch so why is priority being given to Redrow.

#### **Environmental Health**

No objection subject to conditions

#### **Trees and Woodland Manager**

No objections subject to a condition relating to a S.278 agreement to ensure the replacement of street trees that will be lost as a result of the development.

#### **Parks and Greenspaces (Nature Conservation)**

No objection subject to conditions

#### **Drainage**

Has requested that the applicant is made aware that parts of the development are susceptible to surface water flooding during a 1 in 200 year event and this should be taken into account during the detailed design stage as it should be managed within the site. There may be an historically culverted watercourse in this area and the developer should be aware of its possible presence.

#### **The Environment Agency**

No objection subject to conditions

#### **Merseyside Fire and Rescue**

No objections

#### **Merseytravel**

No objections subject to conditions

#### **Planning Policy**

##### **National Planning Policy Framework (NPPF)**

It is considered that the saved policies contained within the adopted Unitary Development Plan (2002) broadly align with the principles contained within The Framework and therefore remain material planning considerations.

##### **Liverpool Unitary Development Plan**

H4 – Primarily Residential Areas

H5 – New Residential Development

OE11 - Protection of Green space

OE14- Open Space in New Residential Developments

HD5 - Development Affecting the Setting of a Listed Building

HD18- General Design Requirements

HD19- Access for All

HD10- Crime Prevention

HD22 - Existing Trees and Landscaping

HD23 - New Trees and Landscaping  
HD24 - Public Art

## **The Draft Core Strategy**

### **Issues:**

The primary issues associated with this development are:

1. Development on Green Spaces
2. Loss of Sports Pitches
3. The principle of a New Residential Development
4. Residential Amenity
5. Design and Layout
6. Highway Implications
7. Loss of Trees
8. Accessibility

9. Other – house prices, land ownership, alternative uses.

These shall be explored below.

### **Development on Green Spaces**

The site is allocated as a green space in the UDP, and as such the application should be assessed against policy OE11. This policy does not preclude development on green space but recommends that permission is not granted where it would result in material harm to:

- Its recreational function
- Visual amenity in terms of important vistas, key frontages, landscaping or its importance as open land in an otherwise densely developed area
- Its relationship to other green spaces
- Its nature conservation value

The first point relating to its recreational function will largely be dealt with in the following section however it is important to note that since the amalgamation of ESLA at the new Garston site there is no agreed formal nor informal use of the site for walking etc. Given this, and the close linkage to the Greenwedge to the north, the Divisional Head of Planning is satisfied that the application meets with this policy requirement.

The second issue relates to the visual impact of developing the site, it is therefore necessary to establish the value of the green space in these terms. The Divisional Manager Planning acknowledges that there are public views into the site from the northern, southern and eastern boundaries and this contributes to a sense of openness in the character in the area. However, notwithstanding this, it is considered that as a largely grassed, open space the site has limited intrinsic quality that contributes to the street scene with the exception of some trees, the majority of which would be retained. Whilst there is no doubt that the proposed development of the entire site would impact on views of open land, it is considered that the development allows scope for additional, more interesting, landscaping which would contribute to the character of the area. Furthermore, it is considered that the visual impact of developing on open space is mitigated to a certain extent by the width and greenery associated with the Heath Road and Mather Avenue highway frontages and the openness of the Golf Course/ Green Wedge to the north off Allerton Road .

Thirdly, in terms of its importance as open land, it is recognised that despite its proximity to other greenspaces there is little direct relationship with them in visual terms and functionality. This is primarily because the building associated with New Heys were located to the north of the site, opposite Allerton Golf Course.

On the forth policy point, the Council's ecology officer considers that the application site contains features that are important to local biodiversity, especially with regard to protected bat species. The site's value is in its mature trees, hedgerow, neutral grassland, in addition to the connectivity it provides for species. These features will all be lost as a result of the proposals. Whilst there will be tree planting associated with the proposals, they will not provide resources for bats, invertebrates and mammals associated with the existing features. The ecological report submitted with the application has not identified any bat roosts, but it has identified the actual and potential value of existing site features to the local bat, and other wildlife populations.

It is considered that in order for the proposal to accord with the National Planning Policy Framework and avoid impacts on local biodiversity and indeed contribute towards it, is to either retain or create suitable features on site or provide for the creation of features that will have a similar function off-site. In this instance the only viable way to provide the necessary biodiversity resources is to agree an off-site compensation scheme to secure an off-site package that provides low density, predominantly linear ground flora and tree planting in an area close to existing mature trees and open grassland, as this will broadly replicate the features to be lost. This can be ensured through a S.106 Agreement to provide foraging opportunities for bat species as well and a range of resources for birds, mammals and invertebrates, supplemented with bird and bat box provision. Instead of creating a new area that would require preparation, aftercare and maintenance, the most suitable and viable solution in ecological terms would be to enhance an existing area of low quality woodland in the vicinity. Therefore the S.106 Agreement would require a commuted sum of £8,000 to:

- Thin out an existing area (measuring approximate 1500m<sup>2</sup>) of dense plantation, adjacent to existing mature trees, to increase foraging opportunities for bat species, mammals, birds and invertebrates at the Eric Hardy Local Nature Reserve.
- Under plant the above area with plug plants of red campion and bluebell to increase foraging opportunities for bat species, mammals, birds and invertebrates.
- Supplement the above with installation of five bird and five bat boxes.
- Time-link the mitigation to the development so that the package can begin before losses associated with the application occur.

The above scheme would provide enhancement to the existing habitat of the Local Nature Reserve proportionate to the losses associated with the development proposals.

In summary, it is considered that the proposed development of this Greenspace will compromise saved UDP policy OE11 however it is considered that the policy does allow for the development proposed here and that the potential adverse impacts can be largely mitigated against. Furthermore the impact on the green space needs to be carefully balanced against the benefits of the proposal. In this context it is appropriate to consider other material considerations which outweigh any harm to the value of the green space. These other material considerations will be addressed in the following sections.

### **Loss of Sports Pitches**

Over half of the application site was previously used as sports pitches. The loss of sports pitches are required to be compensated for under UDP policy OE11 and also as part of Sport England requirements. The on-site pitches were primarily used for football and Sport England have accepted that the proposal would not lead to a deficient of this type of sports provision within the area. However it is not accepted that replacement facilities have been provided previously at the new ESLA site; these facilities related solely to those on the St Benedict's site and those associated with Dutch Farm, which was the neighbouring park that was brought in to the control of the school as part of the development.

The policy requires the replacement pitches to be of an equal quality and suitable size. In this particular instance Sport England working with Sport and Recreation have identified suitable mitigation for the loss of 2 playing pitches to fund a synthetic cricket wicket (to assist the ECB with their 'last man stands' initiative) together with playing pitch improvements (including piped drainage systems) at an alternative site including a 25 year maintenance fund at either Heron Eccles PF or Garston Recreation Ground with the latter site the optimum preference subject to further investigation.

The commuted sum will for £100,000 will be secured by means of a Section 106 Agreement and there will be a Memorandum of Understanding (MoU) between the Council and Sport England to give Sport England the certainty that the payment will secure agreed works on the replacement site in a timely fashion.

As part of the MoU the Council will agree to secure the provision of the agreed works within a 2 year period following confirmation of the receipt of the commuted sum from the developer.

The Divisional Manager Planning is satisfied that the securing of £100,000 for the provision of additional, and upgrade of existing, sports provision will compensate for the loss of the playing pitches on the New Heys site, in accordance with Policy OE11.

### **The Principle of New Residential Development**

Subject to adherence to the Plan policies stated above, there is no objection to the principle of the development of the site for residential purposes. The site is recognised to be deliverable in actual terms and will contribute to the City's 5 year supply in accordance with the aims and objectives of the National Planning Policy Framework, as well as providing large, quality, family housing within a sustainable location providing housing mix and choice for local communities.

The application site is located immediately adjacent to a primary residential area and will continue with this character.

For these reasons the Divisional Manager Planning is supportive of the development of this site for residential purposes.

### **Residential Amenity**

The separation distance between the existing properties abutting the site and those proposed generally adhere to those stated within Supplementary Planning Guidance Note 10. 51 Ambleside Road has raised this particular issue in their representation and although there is no direct interface with this property, plot 65 is orientated at right angles to the neighbouring properties and is some 16.4 metres away (policy guidance

recommends 15 metres minimum between habitable room windows and blank gable such as this). The minimum distance between existing habitable room and proposed habitable rooms on Ambleside Road (which has most interface with the site) is 22 metres. Although SPGN10 provides guidance to state that this distance should be 23 metres at the rear, the Divisional Manager Planning considers that it is acceptable in this instance to achieve a satisfactory urban form on this site. The reduction in the recommend interfaces distances of just 1 metre would not lead to a significant impact on existing residential amenity or privacy.

Within the site too, the interfaces largely adhere to those stated within the SPGN although the Divisional Manager Planning has allowed some flexibility to accommodate this modern, urban estate. In a few instances, these standards have been relaxed more significantly however this has been allowed in order to create definition of an area, such as plots 20 and 23 (16 metres between front habitable room windows).

There appears to be differences in ground levels across the site, with land to the east (i.e. Allerton Road) appearing higher than the site boundary to the west (Mather Avenue) but the land being reasonably flat north-south (Ambleside Road to Heath Road). Notwithstanding this, the submission of existing and proposed land levels would be a condition of the approval in order to ensure that the proposal would not impact adversely on the amenity of the existing neighbours.

On this basis the Divisional Manager Planning considers that in the long term the proposal would not adversely impact on levels of residential amenity associated with the existing neighbouring properties. In the short term the impacts of noise and general disturbance resulting from the development works may impact on residential amenity although this will be largely mitigated to acceptable levels by means of a construction management plan, which would be a condition of the planning consent.

#### **Design, Layout and Impact on listed building**

The development comprises of 119 large, detached dwellings in a modern, relatively dense, urban form that is outward facing with internal access roads and cul-de-sacs. The wider site is defined by 2 distinct character areas, one of which is accessed from Allerton Road and the other from Heath Road although all properties that front the highway have direct access providing animation and interest to the street scene. The character areas are defined by scale, house-type and openness but are connected by means of a pedestrian walk way, which is overlooked in the interests of crime prevention.

The site is immediately adjacent to New Heys to the north-east corner of the site, which is a Grade II listed building. All trees and shrubbery along the shared boundary would be retained (as shown on plans to be approved) and on this basis it is considered that the vistas between the two sites would not be adversely affected and the proposal would not adversely impact on the setting of the listed building.

The Heritage and Urban Design Manager is satisfied with the proposal presented.

#### **Highway Implications**

Given the size of the proposed dwelling houses, it is considered that the parking spaces which are provided at a minimum of 2 spaces per property is deemed acceptable and satisfies Transport's Supplementary Planning Documents (SPD).

Proposed development traffic to the site is not considered to have a negative impact to the surrounding highways. The development provides a range of site access locations which would disperse traffic movements to other parts of the surrounding road network without detriment to highway safety. It should be noted that the peak trip rates to the development site which was formerly occupied by a School would have generated a greater demand in traffic during the morning to the local network than its proposed use, as such, it is accepted that less vehicular traffic is anticipated to the development site than its former use although afternoon peak times at commuter hours will see a slight rise in traffic to the current highway network at approximately 1 vehicle per minute. Nevertheless, this increase is negligible with the network continuing to operate satisfactorily.

Support is provided to the application in the form of the submitted Transport Assessment which assesses the following:

- Signalled junction Heath Road/Mather Avenue
- Priority junction Allerton Road/Heath Road

The Highways manager considers that the junction assessments provided within the TA are robust and demonstrates up to date traffic counts from January 2013. The assigned traffic distribution is considered satisfactory and demonstrates that the neighbouring highway network will continue to operate by the horizon year of 2020 with development traffic at less than 0.85 RFC (ratio of flow to capacity) and within 90% DoS (degree of saturation). There are existing central reservation gaps from Heath Road which should align the proposed site access points to enable right turn to Heath Road West. To enable safe access between these central intersections, in particular, to accommodate refuse vehicle manoeuvres safely, the existing central gap shall be widened to ensure sufficient width is provided for two-way traffic access/movement. This offsite highway work, as well as the proposed driveways directly on to the existing surrounding highway network, will require the removal of some grass verge/landscape. Such trees and landscaping are outside of the application site boundary and permission will be required for this by the Trees and Woodland's Manager (Peter Howson) outside of the planning application process with replacement highway trees to be provided through a S278 agreement.

In summary therefore, it is considered that the proposal would not have an adverse impact on highway safety and there is no objection to the application on highway grounds subject to conditions.

#### **Loss of Trees**

The application site has numerous trees located within it, the majority of which are subject to a Tree Preservation Order around the perimeter of the site and to the south and east of the existing tennis courts, adjacent to the boundary with the New Heys. In order to facilitate the development, some trees that are protected will be lost.

The application provides the opportunity to provide a more comprehensive landscaping plan that offers an additional level of amenity to existing and proposed street scenes compared to that existing using a more structure approach than that currently evident. Although the applicant has included a plan within the development that includes for landscaping/ replacement trees, the Divisional Manager Planning considers that this could be improved and therefore a landscaping plan would be a condition of an approval relating to this site.

The applicant has identified street trees on plan that would need to be removed in order to accommodate the development, namely from Mather Avenue and Heath Road. However there is a discrepancy between the level of loss that the applicant has identified and the level that the Parks and Green Spaces Manager consider would be necessary. Notwithstanding this, based on the worse case scenario, the Parks and Green Spaces Manager does not object to the loss of street trees provided that replacements are provided alongside a maintenance sum. The mechanism for this will be by means of a S.278 agreement, as the trees are outside of the application site within the highway, although conditions will apply in order to ensure that those trees to be retained are properly protected. The applicant is aware that as the highway trees are located on the public highway, and are therefore owned by the Local Authority, they cannot engage in works to fell these trees without the consent of the Parks and Green Spaces Manager.

Whilst in the short to medium term there would be an impact on visual amenity due to the loss of street trees, through re-planting and a comprehensive landscaping scheme for the site as a whole, the Divisional Manager Planning considers that the proposal could increase interest and visual amenity within the streetscape in the longer term.

#### **Access**

The site is located within a sustainable location in close proximity to regular local bus routes with permeability to local services available through the site. The properties accord with the Life Time Homes standards, providing level access and adaptability, and this is welcome.

#### **Other – house prices, land ownership, alternative uses, procedural concerns.**

Private interests such as house prices and ownership are not material planning considerations that can be given significant weight in the application process. Unusually in this case there has been a request from a neighbour to undertake works to trees within their boundary that are not within the application site. It is believed that a dialogue is taking place directly between the neighbour and the developer however any tree works outside the application boundary may need to be subject to a separate consent if protected by a TPO. Tree works approved as part of this application relate to those within the identified site boundary only.

Whilst there may be alternative uses for the site, other than housing, the Local Planning Authority has a duty to fully consider all planning applications formally submitted to them. Whilst the Divisional Manager Planning respects suggestions that the land could be retained for recreational and fitness purposes, it is also recognised that the site is currently not publicly available and, indeed, the replacement facilitates required by planning policy and Sport England will ensure additional, continued, community accessible fitness facilities.

Other suggestions for the land include the relocation of Arch Bishop Blanch School. Again, the Divisional Manager Planning would reiterate that the LPA can only consider developments that are formally put forward, and this alternative land use has not, however Members may be interested to know that an application for a new secondary school is currently being considered on Smithdown Road, which would be suitable for Arch Bishop Blanch.

### **Other – Procedural**

Representations received raise concern that the consultation period for the application should have been longer and that the application 'feels like a done deal'.

The Divisional Manager Planning can assure Members and the public that publicity was given to the application in accordance with the statutory instrument; the application was advertised by neighbour notification letter, site notice and press notice with each method allowing a 21 day time frame for a response. Where a representation is received outside of this time frame, it will always be taken in to account provided that it is received prior to the determination of the application.

Within this report all issues raised by planning policy and material considerations outlined by members of the public have been discussed and justifications made in terms of its conclusions. The consideration of the planning application in the public forum which is Planning Committee gives transparency to the planning process.

### **Conclusions and Recommendations**

The Divisional Manager Planning considers that the application is acceptable in terms of principle, residential amenity, design and layout, highway safety and accessibility. Issues such as the development of green space, loss of sports pitches and loss of trees can be successfully mitigated against and therefore, on balance, the application is therefore considered to be acceptable. On this basis the application is recommended for approval subject to conditions and a S. 106 Agreement requiring the following:

- The payment of a commuted sum to the value of £8,000 to support ecology at Eric Hardy Local Nature Reserve prior to the commencement of development. This sum shall:
  - o Thin out an existing area (measuring approximate 1500m<sup>2</sup>) of dense plantation, adjacent to existing mature trees, to increase foraging opportunities for bat species, mammals, birds and invertebrates at the Eric Hardy Local Nature Reserve.
  - o Under plant the above area with plug plants of red campion and bluebell to increase foraging opportunities for bat species, mammals, birds and invertebrates.
  - o Supplement the above with installation of five bird and five bat boxes.

Prior to the commencement of development the applicant shall agree a phasing plan with the Council's Parks and Green Spaces department, through the LPA, in order to time-link the mitigation to the development so that the package can begin before losses associated with the application occur.

- The payment of a commuted sum to the value of £119,000 (based on £1,000 per new dwelling house created) to support open space provision within the local area to be paid prior to the commencement of development.
- The payment of a commuted sum to the value of £100,000 to support off-site sports provision and maintenance to be paid prior to the commencement of development. Such funding will provide a synthetic cricket wicket (to assist the ECB with their 'last man stands' initiative) together with playing pitch improvements (including piped drainage systems) at an alternative site including a 25 year maintenance fund at either Heron Eccles PF or Garston Recreation Ground with the latter site the optimum preference subject to further investigation. Physical works will be implemented by the City Council within 2 years of the date of the permission.

- The payment of a commuted sum of 15% of the total planning fee (£4,04.60) to support a strategy for public art to be paid prior to the commencement of development.
- The payment of a commuted sum of 15% of the total planning fee (£4,04.60) for S.106 monitoring to be paid prior to the commencement of development.
- The Submission and implementation of a local employment and training strategy to encourage the involvement and employment of local people and companies in the construction and operation of the development, such strategy to be consistent with the following principles:-  
The Local Employment and Training Strategy will seek to secure the following objectives:
  - (i) training schemes to equip local people for employment for the construction process; (ii) a scheme for advertising jobs locally, including initially for the construction/start up of the development, and thereafter for all available posts that arise, to maximise local recruitment which will include all of the following: local newspapers, local employment agencies and local job centres;
  - (iii) a scheme to monitor annually the number of persons employed on the construction who are resident within the local area and to report annually thereon to the Council for the duration of the build.

## **Conditions**

**1**

The development hereby permitted shall be commenced before the expiration of 3 years from the date of this permission.

**REASON:** To comply with Section 91 (as amended) of the Town and Country Planning Act 1990.

**2**

The development hereby approved shall be carried out in accordance with the following drawings and documents unless otherwise agreed in writing by the local planning authority:

(i) Drawing Numbers:

Planning Layout 1103-02-02-001 Rev R

Materials Layout 1103-02-02-006 Rev H

Boundary Treatment Plan 1103-02-02-008 Rev J

Tree Layout Plan 1103-02-02-100 Rev F (in so far as it relates to retention only)

Substation dwgs A3 SP/A MP

Triple Garage Type 1 A3 1103-01/02-TG1

Double Garage Type 1 A3 DG t1

Double Garage Type 2 (Twin) A3 DGt2

Single garage Type 1 A3 SG t1

Brick Walling and railing detail to front of properties A4 D-SD0804 A

Free Standing Brick wall detail A4 D-SD0806 Rev A  
Close Boarded Fencing 1.8m high A4 D-SD0906  
Close boarded Gate detail. 1.8m high A4 D-SD0910  
Worcester HT RVT A3 E4H118 RVT  
Oxford HT RVT A3 E4H130 RVT  
Cambridge HT RVT A3 E4H138 RVT  
Shaftesbury HT RVT A3 E4H140 RVT  
Canterbury HT RVT A3 E4H141 RVT  
Welwyn HT RVT A3 E4H153 RVT  
Sunningdale HT RVT A3 E4H162 RVT  
Henley HT RVT A3 E4H176 RVT  
Marlborough HT RVT A3 E5H189 RVT  
Richmond HT RVT A3 E4H203 RVT  
Buckingham HT RVT A3 E5H283 RVT  
Sandringham HT RVT A3 E5H248 RVT  
Highgrove HT RVT A3 E5H276 RVT  
Highgrove RVT Plot 27 only E5H276  
Chatsworth HT RVT A3 E5H323 RVT  
Site Location Plan 1103-02-02-002  
Tree Constraints Plan 00002-04  
Vehicle Swept Path 1103/ENG003-02

(ii) Supporting Documents:

Design and Access Statement

Air Quality Assessment

Noise Impact Assessment

Planning Statement

Flood Risk Assessment dated September 2011 (Betts Associates)

Transport Assessment dated February 2013 (SCP)

Life Time Homes Compliance Changes from Standard House Types and Life Time Homes  
Developers Checklist supported by external works layout sheets 1-5 illustrating level  
access

Phase 1 Habitat and Arboricultural Survey

**REASON:** To ensure that the development is carried out in accordance with the approved  
plans and within the parameters of the grant of planning p  
ermission.

3

Prior to development commencing a detailed construction management programme shall  
be submitted to and approved by the local planning authority and the programme shall  
include, inter alia, commencement and completion dates, hours of operation for  
construction work, measures to control noise and dust, details of site compounds, any  
temporary highway works or closures and access for construction traffic. The construction  
shall be carried out in accordance with the approved programme unless otherwise agreed  
in writing with the local planning authority.

**REASON:** It is in the interests of residential amenity in accordance with Liverpool Unitary  
Development Plan Policy HD18 (General Design Requirements).

4

Other than those shown on the approved plans, prior to implementation, the following shall be submitted to and approved in writing by the local planning authority and shall be implemented in accordance with the approved details before the development is occupied/brought into use:-

- (i) all new windows and doors
- (ii) all new means of enclosures other than those shown on the approved plans
- (iii) cycle stores
- (iv) bin storage facilities
- (v) all land surfaces not built upon

**REASON:** These details are not included in the application and the Council wishes to ensure that they are satisfactory in accordance with Liverpool Unitary Development Plan Policy HD18 (General Design Requirements).

5

Prior to the first occupation of any dwellinghouse full details of the number, size, species, root treatment or container type and location of trees and shrubs to be planted and the treatment of all ground surfaces not built upon shall be submitted to and approved in writing by the local planning authority. The plan must be to a recognised scale and the symbols used and plant schedule provided must comply with BS EN ISO 11091:1999 Construction Drawings Landscape Drawing Practice.

**REASON:** Acceptable details have not been submitted with the application and the Council wishes to ensure they are satisfactory in the interests of visual amenity in accordance with Liverpool Unitary Development Plan Policy HD23 (New Trees and Landscaping).

6

(i) The approved landscaping scheme shall be completed either (a) not later than the first planting season following completion of each phase of the development or (b) during the appropriate planting season progressively as the development proceeds, in accordance with a programme to be agreed in writing with the local planning authority.

(ii) Any trees or shrubs which die, become diseased, damaged or are removed within 3 years of planting shall be replaced with trees and shrubs of similar sizes and species or as may otherwise be agreed with the local planning authority in the first available planting season thereafter, all works to be carried out to BS 4428: 1989 "Code of Practice for General Landscape Operation".

**REASON:** It is in the interests of visual amenity and in accordance with the duty of the Council under Section 197 of the Town and Country Planning Act 1990 in respect of the planting and preservation of trees in accordance with Liverpool Unitary Development Plan Policy HD22 (Existing Trees and Landscaping).

7

Prior to the commencement of development, plans showing existing and proposed site levels in relation to the application site and neighbouring land shall be submitted to and agreed in writing by the Local Planning Authority and implemented in full thereafter.

REASON: In the interests of residential amenity in accordance with saved UDP policy H5.

8

No part or phase of the development hereby permitted shall commence until;

(a) An investigation and assessment methodology, including analysis suite and risk assessment methodologies has been completed and submitted to and approved by the local planning authority (LPA) in writing, prior to any site investigations.

(b) A site investigation and assessment has been carried out by competent persons to determine the status of contamination including chemical, radiochemical, flammable or toxic gas, asbestos, biological and physical hazards at the site and submitted to the LPA. The investigations and assessments shall be in accordance with current Government and Environment Agency recommendations and guidance and shall identify the nature and extent of any contaminants present, whether or not they originate on the site, their potential for migration and risks associated with them. The assessment shall consider the potential risks to:

- (i) human health,
- (ii) controlled waters,
- (iii) property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,
- (iv) adjoining land,
- (v) ecological systems, and
- (vi) archaeological sites and ancient monuments.

(c) A detailed remediation scheme (if required), has been submitted to and agreed in writing with the LPA. This scheme shall include an appraisal of remedial options, implementation timetable, works schedule, site management objectives, monitoring proposals and remediation validation methodology. The scheme once completed must ensure that the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use.

REASON: To ensure that risks from land contamination to future users of the land and neighbouring land are minimised, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

9

After development commences and prior to occupation;

(a) Following completion of the measures identified in the approved remediation scheme and prior to occupation of any part of the development, a verification report which shall

confirm the adequacy of remediation must be prepared and submitted to the LPA and approved in writing before this condition will be discharged.

If a phased approach to the development is being proposed, then a validation/completion report for an agreed number of plots within each of the proposed phases shall be submitted to the local planning authority and approved in writing before the condition relating to the phase in question shall be discharged.

(b) If any potentially contaminated (unusual/suspect) material or flammable/toxic gas not previously identified is discovered, this must be reported in writing to the LPA and a further assessment and a revised remediation scheme will be required by the LPA. If no contamination is found then this should be detailed in the remediation verification report.

**REASON:** To ensure that risks from land contamination to future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

10

All highway works shall be implemented under a Section 278 Agreement within a timeframe to be submitted to and agreed by the local planning authority prior to the commencement of development. For the avoidance of doubt this shall include the following:

- i. Provision of dropped kerbs to facilitate proposed driveway access to each dwellinghouse unit
- ii. Construction of site access points from Heath Road, Mather Avenue and Allerton Road to LCC standards.
- iii. Installation/upgrade/improvements to street lighting surrounding the development site. In particular, there will be a requirement to provide staggered lighting to Heath Road to ensure adequate provision is provided to the residential development.
- iv. Provision of tactile paving to development's site access points.
- v. Reinstatement of redundant vehicular access contiguous to the development site.
- vi. A detailed drainage assessment to determine any requirement for subsequent works including its installation and implementation.
- vii. Upgrade of bus stops to current standard where appropriate in order to provide adequate facilities
- viii. Relocation of speed humps from Heath Road where necessary to ensure proposed driveway accesses are not in conflict
- ix. Widening of central reservation 'gap' from Heath Road to provide adequate access/alignment to development site access points and improve right turn movements for development traffic including servicing vehicles.
- x. Removal and re-placement of street trees from within the public highway as a result of conflict between the development and existing vegetation.

The detail design of which will be undertaken by Liverpool City Council / 2020 Liverpool at the developer's expense and at nil cost to the Council.

**REASON:** In the interests of vehicular and pedestrian safety.

11

Prior to the first occupation of the development, a travel plan shall be submitted to and agreed in writing by the local planning authority and implemented in full thereafter. For the avoidance of doubt this shall include details of information packs for new residents.

**REASON:** In the interests of sustainability and residential amenity.

12

The provisions of Part 17 Class G(a) of Schedule 2 of Article 3 of the Town and Country Planning (General Permitted Development Order) 1995 shall not apply to this development (i.e. planning permission will be required for the erection of electricity substations).

**REASON:** The local planning authority would wish to retain control over the location and design of substations otherwise permitted under the provision of the GPDO in the interests of visual amenity.

13

The development permitted by this planning permission shall be carried out in accordance with the approved Flood Risk Assessment (FRA) dated April 2011, and the following mitigation measures detailed within it shall apply:

1. Limiting the discharge rate to 59.8 litres/ second.
2. Providing sufficient and acceptable surface water attenuation to cater for the 100-year 30% flood event without any off-site flooding occurring.
3. SuDS facilities to be incorporated into the detailed drainage design.
4. Overland flood flow routing to be designed into the development layout.
5. Where flood waters are to be stored within areas of highway, sufficient safeguards are included to protect nearby property.

**REASON:** To reduce flood risk to an acceptable level, both to the development itself and elsewhere.

14

The development hereby permitted shall not be commenced until such time as a surface water regulation scheme has been submitted to, and approved in writing by, the local planning authority.

The scheme shall be fully implemented and subsequently maintained, in accordance with the timing / phasing arrangements embodied within the scheme, or within any other period as may subsequently be agreed, in writing, by the local planning authority.

**REASON:** To reduce flood risk to an acceptable level - both to the development itself and elsewhere.

15

The development hereby permitted shall not be commenced until such time as a scheme for the management of overland flow from surcharging of the site's surface water drainage system has been submitted to and agreed in writing by the Local Planning Authority. The scheme shall include details of the proposed ground levels and proposed building finished floor levels.

The scheme shall be fully implemented and subsequently maintained in accordance with the timing/ phasing arrangements embodied within the scheme, or within any other period as may subsequently agreed, in writing, by the Local Planning Authority.

**REASON:** To reduce the risk of flooding to the proposed development and future occupants.

16

Prior to works commencing on the proposed sales office, full details of this along with a strategy for the completion of this plot (which shall include for the replacement of the sales office with a residential unit in accordance with the approved plans) shall be submitted to and approved in writing by the Local Planning Authority and implemented in full thereafter.

**REASON:** These details have not been provided for in the submission of the application and are necessary to assist the impact on amenity and realise a holistic scheme.

17

Notwithstanding the Tree Layout Plan submitted with the application, prior to the commencement of development a Tree Removal and Retention Drawing and Associated Plan shall be submitted to and approved by the Local Planning Authority in relation to all on-site trees and street trees to include:

- i) The trees that are to be removed and those to be retained in relation to the overall building layout, including driveways, hard surfaces and landscaped areas
- ii) Of the trees identified for retention, the Root Protection Areas (RPA) around individual trees must be shown (with value). The RPAs will serve as a minimum distance for protection around each tree
- iv) Where any work is required within an RPA it will then require method statements to be submitted and approved

**REASON:** Clear details are not provided with the application and are required in order to safeguard the visual amenity of the area.

18

Prior to commencement of works on site (including the pre-construction delivery of equipment or materials, or the creation of site access) a method statement is required to be submitted to and approved in writing by the local planning authority, detailing the position and construction specification of the protective fencing (construction exclusion zone) around the retained trees and areas of future planting and soft landscaping on site.

**REASON:** It is in the interests of visual amenity, and in accordance with the duty of the Council under Section 197 of the Town and Country Planning Act 1990, in respect of the planting and preservation of trees, in order to protect, on the basis of advice given in BS 5837 2012 "Trees in relation to design, demolition and construction" , the trunk and vulnerable surface root systems from damage, including breakage of limbs by vehicles and equipment, asphyxiation arising from soil compaction, chemical pollution, and the loss of foliage through the effects of heat.

19

All trees, other than those shown to be removed on the approved plans, shall be adequately protected during the period of construction by the erection of a braced scaffold vertical and horizontal frame fence with vertical tubes spaced at a maximum interval of 3m. On to this weldmesh panels should be securely fixed with wire or scaffold clamps. These panels must be at least 2.3m high (as per BS 5837 2012). This shall be constructed to form a construction exclusion zone around the trees, positioned at a minimum, outside the root protection area, calculated using table 2 of BS 5837 2012.

There shall be no raising or lowering of ground levels; no storage of soil, debris or building materials; and no passage of vehicles or plant within the construction exclusion zone under any circumstances, except with the written consent and advice of the local planning authority on additional protective measures. Once erected, the protective fencing shall at no times be breached or removed without the prior written consent of the local planning authority.

All fires on site shall be at least 20m from the outermost part of the trees spread, and oil, concrete and similar injurious materials or substances must not be stored or prepared less than 10m from the outermost part of the trees spread. No underground services, kerbing or hard surface materials shall be laid within the construction exclusion zone, except with the written consent and advice of the local planning authority. No notice boards, telephone cables, other services or similar elements shall be attached to protected trees on the site.

**REASON:** In the interests of visual amenity, and in accordance with the duty of the Council under Section 197 of the Town and Country Planning Act 1990, in respect of the planting and preservation of trees, in order to protect, on the basis of advice given in BS 5837 2012, the trunk, branches and root systems from damage.

20

Prior to commencement of works on site a method statement shall be submitted to and approved in writing by the local planning authority detailing the construction methods and materials employed for hard surfacing or resurfacing within the construction exclusion zone around the retained trees on site. This statement must follow the guidance and methodology contained within Arboricultural Practice Note 12 -Through the trees to development.

**REASON:** It is in the interests of visual amenity, and in accordance with the duty of the Council under Section 197 of the Town and Country Planning Act 1990, in respect of the planting and preservation of trees, in order to protect, on the basis of advice given in BS

5837 2012 "Trees in relation to design, demolition and construction", the trunk and vulnerable surface root systems from damage.

21

Any existing tree that suffers injury during the period of construction or new tree planting or soft landscaping which dies within 3 years of the development shall be replaced with a tree or new planting of a suitable size and species, to the satisfaction of the local planning authority in the first available planting season thereafter, all works to be carried out to BS 4428: 1989 "Code of Practice for General Landscape Operations".

REASON: It is in the interests of visual amenity, and in accordance with the duty of the Council under Section 197 of the Town and Country Planning Act 1990, in respect of the planting and preservation of trees.

### **Informatives**

#### **1 Section 278 Required:**

All section 278 works are to be fully funded by the developer and at nil cost to the Council, the detail design of which will be undertaken by Liverpool City Council / 2020 Liverpool at the developers expense. In the first instance the applicant is requested to contact Mr Jon Robinson on 0151 233 5241 to progress these works.

There is also a requirement (in advance of any planned programme of works) for section 50 and section 58 highway works notices to be in place prior to any construction works commencing on the adopted highway, details of which can be forwarded to the applicant on request.

#### **Section 38 Required:**

Any areas proposed for future adoption will be managed through the section 38 adoption process. In addition, the palette of material selected for adoption must comply with LCC's standards. This can be agreed at the detailed design stage.

In the first instance the applicant is requested to contact Mr Fraser Arnott on 0151 233 8145 to progress these works.

#### **Naming & Numbering Scheme Required**

Liverpool City Council is the Street Naming and Numbering Authority and has the responsibility of allocating postal addresses to new properties, existing properties converted to apartments. All street name and numbering must be managed and agreed appropriately in accordance with LCC standards and policy.

In the first instance the applicant is requested to contact Miss Zita Carroll on 0151 233 5240 to progress these works.

2 The permission hereby granted does not convey any rights or approval to build on, or develop, any land that is not fully owned or controlled by the applicant, including party boundaries. Applicants should satisfy themselves that the agreement of any adjoining land owners has been given prior to works commencing on site.

3 Liverpool expects strict compliance with all conditions attached to planning decisions. Conditions particularly pre-commencement conditions require submission to and approval in writing by local planning authority before any works start. Failure to discharge conditions before commencing development could result in the development being unlawful. Central Government regulations since April 2008 now mean that a fee is normally payable to formally discharge planning conditions.

4 During the site works the contractor shall pay full regard to the best practicable means available in respect of the control of noise and dust from the site. In addition, no operations which are audible at the site boundary shall be carried out:

- (i) outside the hours of 0800 to 1800 weekdays
- (ii) outside the hours of 0800 to 1300 Saturdays, and
- (iii) at any time on Sundays or Bank Holidays.

5 For those new highways to be adopted and maintained at public expense, the developer shall be required to enter into an agreement with Liverpool City Council pursuant to section 38 of the Highways Act 1980; all works and associated legal agreements shall be at the developer's cost and at nil cost to the City Council.

6 Consultations with Trees and Woodland Manager, Mr Peter Howson (233-6927) should take place on the loss/removal of landscape/trees/grass verge within the public highway prior to any works commencing.

#### 7 Reasons for Approval - Positive Planning

The decision to grant permission and impose any conditions has been taken having regard to the relevant policies and proposals in the Liverpool Unitary Development Plan 2002. The Local Planning Authority have worked with the applicant in a positive and proactive manner based on seeking solutions to problems arising in relation to dealing with a planning applications and have implemented the requirement in NPPF para 187.

#### **Liverpool UDP Policies**

#### **Reason for Refusal**

SEVENTH SCHEDULE



DATED 2014  
Ref: LS/2051.353/RM

LIVERPOOL CITY COUNCIL

And

REDROW HOMES LIMITED

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S.106 Agreement

RE: Planning Application Ref: 13F/1823  
Former Site of New Heys School, Heath Road, Liverpool L19 4TN

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J McLoughlin  
Interim City Solicitor  
Liverpool City Council

THIS DEED is made the

day of

2014

BETWEEN

Parties

1. Liverpool City Council of Municipal Buildings, Dale Street, Liverpool, L2 2DH ("The Council")
2. REDROW HOMES LIMITED (Company Registration 01990710) whose registered office is at Redrow House, St David's Park Flintshire CH5 3RX ("The Owner")

RECITALS

- 1 The Council is the Local Planning Authority for the purposes of this Deed for the area in which the land described in the First Schedule ("the Land") is situated and by whom the obligations contained in this Deed are enforceable.
- 2 The Owner is the owner in fee simple in possession of the Land.
- 3 The Owner has by application referenced 13F/1823 ("the Planning Application") applied to the Council for permission to develop the Land in the manner and for the uses set out in the Planning Application and in the plans specifications and particulars deposited with the Council and forming part of the Planning Application more particularly set out in the Second Schedule ("the Development").
- 4 The Council has decided to granted planning permission the form of which is annexed to this Deed at the Sixth Schedule ("the Planning Permission") for the Development in accordance with the Planning Application subject to the making of this Agreement without which the planning permission for the Development would not have been granted.

NOW THIS DEED is made in pursuance of section 106 of the Town and Country Planning Act 1990 and is a planning obligation for the purposes of that section and WITNESSES as follows:

1. The Owner covenants with the Council to observe the restrictions specified in the Third Schedule
2. The Owner covenants to perform the obligations or activities specified in the Fourth Schedule
3. The Council covenants with the Owner as set out in the Fifth Schedule hereto
4. It is agreed and declared as follows:
  - 4.1. The expression "the Council", and "the Owner" shall include their successors in title and assigns.
  - 4.2. No person shall be liable for breach of a covenant contained in this Agreement after he shall have parted with all interest in the Land or the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest.
  - 4.3. The covenants contained in this Agreement shall take effect upon the date of this Agreement.
  - 4.4. Words denoting an obligation on the Owner to do any act, matter or thing include an obligation to procure that it be done and words placing the Owner under a restriction include an obligation not to cause or permit or suffer any infringement of the restriction.
  - 4.5. If the permission granted pursuant to the Planning Application shall expire before the development is begun as defined above or shall at any time be revoked this Agreement shall forthwith determine and cease to have effect.
  - 4.6. Nothing in this Agreement shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than one relating to the Development as specified in the Planning Application) granted (whether or not on appeal) after the date of this Agreement.
  - 4.7. The Council will upon the written request of the Owner at any time after the obligations of the Owner under the Agreement have been fulfilled issue written confirmation thereof and thereafter cancel all related entries in the Register of Local Land Charges.
  - 4.8. This Agreement is a local land charge and shall be registered as such.
  - 4.9. This Agreement shall not be binding upon:
    - 4.9.1. the owners occupiers or tenants of individual dwellings (including a house apartment or maisonette) to be constructed pursuant to the Planning Permission; or

- 4.9.2. an occupier or tenant or a purchaser of a site or sites required for statutory infrastructure purposes in relation to the Development.
- 4.10. 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 Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development.
- 4.11. 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.

5 It is hereby acknowledged by the parties that this deed is a duplication to the S106 Agreement dated [ ] and made between Liverpool City Council and Redrow Homes Limited ("the Original s106 Agreement") and upon completion of this deed the Original s106 Agreement shall determine and the Council will remove the associated entry from the local land charges register AND It is further acknowledged by the parties that the obligations under the Original s106 Agreement have been satisfied

6. **DISPUTES**

- 6.1 If agreed in writing by both parties then any dispute or difference arising between the Parties to this Deed in respect of any matter contained in this Deed (save for a matter of law) and which is to be resolved under this Clause shall be referred by any Party to a person who shall have a minimum of 10 years relevant experience in such matters ("Expert") nominated by agreement between the Parties hereto or in default of agreement by such a person nominated by the President for the time being of the Royal Institution of Chartered Surveyors on the application of any Party who shall act as an expert (and not an arbitrator)
- 6.2. The Expert shall require the Parties to make written submissions to him with regard to the nature dispute
- 6.3. The Parties shall exchange such written submissions and shall have the right to comment upon the written submissions of the other

- 6.4. If any Party shall require the Expert shall hold a hearing at which the Parties shall be entitled to give and call evidence as to the nature of the dispute
- 6.5. The Expert shall give written detailed reasons for his award
- 6.6. The Expert shall make his award within 6 weeks of the date of his appointment
- 6.7. the Expert's costs shall be borne as such Expert shall award

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

**FIRST SCHEDULE**

**"The Land"**

**Former Site of New Heys School, Heath Road, Liverpool L19 4TN registered at the Land Registry with title number MS 564826 and shown edged red on the attached plan.**

**SECOND SCHEDULE**

**"The Development"**

**To erect 119 dwellinghouses and layout associated infrastructure and landscaping,**

### THIRD SCHEDULE

#### Restriction

The Owner shall not begin the Development within the meaning of section 56 of the Town and Country Planning Act 1990 until it has performed the obligations or activities specified in the Fourth Schedule.

## FOURTH SCHEDULE

### Owner Obligations

In this Schedule the following words and phrases shall have the following meanings:

"Local Nature Reserve Sum" means the amount of £8,000.00 (EIGHT THOUSAND POUNDS) if paid within one year after the date of this agreement or the amount as calculated in accordance with the following formula:

£8,000.00 multiplied by the Index for the month immediately preceding the date of payment and divided by the Index for the month immediately preceding the date of this agreement

"Index" means the all items index figure of the Index of Retail Prices published by the Office for National Statistics or any successor, Ministry or Department

"Commutated Sum" means the amount of £119,000.00 (ONE HUNDRED AND NINETEEN THOUSAND POUNDS) if paid within one year after the date of this agreement or the amount as calculated in accordance with the following formula:

£119,000.00 multiplied by the Index for the month immediately preceding the date of payment and divided by the Index for the month immediately preceding the date of this agreement

"Sports Contribution" means the amount of £100,000.00 (ONE HUNDRED THOUSAND POUNDS) if paid within one year after the date of this agreement or the amount as calculated in accordance with the following formula:

£100,000.00 multiplied by the Index for the month immediately preceding the date of payment and divided by the Index for the month immediately preceding the date of this agreement

"Public Art Contribution" means the amount of £4,047.60 [FOUR THOUSAND AND FORTY SEVEN POUNDS AND SIXTY PENCE) if paid within one year after the date of this agreement or the amount as calculated in accordance with the following formula:

£4,047.60 multiplied by the Index for the month immediately preceding the date of payment and divided by the Index for the month immediately preceding the date of this agreement

"Tree Phasing Plan" – means a plan showing how the trees within Site shall be removed during the Development PROVIDED ALWAYS that such plan shall provide that until the Local Nature Reserve Sum has been expended by the Council or the date which is 12 from receipt by the Council of the Local Nature Reserve Sum (whichever is the earlier) 5 (five) trees shall remain on the Site

"Local Employment and Training Strategy" means a strategy that will seek to secure the following objectives:

- (i) training schemes to equip local people for employment for the construction process;

- (ii) (ii) a scheme for advertising jobs locally, including initially for the construction/start up of the development, and thereafter for all available posts that arise, to maximise local recruitment which will include all of the following: local newspapers, local employment agencies and local job centres;
- (iii) (iii) a scheme to monitor annually the number of persons employed on the construction who are resident within the local area and to report annually thereon to the Council for the duration of the build.

- 1 The Owner shall pay to the Council the Local Nature Reserve Sum to fund works at the Eric Hardy Local nature Reserve.
- 2 The Owner shall pay to the Council the Commuted Sum in lieu of on-site provision of open space by the Development at the Land.
- 3 The Owner shall pay to the Council the Sports Contribution.
- 4 The Owner shall pay to the Council the Public Art Contribution.
- 5 The Owner shall agree the Tree Phasing Plan in writing with the Council and will carry out the Development in accordance with that plan as agreed.
- 6 The Owner shall agree a Local Employment and Training Strategy in writing with the Council and will and will carry out the Development in accordance with that plan as agreed
- 7 The Owner shall give immediate written notice of any change in ownership of the interests in the site 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 site or unit to which the interest applies.

## FIFTH SCHEDULE

### Council Covenants

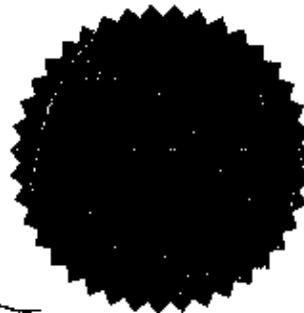
#### **Repayment of payments**

1. The Council hereby covenants with the Owner to use all sums received from the Owner 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 Owner and the Council shall agree.
2. The Council covenants with the Owner that it will pay to the Owner such amount of any payment made by the Owner pursuant to the Second Schedule of this Deed to the Council which has not been expended in accordance with the provisions of this Deed within five years of the date of receipt by the Council of the final such payment due to be paid to the Council under this Deed together with any interest actually accrued thereon from the date of payment to the date of refund.
3. The Council shall provide to the Owner such evidence, as the Owner shall reasonably require in order to confirm the expenditure of the sums paid by the Owner under this Deed and further the Council will if so requested in writing by the Owner provide a written report on an annual basis detailing such expenditure.

#### **Discharge of obligations**

4. At the written request of the Owner the Council shall provide written confirmation of the discharge of the obligations contained in this Deed when satisfied that such obligations have been performed.
5. 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.

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



*[Handwritten signature]*

Assistant City Solicitor

07.11.14

SIGNED as a DEED by  
*P. Sinclair* as attorney for  
REDROW HOMES LIMITED  
in the presence of:-

*[Handwritten signature]*

.....  
as attorney for REDROW HOMES  
LIMITED

Signature of witness ..... *Tracy Baker* .....

Name (in BLOCK CAPITALS) ..... *TRACY BAKER* .....

Address: Care of Redrow House, St David's Park.....  
Flintshire .....  
CH 5 3RX.....

SIGNED as a DEED by  
*A. McViech* as attorney for  
REDROW HOMES LIMITED  
in the presence of:-

*[Handwritten signature]*

.....  
as attorney for REDROW HOMES  
LIMITED

Signature of witness ..... *Tracy Baker* .....

Name (in BLOCK CAPITALS) ..... *TRACY BAKER* .....

Address: Care of Redrow House, St David's Park.....  
Flintshire .....  
CH 5 3RX.....