

Decision under Delegated Powers

Officer Requesting Decision

Principal Planning Officer, Development Management

Officer Making the Decision

Head of Planning & Regeneration Services

Recommendation

That the s106 Legal Agreement attached as appendix A, for the development at Peashill Farm, Ratcliffe Road, Sileby is signed

Reason

To ensure that planning obligations necessary to enable development to go ahead that would otherwise need to be refused are secured in a legal agreement in accordance with the resolution of Plans Committee.

Authority for Decision

The request was considered and agreed by Plans Committee on 11 January 2018. The S106 has been completed in accordance with the resolution of the Plans Committee as set out in the Officers Report.

Part 2a of the Council Constitution - Delegation to the Head of Planning and Regeneration applies and therefore there is authority to agree:

-) To agree non-material amendments and minor material amendments to planning permissions where no demonstrable harm would be caused to an interest of acknowledged importance.
-) To negotiate the heads of terms of section 106 agreements.

Decision and Date



26 January 2018

Background

Plans Committee considered an outline planning application for residential development under application ref P/17/1578/2 at its meeting on 11 January 2018. This application was approved subject to conditions and a S106 legal agreement being signed.

A Section 106 Agreement has been circulated and agreed between officers and the applicant. The S106 will deliver the requirements of the committee resolution, as follows:

- The on-site provision of 30% of the development to Affordable Housing in an appropriate tenure mix
- The on-site provision of additional Cemetery space of a minimum of 0.33ha.
- The on-site provision of allotments
- Outdoor Play space contributions will be sought to meet CS15 standards in terms of parks and formal outdoor play and sports provision unless otherwise provided on site
- A contribution of £104,381.76 towards Healthcare provision unless otherwise provided on site through the conversion of the farm buildings.
- A contribution of £5,130 towards Sileby Library
- A contribution of £493,639.61 to the Primary School Sector be sought towards Highgate Community Primary School and Sileby Redlands Community Primary School would be the second choice for contribution.
- A contribution of £8,784 towards Mountsorrel Waste Site to provide capacity to deal with additional waste
- A Construction Traffic Routeing Agreement to be submitted to and approved in writing by the Highway Authority. During the period of construction, all traffic to and from the site shall use the agreed route at all time
- The Travel Plan
- Appointment of a Travel Plan Co-ordinator
- Travel Packs
- 6 month bus passes, two per dwelling (2 application forms to be included in Travel Packs and funded by the developer); to encourage new residents to use bus services, to establish changes in travel behaviour from first occupation and promote usage of sustainable travel modes other than the car.
- A Travel Plan monitoring fee of £6,000.00.
- Safeguarding of the open space and management regime
- The sum of £50,000 payable to the Council to be applied by the Sileby Parish Council for the provision of lighting at the Pavilion Car Park in Sileby
- The sum of £30,410 payable to the Council to be applied by the Sileby Parish Council for the provision of works to improve the King Street Car Park in Sileby.

This agreement comprised a residential development of up to 170 dwellings and secured 30% of the dwellings constructed on site to be affordable housing along with other contributions towards community infrastructure, including towards infrastructure contributions to parking as requested by the Parish Council.

The proposals for additional dwellings will support the Council's Housing Land Supply.

Relevant Planning History

This is set out in the planning history and the officer's report but the proposals approve outline planning permission for up to 170 dwellings and associated works.

Policy Considerations

Development Plan

Policy CS3 of the Charnwood Core Strategy 2011 to 2028 - Strategic Housing Needs - sets out affordable housing requirements and an appropriate mix of types, tenures and sizes of homes.

Policy CS15 of the Charnwood Core Strategy 2011 to 2028 - Open Spaces Sports and Recreation - requires new development to meet the standards set out in the Council's Open Space Strategy and to provide for long term management and investment plans for existing and new facilities.

Policy CS24 of the Charnwood Core Strategy 2011 to 2028 - Delivering Infrastructure – sets out that infrastructure should be delivered having regard to the economic viability and circumstances.

Housing SPD (May 2017)

The SPD provides guidance to support the Local Plan Core Strategy and the saved policies of the Borough of Charnwood Local Plan in respect of Policy CS3: Strategic Housing Needs - for affordable housing. The new SPD includes a flexible and negotiated position in terms of meeting housing needs and tenure mixes.

Consultations

Housing Strategy – The affordable housing provision are noted and agreed.

Open Space – The S106 has been prepared in a way that will meet the needs of the population.

Considerations

Financial Implications

None

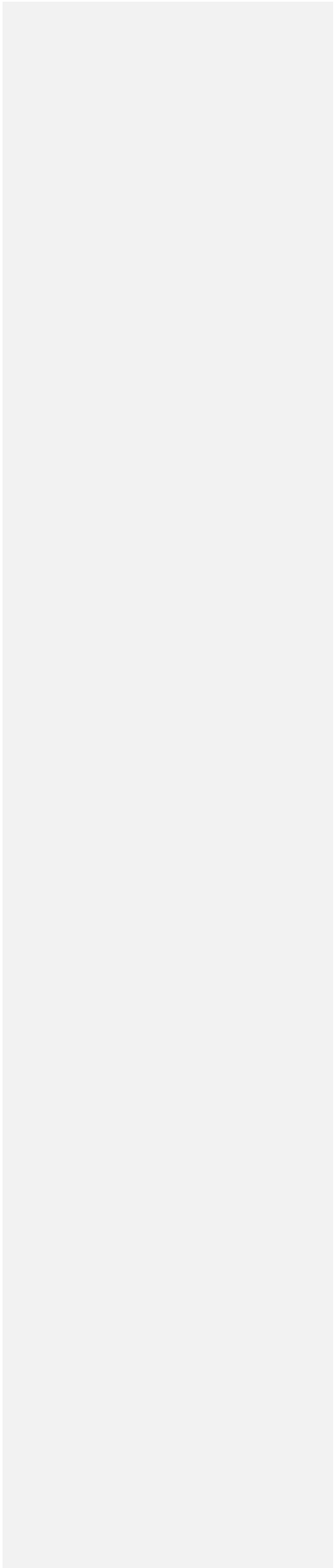
Risk Management

Risk Identified	Likelihood	Impact	Risk Management Actions Planned
Affordable Housing Delivery	unlikely	minor	Housing Strategy Officers and Planning Officers are engaged in and agreeing the delivery of an appropriate mix of affordable housing and where these are best located.
Open Space	unlikely	minor	Open space will be delivered either on site or contributions would be sought to Sileby Memorial Park
Car parking enhancement and provision to Sileby centre	unlikely	minor	Car parking improvements to be delivered as set out in the Council's Car parking strategy is on public land and will be delivered by the Parish Council.

Key Decision: No

Background Papers:

Planning files: P/17/1578/2
Officer Report to 11 January 2018 Plans Committee
Draft S106



Appendix A

Dated

2017

- (1) The Council of the Borough of Charnwood
- (2) Leicestershire County Council
- (3) Messrs F and G Barber

Agreement

under section 106 Town and Country Planning
Act 1990 relating to
land at Peashill Farm off Ratcliffe Rd, Sileby
Leicestershire

CONTENTS

Clause	Page
1 INTERPRETATION	3
2 EFFECT OF THIS AGREEMENT	5
3 COMMENCEMENT DATE	6
4 OBLIGATIONS OF THE PARTIES	7
5 TERMINATION OF THIS AGREEMENT	7
6 NOTICES	8
7 COSTS OF THIS AGREEMENT	9
8 DETERMINATION OF DISPUTES	9
9 COMMUNITY INFRASTRUCTURE	
LEVY	10
10 MONITORING COSTS CONTRIBUTION	11
11 JURISDICTION	11
12 EXECUTION	11
Schedules	
1 Planning Permission	12
2 Contributions	13
3 Affordable Housing.....	18
4 Public Open	
Space.....	
.....	20

THIS AGREEMENT is made on

2017

BETWEEN:

- (1) THE COUNCIL OF THE BOROUGH OF CHARNWOOD of Southfields, Loughborough, Leicestershire, LE11 2TX ("the Council"); and
- (2) LEICESTERSHIRE COUNTY COUNCIL of County Hall, Leicester Road, Glenfield, Leicestershire, LE3 8RA ("the County Council"); and
- (3) Messrs F & G Barber of Woodcock Farm, Rothley, Leicestershire ("the Landowner");

BACKGROUND

- (A) For the purposes of the 1990 Act, the Council is the local planning authority for the area within which the Site is located and the person who is entitled to enforce the obligations contained in this Agreement.
- (B) The County Council is the highway authority for the purposes of the 1980 Act and responsible for the provision of education and library facilities for the area within which the Site is located.
- (C) The Landowner is the freehold owner of the whole of the Site pursuant to the Title Number free from encumbrances that would prevent the Landowner entering into this Agreement.
- (D) Pursuant to the Planning Application the Landowner has applied to the Council for outline planning permission for the Development
- (E) The Council's Plans Committee resolved to grant the Planning Permission subject, among other things, to the completion of this Agreement.
- (F) The Landowner has agreed to enter into this agreement with the intention of securing obligations for a contribution towards primary education, library stock, healthcare, parking and sustainable transport measures and the provision of 30% affordable housing within the Site.
- (G) The parties have agreed to enter into this Agreement with the intention that the obligations contained in this Agreement may be enforced by the Council and the County Council as appropriate against the Landowner and its successors in title.

OPERATIVE PROVISIONS

1. INTERPRETATION

1.1 In this Agreement, the following words and expressions have the following meanings:

"1980 Act"	the Highways Act 1980
"1990 Act"	the Town and Country Planning Act 1990
"Commencement Date"	the date specified in clause 3.1
"Council Monitoring Costs Contribution"	Means £250.00 (Two Hundred and Fifty Pounds) per financial obligation in favour of the Council towards the Council's costs of monitoring compliance with the obligations contained in this Agreement
"County Council Monitoring Costs Contribution"	<u>means the sum of THREE HUNDRED POUNDS (£300.00) or 0.5% of the value of any Contribution due under this Agreement save for the Travel Plan Monitoring Contribution per obligation (whichever is greater) (Index linked) payable towards the County Council's costs of monitoring contributions payable by the Owner to the County Council as set out in Schedule 2</u> Means £250.00 (Two Hundred and Fifty Pounds) per financial obligation in favour of the County Council towards the County Council's costs of monitoring compliance with the obligations contained in this Agreement
"Development"	the development of the Site for up to 170 residential dwellings and associated infrastructure pursuant to the Planning Permission
"Dwelling"	a house, bungalow or apartment comprised in the Development (and "Dwellings" shall be interpreted accordingly)

"Occupation and Occupied"	occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction fitting out or decoration, or occupation for marketing or display or occupation in relation to security operating at the Site
"Plan"	the plan attached to this Agreement
"Planning Permission"	the planning permission granted in pursuance of the Planning Application in substantially the form set out in Schedule 1 and which shall include any variation to that permission pursuant to s73 of the Act
"Planning Application"	an application for outline planning permission for the carrying out of Development made by the Landowner carrying the reference P/17/1578/2
"Site"	the freehold property known as land at Peashill Farm off Ratcliffe Rd, Sileby, Leicestershire and shown for identification edged red on the Plan
"Specialist"	has the meaning given to it in clause 8.2
"Working Day(s)"	Any day from Monday to Friday (inclusive) which is not Christmas Day, Good Friday or a Statutory Bank Holiday

Comment [RL1]: Was this a section 73 application? If there is a future variation then a new section 106 agreement/planning obligations will be considered at that time.

1.2 In this Agreement:

- 1.2.1 the clause headings do not affect its interpretation;
- 1.2.2 unless otherwise indicated, references to clauses and Schedules are to clauses of and Schedules to this Agreement and references in a Schedule to a Part or paragraph are to a Part or paragraph of that Schedule;
- 1.2.3 references to any statute or statutory provision include references to:

- 1.2.3.1 all Acts of Parliament and all other legislation having legal effect in the United Kingdom as enacted at the date of this Agreement; and
 - 1.2.3.2 any orders, regulations, instruments or other subordinate legislation made under that statute or statutory provision;
 - 1.2.4 references to the Site include any part of it;
 - 1.2.5 References to any party in this Agreement include the successors in title of that party. In addition, references to the Council include any successor local planning authority exercising planning powers under the 1990 Act and references to the County Council include any successor local highway authority ;
 - 1.2.6 "including" means "including, without limitation";
 - 1.2.7 any covenant by the Landowner not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing;
 - 1.2.8 where two or more people form a party to this Agreement, the obligations they undertake may be enforced against them all jointly or against each of them individually; and
 - 1.2.9 if any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of the Agreement is to be unaffected.
- 1.3 The parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.
- 2. EFFECT OF THIS AGREEMENT
 - 2.1 This Agreement is made pursuant to section 106 of the 1990 Act. To the extent that they fall within the terms of section 106 of the 1990 Act, the obligations contained in this Agreement are planning obligations for the purposes of section 106 of the 1990 Act and are enforceable by the Council and the County Council.
 - 2.2 To the extent that any of the obligations contained in this Agreement are not planning obligations within the meaning of the 1990 Act, they are

entered into pursuant to the powers contained in section 111 Local Government Act 1972, section 2 Local Government Act 2000 and all other enabling powers.

2.3 Nothing in this Agreement restricts or is intended to restrict the proper exercise at any time by the Council or the County Council of any of their statutory powers, functions or discretions in relation to the Site or otherwise.

2.4 This Agreement will be registered as a local land charge by the Council.

2.5 The obligations in this Agreement will not be enforceable against:

2.5.1 the buyers of an individual dwellinghouse erected on the Site pursuant to the Planning Permission; or

2.5.2 a statutory undertaker after the transfer of the statutory apparatus and any land upon or in which the statutory apparatus is situated by the Landowner to that statutory undertaker.

2.6 Nothing in this Agreement prohibits or limits the right to develop any part of the Site in accordance with a planning permission, other than one relating to the Development as specified in the Planning Application, granted after the date of this Agreement, whether or not pursuant to an appeal.

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

3. COMMENCEMENT DATE

3.1 The obligations contained in clauses 4.1 to 4.3 and the Schedules referred to in those clauses do not come into effect until the earlier of:

3.1.1 subject to clause 3.2, the date on which the Development commences by the carrying out on the Site pursuant to the Planning Permission of a material operation as specified in section 56(4) of the 1990 Act

3.2 The Commencement Date will not be triggered by any of the following operations:

3.2.1 site investigations or surveys;

3.2.2 site decontamination;

3.2.3 the clearance or regrading of the Site;

3.2.4 works connected with infilling; or

3.2.5 works for the provision of drainage or mains services to prepare the Site for development.

3.3 The Landowner covenants with the Council and the County Council to serve written notice upon the Council and the County Council advising them of the Commencement Date within 14 days of the occurrence of the same PROVIDED THAT default in giving notice shall not prevent Development commencing

4. OBLIGATIONS OF THE PARTIES

4.1 The Landowner agrees with the Council and the County Council to comply with the obligations set out in Schedules 2 and 3 in relation to the Development.

4.2 The Council agrees with the Landowner to comply with the obligations set out in Schedule 2.

4.3 The County Council agrees with the Landowner to comply with the obligations set out in Schedule 2.

4.4 No person will be liable for any breach of the terms of this Agreement occurring after the date on which they part with their interest in the Site or the part of the Site in respect of which such breach occurs, but they will remain liable for any breaches of this Agreement occurring before that date. Neither the reservation of any rights or the inclusion of any covenants or restrictions over the Site in any transfer of the Site will constitute an interest for the purposes of this clause 4.5.

4.5 The Landowner shall indemnify and keep indemnified the Council and the County Council in respect of any actions claims costs demands or proceedings arising out of, in connection with or ancillary to any of the matters arising out of this Agreement

4.6 The Landowner agrees with the Council and the County Council to give the Council and the County Council immediate written notice of any change in ownership of any of its interests in the Site occurring before all of the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site purchased by reference to a plan save that the sale of individual units of occupation shall not be subject to such notification

4.7 The Landowner agrees to provide not less than 21 (twenty one) days prior notice to the Council and the County Council of Occupations in accordance with the requirements of the Schedules PROVIDED THAT default in giving notice or confirming the date by exchange of correspondence shall not prevent Occupation or the operation of this Deed.

⊖

Formatted: Indent: Left: 1.5 cm, No bullets or numbering

5 TERMINATION OF THIS AGREEMENT

5.1 This Agreement will come to an end if:

5.1.1 subject to clause 5.2, the Planning Permission is quashed and refused upon redetermination, revoked or otherwise withdrawn before the Commencement Date so as to render this Agreement or any part of it irrelevant, impractical or unviable; or

5.1.2 the Planning Permission expires before the Commencement Date without having been implemented

5.2 Clause 5.1.1 will not apply in respect of any minor modifications to the Planning Permission or the Development agreed from time to time between the Council, the County Council and the Landowner prior to the Commencement Date.

5.3 Where the Agreement comes to an end under clause 5.1:

5.3.1 the Council is, on the written request of the Landowner, to vacate or cancel the entry made in the Local Land Charges register in relation to this Agreement or otherwise to record the fact that it has come to an end and no longer affects the Site ;and

5.3.2 any monies paid under this Agreement to the Council or the County Council, with the exception of fees paid under clause 7, are to be returned

to the party that made the payment within one month of the Agreement coming to an end

6. NOTICES

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

6.2 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 Agreement or to such other address as one party may notify in writing to the others at any time as its address for service and in the case of service upon the Council shall be addressed to the Head of Legal Services and in the case of service upon the County Council shall be addressed to the Head of Planning and Historic and Natural Environment, County Hall, Glenfield, LE3 8RA or such other address for service as shall have been previously notified by the County Council to the Landowner; and County Solicitor

6.3 Unless the time of actual receipt is proved, a notice, demand or communication sent by the following means is to be treated as having been served:

6.3.1 if delivered by hand, at the time of delivery;

6.3.2 if sent by post, on the second Working Day after posting; or

6.3.3 if sent by recorded delivery, at the time delivery was signed for.

6.4 If a notice, demand or any other communication is served after 4.00 pm on a working day, or on a day that is not a Working Day, it is to be treated as having been served on the next Working Day.

6.5 For the avoidance of doubt, 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.

7 COSTS OF THIS AGREEMENT

Upon execution of this Agreement the Landowner is to pay to the Council and the County Council their reasonable and proper legal costs of £950 respectively in connection with the preparation, negotiation and completion of this Agreement.

8 DETERMINATION OF DISPUTES

- 8.1 Subject to clause 8.7, if any dispute arises relating to or arising out of the terms of this Agreement, either party may give to the other written notice requiring the dispute to be determined under this clause 8. The notice is to propose an appropriate Specialist and specify the nature and substance of the dispute and the relief sought in relation to the dispute.
- 8.2 For the purposes of this clause 8 a "Specialist" is a person qualified to act as an expert in relation to the dispute having not less than ten years' professional experience in relation to developments in the nature of the Development and property in the same locality as the Site.
- 8.3 Any dispute over the type of Specialist appropriate to resolve the dispute may be referred at the request of either party to the President or next most senior available officer of the Leicestershire Law Society who will have the power, with the right to take such further advice as he may require, to determine the appropriate type of Specialist and to arrange his nomination under clause 8.4.
- 8.4 Any dispute over the identity of the Specialist is to be referred at the request of either party to the President or other most senior available officer of the organisation generally recognised as being responsible for the relevant type of Specialist who will have the power, with the right to take such further advice as he may require, to determine and nominate the appropriate Specialist or to arrange his nomination. If no such organisation exists, or the parties cannot agree the identity of the organisation, then the Specialist is to be nominated by the President or next most senior available officer of the Leicestershire Law Society.
- 8.5 The Specialist is to act as an independent expert and:
- 8.5.1 each party may make written representations within ten Working Days of his appointment and will copy the written representations to the other party;
 - 8.5.2 each party is to have a further ten Working Days to make written comments on the other's representations and will copy the written comments to the other party;
 - 8.5.3 the Specialist is to be at liberty to call for such written evidence from the parties and to seek such legal or other expert assistance as he or she may reasonably require;

- 8.5.4 the Specialist is not to take oral representations from the parties without giving both parties the opportunity to be present and to give evidence and to cross-examine each other;
 - 8.5.5 the Specialist is to have regard to all representations and evidence before him when making his decision, which is to be in writing, and is to give reasons for his decision; and
 - 8.5.6 the Specialist is to use all reasonable endeavours to publish his decision within 30 Working Days of his appointment.
- 8.6 Responsibility for the costs of referring a dispute to a Specialist under this clause 8, including costs connected with the appointment of the Specialist and the Specialist's own costs, but not the legal and other professional costs of any party in relation to a dispute, will be decided by the Specialist.
- 8.7 This clause 8 does not apply to disputes in relation to matters of law or the construction or interpretation of this Agreement which will be subject to the jurisdiction of the courts.

9 COMMUNITY INFRASTRUCTURE LEVY

- 9.1 For the purposes of this clause, "CIL" means a tax, tariff or charge introduced by the Council or the County Council pursuant to regulations enabled by the Planning Act 2008 or any subsequent proposed legislation to fund the delivery of infrastructure known as the "community infrastructure levy" or known by any other name.
- 9.2 If, after the date of this Agreement, a CIL is introduced that is applicable to the Development then the parties to this Agreement will use reasonable endeavours to agree variations to this Agreement with the intent that:
- 9.2.1 The planning benefits secured by this Agreement should continue to be secured and delivered; and
 - 9.2.2 The landowner should not be in a position where they are in a financially worse position because of CIL in respect of the obligations contained in the Schedules than they would be if they performed the obligations in this Agreement and no CIL had been introduced.

10 MONITORING COSTS CONTRIBUTION

Prior to the Commencement Date the Landowner shall pay to the Council the Council Monitoring Costs Contribution and to the County Council the County Council Monitoring Costs Contribution adjusted in accordance with the Index as defined in Schedule 2 as a contribution towards the administration costs of confirming compliance with the obligations contained in this Agreement

11 INTEREST

If any payment due to the Council or County Council under this Deed is paid late, interest will be payable from the date payment is due to the date of payment at the rate of 2% above the Bank of England base lending rate prevailing at the time.

~~12~~ JURISDICTION

~~12.1~~ This Agreement is to be governed by and interpreted in accordance with the laws of England.

~~12.2~~ The courts of England are to have jurisdiction in relation to any disputes between the parties arising out of or related to this Agreement. This clause operates for the benefit of the Council and the County Council who retain the right to sue the Landowner and enforce any judgment against the Landowner in the courts of any competent jurisdiction.

~~13~~ FETTER OF DISCRETION

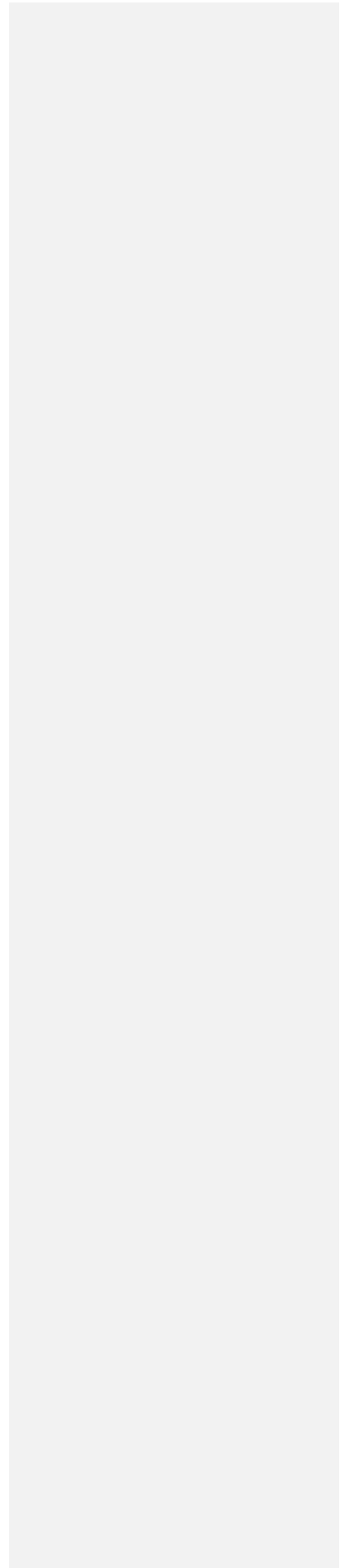
FOR THE AVOIDANCE OF DOUBT nothing herein contained shall prejudice or affect the Council or the County Council's rights powers duties and obligations in the exercise of any of their functions as local authorities and all such rights powers duties and obligations under all public or private statute bye-laws orders regulations and otherwise may be as fully and effectually exercised in relation to the proposed Development of the Site and any other subject matter of this Deed as if this Deed had not been executed by the Council or the County Council

~~14~~ RIGHTS OF THIRD PARTIES

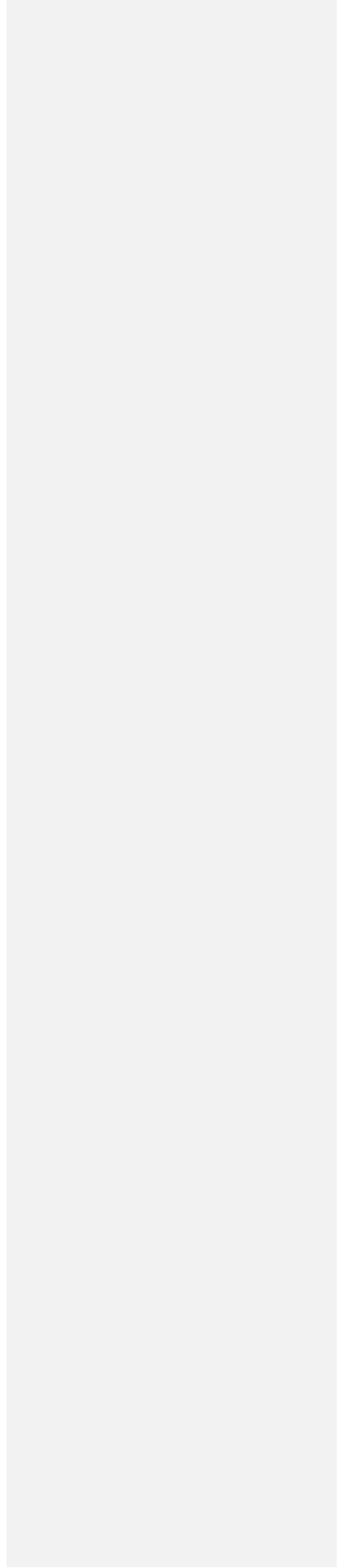
The Parties intend that no terms of this Deed may be enforceable pursuant to the Contract (Rights of Third Parties) Act 1999 by any person who is not a Party to this Deed save for any successor in title to the Owners or any successor in function to the Council and the County Council

154 EXECUTION

The parties have executed this Agreement as a deed and it is delivered on the date set out above.



SCHEDULE 1
Draft Planning Permission



SCHEDULE 2

Contributions

1. Defined terms

In this Schedule, the following words and expressions have the following meanings:

"Base Index Date"	means the date of the grant of Planning Permission
"Base Index Figure"	means the figure published in respect of the Index immediately prior to the Base Index date
"Bus Pass"	an adult bus pass entitling the holder of the pass to travel by bus free of charge for a period of six months <u>from receipt of the Bus Pass</u> for travel within <u>the vicinity of the Development</u> Leicestershire
"Bus Pass Contribution"	the sum of £720.00 <u>(seven hundred and twenty pounds) (Index Linked)</u> per Dwelling to be paid by the Landowner to the County Council for the provision of two adult Bus Passes per Dwelling for the first occupants of that Dwelling
"Civic Amenity Contribution"	The sum of £8784.00 <u>(eight thousand seven hundred and eighty four pounds) (Index Linked)</u> payable by the Landowner to the County Council to be applied to pro ject code [-xxx]MOU008 to provide capacity to deal with additional waste at the Mountsorrel Waste Site serving the Development
"Contributions"	means a collective reference to the Education Contribution and the Library Contribution and the Bus Pass Contribution and the Civic Amenity Contribution and the Open Space Contribution and the Travel Pack Contribution <u>and the Travel Plan Monitoring Contribution</u> and the Healthcare

Contribution and the Parking Contribution and 'Contribution' shall be construed as a reference to a singular contribution for the purposes of paragraphs 2.1 of this Schedule

" Education Contribution"

Means the sum of £493,639.61 ~~(four hundred and ninety three thousand six hundred and thirty nine pounds and sixty one pence) (Index Linked)~~ towards the provision by the County Council of primary school ~~provision~~ ~~at Sileby Highgate Community Primary School and Sileby Redlands Community Primary School~~

" Final Index Figure"

means the figure published or otherwise agreed or determined in respect of the relevant Index immediately prior to the respective date upon which each of the Contributions are paid

" Healthcare Contribution"

Means the sum of £104,381.76 payable by the Landowner to the Council towards improved facilities at the Banks Surgery and Highgate Surgery in Sileby

" Index"

Means:

i) in the case of the Council the "All Items" index figure of the Index of Retail Prices published by the Office for National Statistics or any successor ministry or department of government or if for any reason the Index shall be abolished, there shall be substituted for the purposes of this Schedule, such index of food price costs (including the altered All Items Retail Prices Index) as may from time to time be published by or under the authority of any Ministry or Department of Her Majesty's Government and if no such index is published, the parties thereto shall endeavour to agree such other index as shall most closely reflect changes in the costs of living; and

ii) in the case of the County Council the all in Tender Price index of buildings costs information services ("BCIS") as published by the Royal Institute of Chartered Surveyors ("RICS") or in the event that the RICS shall change the basis of compilation or cease to compile or publish the said index such other index as the parties hereto shall agree most closely reflects the changes in building industry costs

"Library yes Contribution"	The sum of £5,130 <u>(five thousand one hundred and thirty pounds) (Index Linked)</u> towards the provision of improved library facilities or stock at Sileby Library <u>under project number SIL005</u>
"Open Space Contribution"	[is a contribution required for indoor sport?]
"Parking Contribution"	Means the sum of £80,410 payable by the Landowner to the Council and to be committed by the Sileby Parish Council for the provision of lighting at the Pavilion Car Park and upgraded facilities at the King Street Car Park in Sileby
"Payment Date"	means upon the Commencement Date or such alternative date as set out in <u>paragraph clause-3</u> of this Schedule
"Specified Period"	5 (five) years from and including the Payment Date
"Specified Use"	means the use to which a Contribution is to be applied as provided for in the definition of that Contribution in this Schedule
"Travel Pack"	A package of information containing at least the following: <ul style="list-style-type: none">) the provision of two bus pass application forms for the occupiers of any Dwelling;

-) steps to promote rail travel by residents of the Development;
-) details of the bus services serving the Development;
-) details of the sustainable modes of travel serving the development as may be appropriate

"Travel Pack Contribution" The sum of £52.85 (fifty two pounds eighty five ~~pence~~) (Index Linked) per Dwelling to be paid by the Landowner to the County Council as a contribution towards the provision of one Travel Pack per Dwelling

"Travel Plan" means the plan approved in accordance with the requirements of the Planning Permission to ensure compliance with sustainable travel requirements

"Travel Plan Monitoring Contribution" means the sum of £6,000.00 (six thousand pounds) (Index Linked) payable by the Landowner to the County Council to monitor the implementation of the Ttravel Pplan forming part of the Planning Application

2. Index Linking Provisions

2.1 The Contributions shall be increased by such sum, if any, in pounds sterling as shall be equal to the sum calculated according to the following formula:

$$\text{Increased Sum} = \frac{A \times C}{B}$$

Where:

- "A" equals the relevant Contribution
- "B" equals the Base Index Figures
- "C" equals the Final Index Figure

2.2 If after the Base Index Date there should be any change in the Base Index Figure by reference to which changes in the Index are calculated,

the figure taken to be shown in the Index after such change shall be the figure which would have been shown in the Index if the said Base Index Figure had been retained and the appropriate reconciliation shall be made but if for any reason the Index shall be otherwise altered or shall be abolished or replaced, there shall be substituted for the purposes of this Schedule, such index of food prices and building costs as appropriate as may from time to time be published by or under the authority of any Ministry or Department of Her Majesty's Government and if no such index is published, the parties thereto shall endeavour to agree such other index as shall most closely reflect changes in the costs of living and building costs.

- 2.3 If any substitution for the said Index or any index previously substituted therefore shall occur pursuant to the provisions of Clause 2.2 of this Schedule, the parties hereto shall endeavour to agree the appropriate reconciliation between the index substituted on the one hand and the Index or any index previously substituted therefor on the other hand.

3. Payment of the Contributions

- 3.1 The Landowner covenants with the Council and the County Council as appropriate that it will pay the Contributions increased to reflect any increase in the Index occurring in the period from and including the date of this Agreement to and including the date of actual payment to the Council or the County Council as appropriate on or before the Payment Date to be used towards the Specified Use and not to allow or permit any Development unless and until the Contributions have been paid EXCEPT THAT

- 3.1.1 the Landowner covenants with the County Council to pay 25% of the Bus Pass Contributions on or before the Payment Date to be used towards the Specified Use and to pay the remaining 75% of the Bus Pass Contribution prior to first Occupation of the 100th Dwelling AND the County Council and the Landowner may by agreement defer the payment to a later date.

- 3.1.2 The Landowner covenants with the County Council to pay the Education Contribution in 3 ~~equal~~ instalments as follows:

3.1.2.1 ~~£164,546.54 (one hundred and sixty four thousand five hundred and forty six pounds and fifty four pence) being~~ on the Payment Date;

3.1.2.2 £164,546.54 (one hundred and sixty four thousand five hundred and forty six pounds and fifty four

Formatted: Level 4

~~pence) and~~ prior to first Occupation of ~~the 43rd~~
~~more than 25% of the Dwellings; and~~

Formatted: Superscript

~~3.1.23.1.2.3~~ £164,546.53 (one hundred and sixty four thousand
five hundred and forty six pounds and fifty three
pence) ~~and the~~ prior to first Occupation of ~~the 86th~~
~~more than 50% of the Dwelling_s~~

Formatted: Superscript

3.1.3 The Landowner covenants with the Council to pay the Parking
Contribution in 2 instalments £30,140 upon the Payment Date
and £50,000 prior to the first Occupation of more than 25% of
the Dwellings

3.2 The Council and the County Council agrees with the Landowner to use
the Contributions only for the Specified Use and for no other purpose and
to return following demand any part of the Contributions not spent or
committed for the Specified Use by the Specified Date to the party which
made payment of the Contributions EXCEPT THAT the County Council
agrees with the Landowner to use the Bus Pass Contribution only for the
Specified Use and for no other purpose and to return any part of the Bus
Pass Contributions not spent or committed for the Specified Use at the
end of a period of nine months after notification of the Occupation of the
final Dwelling.

Comment [RL2]: Is this acceptable?

SCHEDULE 3
AFFORDABLE HOUSING

4. Defined terms

In this Schedule, the following words and expressions have the following meanings:

“ Affordable Housing ”	has the meaning given to it in the National Planning Policy Framework
“ Open Market Dwellings ”	those Dwellings to be erected on the Site pursuant to the Planning Permission for sale or rent excluding the Affordable Dwellings
“ Social Rented Dwellings ”	means those Affordable Dwellings to be constructed as part of the Development and let under a tenancy by a Registered Provider including affordable rent
“ Shared Ownership Dwellings ”	means those Affordable Dwellings to be constructed as part of the Development and offered for sale on a shared equity basis whereby not more than 75% and not less than 25% of the equity is initially sold to the purchaser by the Registered Social Landlord with flexibility to increase their degree of ownership if they so wish or other types of intermediate tenure
“ Registered Provider ”	a provider of social housing registered with the Homes and Communities Agency or approved by the Council

In order to meet the need for Affordable Housing the following shall apply:

2. Thirty per cent (30%) of the Dwellings in the Development shall be transferred to a Registered Provider to be made available through such Registered Provider on a social rented or shared ownership basis (“the Affordable Dwellings”) in the proportion of at least seventy five per cent (75%) as Social Rented Dwellings and the balance as Shared Ownership Dwellings. The calculations shall be

rounded up to the nearest whole number. The sizes and types of the Affordable Dwellings shall reflect the sizes and types of the development as a whole and they shall be distributed across the Development in small blocks where appropriate or as agreed with the Council such agreement not to be unreasonably withheld or delayed.

3. Prior to the Commencement Date the Landowner shall submit to the Council for approval (such approval not to be unreasonably withheld or delayed) a Scheme for the provision by a Registered Provider of the Affordable Dwellings ("the Scheme").
4. Subject to paragraph 2 above the Scheme shall include the following details:
 - a) The intended Registered Provider;
 - b) The intended funding arrangements for the Scheme;
 - c) The housing types locations sizes and tenures of the Affordable Dwellings;
 - d) The rent levels anticipated for the rented Affordable Dwellings;
 - e) The programme for the construction of the Affordable Dwellings;
 - f) The nomination rights to be granted to the Council; and
 - g) The programme for promoting the Scheme.
5. The Landowner shall promote the Scheme in accordance with the approved programme and shall secure the provision of the Scheme by agreement with the Registered Provider.
6. No more than eighty per cent (80%) of the Open Market Dwellings shall be Occupied until the Affordable Dwellings have been constructed and transferred to a Registered Provider
7. If the Affordable Dwellings are not transferred to a Registered Provider within 18 months of their completion then the Affordable Dwellings shall be offered by the Landowner to a Registered Provider nominated by the Council for a further period of one month.
8. If the Affordable Dwellings are not transferred to a Registered Provider within this further month then the Landowner shall [insert cascade]
9. The letting agreements for the Affordable Dwellings shall contain covenants to the effect that they be only used for the purposes of Affordable Housing.

10. The obligations contained in this Schedule shall not be binding upon:

10.1 Any mortgagee or chargee of a Registered Provider exercising its power of sale by or pursuant to its mortgage; or

10.2 Any person who exercises a statutory or contractual right to acquire an interest in an Affordable Dwelling under the provision of the Housing Act 1996 or any similar or substitute right applicable; or

10.3 Any person who acquires an interest in an Affordable Dwelling or part an Affordable Dwelling pursuant to the initial grant of a shared ownership lease; or

10.4 Any successor in title from the persons in this clause.

SCHEDULE 4

PUBLIC OPEN SPACE

1. In this schedule the following words and expressions have the following meanings

“On Site Open Space”	the area or areas of open space provided on the Site as part of the Development including [list from masterplan parks 0.85 ha natural open space 2.57 amenity green space 1.60 facilities for young children 0.04 allotments 0.18 indoor sport [Sport England calculator] contribution? cemetery 0.33 attenuation 1.04 total 6.61 ha NB this 4.68 times the policy required level of open space]
“On Site Open Space Certificate of Practical Completion	means a certificate issued by the Council to the effect that any On-Site Open Space is practically complete save for such minor outstanding works as the Council may agree or such a certificate deemed to have been issued under paragraphs 6.2 or 6.3 of

this Schedule

"On Site Open Space Certificate of Final Completion

means a certificate issued by the Council to the effect that any On Site Open Space is finally complete and all defects which have become manifest since the issue of the On Site Open Space Certificate of Practical Completion and all outstanding works identified in the On Site Open Space Certificate of Practical Completion have been made good and completed or such a certificate is deemed to have been issued under paragraphs **8 and 6.2 or 6.3** of this Schedule

"On Site Open Space Maintenance Contribution"

Means the sum calculated by using the following formula

$$A + B + C + (D \times E)$$

Where

A = in the event that any children's locally equipped area of play is included within the On Site Open Space the figure of £49,413 (forty nine thousand four hundred and thirteen pounds) but otherwise £0;

B = in the event that any sustainable urban drainage facility is included within the On Site Open Space the figure of £21,000 (twenty one thousand pounds) but otherwise £0;

C = in the event that any multiple

use games area is included within the On Site Open Space the figure of £11,596 (eleven thousand five hundred and ninety six pounds) but otherwise £0;

D = £64,013.91 (sixty four thousand and thirteen ponds and ninety one pence per hectare

E = the total surface area in hectares (excluding the surface area of any ponds or children's locally equipped area of play or multiple use games area) of the open space provided within the Development

"Management Company"

Means a company registered in England and Wales prepared to maintain the On Site Open Space

2. No more than 150 of the Dwellings comprised within the Development shall be Occupied until the On Site Open Space has been laid out and made available to residents of the Dwellings in accordance with any conditions attached to the Planning Permission or any reserved matters approval granted pursuant to it
3. Once the On Site Open Space has been laid out in accordance with any conditions attached to the Planning Permission or any reserved matters approval granted pursuant to it the On Site Open Space shall thereafter only be used for the purposes of public recreation or leisure use and for no other purpose and shall be maintained to a standard to enable its continuing use for that purpose
4. Upon the completion of the laying out any On Site Open Space the Landowner shall invite the Council in writing to inspect that On Site Open Space with a view to issuing an On Site Open Space Certificate of Practical Completion and the Council may inspect that area within 28

days of receipt of the invitation and may issue a notice to the Landowner within 14 days of such an inspection confirming whether or not that On Site Open Space has been laid out to the Council's reasonable satisfaction

5. If the Council issues a notice in accordance with paragraph 4 above which states that the On Site Open Space has not been laid out to the Council's reasonable satisfaction and which details the work required to reach that standard the Landowner shall use reasonable endeavours to complete the works specified in the notice as soon as reasonably practicable and invite the Council to re-inspect the requisite On Site Open Space
6. The procedure set out in paragraphs 4 and 5 shall be repeated in respect of any On Site Open Space until such time as the Council either
 - 6.1. issues an On Site Open Space Certificate of Practical Completion in relation to that On Site Open Space or
 - 6.2. fails to inspect that On Site Open Space within the 28 days of receipt of a written invitation to inspect in which case an On Site Open Space Certificate of Practical Completion shall be deemed to have been issued in respect of the On Site Open Space 14 days following receipt of the relevant invitation; or
 - 6.3. fails to serve within 14 days of their inspection a notice detailing any further works to be carried out in order for that On Site Open Space to be laid out to their reasonable satisfaction in which case an On Site Open Space Certificate of Practical Completion shall be deemed to have been issued in respect of the On-Site Open Space 14 days following the Council's inspection
7. The Landowner shall maintain the On Site Open Space for a period of 12 months from the issue of an On Site Open Space Certificate of Practical Completion maintaining the On Site Open Space and rectifying any defects which arise in the laying out of the Open Space
8. The Landowner shall notify the Council at the end of the period of 12 months referred to in paragraph 6 and invite the Council in writing to inspect the On Site Open Space with a view to issuing an On Site Open Space Certificate of Final Completion (and the provisions of paragraphs 6.1 to 6.3 shall apply mutatis mutandis) and to continue to maintain the

area in question in accordance with the requirements of paragraph 6 until its transfer in accordance with either paragraphs 9 or 10 of this Schedule

9. Where upon the issue by the Council of the On Site Open Space Certificate of Final Completion the Council contemporaneously indicate that it or its nominee will adopt the On Site Open Space then the Landowner shall offer to transfer the On Site Open Space to the Council or its nominee as the case may be and upon such transfer taking place will pay to the Council the On Site Open Space Maintenance Contribution.

10. Where the Council have not indicated in accordance with paragraph 9 above that it will adopt the On Site Open Space the provisions of this paragraph shall apply

10.1 the Landowner shall transfer the On Site Open Space to the Management Company

10.2 the transfer of the On Site Open Space shall take place within 28 days of the issue of the On Site Open Space Certificate of Final Completion;

10.3 the transfer of the On Site Open Space to the Management Company shall be subject to a restrictive covenant that the On Site Open Space shall always be used for purposes of public recreation or leisure use and for no other purpose

EXECUTED AS A DEED by)
affixing the Common Seal of)
THE COUNCIL OF THE)
BOROUGH OF CHARNWOOD)
in the presence of:)

Authorised Signatory

EXECUTED AS A DEED by)
affixing the Common Seal of)
LEICESTERSHIRE COUNTY)
COUNCIL in the presence of:)

Authorised Signatory

[F&G BARBER]

