

DATED

19 December

2016

BURBURY INVESTMENTS LIMITED (1)

AND

SHROPSHIRE COUNCIL (2)

Pursuant to Section 106 Town & Country Planning Act 1990

Relating to Proposed Marina South of Canal Way, Ellesmere, Shropshire



LEGAL AND DEMOCRATIC SERVICES

The Shirehall Abbey Foregate Shrewsbury SY2 6ND
DX 702024 Shrewsbury 2

Planning Application Reference: 14/04047/OUT

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THIS AGREEMENT is made the **19** day of *December* Two Thousand and Sixteen

BETWEEN:-

(1) **BURBURY INVESTMENTS LIMITED** a company incorporated in The British Virgin Islands (company number 60664) whose registered office is at Corporate Trust (BVI) Limited, Road Town, Tortola, British Virgin Islands and whose address for service in the United Kingdom is PO Box 57, Cirencester, Gloucestershire GL7 7YN ("the Landowner"); and

(2) **SHROPSHIRE COUNCIL** of Shirehall, Abbey Foregate, Shrewsbury, Shropshire SY2 6ND ("the Council");

INTRODUCTION

1. The Council is the local planning authority for the purposes of the Act for the area within which the Site is situated and accordingly is the person who is entitled to enforce the obligations contained in this Agreement.
2. The Landowner is the owner of the Site which is registered at HM Land Registry under title number SL171708 and part of title number SL70744.
3. The Landowner submitted the Application to the Council on 6th September 2014 and pursuant to the Application the Landowner has applied for outline planning permission for the Development.
4. The Council supports the Development subject to completion of this Agreement which makes provision for regulating the Development and securing the matters referred to in this Agreement.
5. 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 against the Landowner and their respective successors in title.
6. The parties are satisfied that the obligations are directly related to the Development, fairly and reasonably related in scale and kind to the Development and necessary to make the Development acceptable in planning terms,

NOW THIS AGREEMENT WITNESSES AS FOLLOWS:

OPERATIVE PART

1 DEFINITIONS

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

"Act"

Means the Town and Country Planning Act 1990 (as amended).

"Affordable Housing Dwellings"

Means Dwellings that will be made available for Occupation by eligible persons for either rental or low cost home ownership at less than market value in accordance with the definitions of tenure given by the Council in the Supplementary Planning Document.

"Affordable Housing Contribution"

Means the sum calculated in accordance with the Supplementary Planning Document listed in the Fourth Schedule of this Agreement and due to the Council to facilitate the delivery of additional affordable and/or supported housing within Shropshire. The Landowner acknowledges the fact that the Council shall use 5% of the Affordable Housing Contribution for the administration of the delivery of affordable housing in accordance with the Council's Type and Affordability of Housing Supplementary Planning Document.

"Affordable Housing Plan"

Means a plan showing the agreed Affordable Housing Dwelling tenures, location, types and bed-space numbers on a plot by plot basis for each Reserved Matters Application containing Dwellings

"Affordable Rent Dwellings"

Means the Affordable Housing Dwellings to be constructed pursuant to the Planning Permission and transferred to a Registered Provider for allocation as rented housing as prescribed in the Fourth Schedule to this Agreement.

Lettings shall be made to persons under a form of tenancy permitted by the Homes and Communities Agency and at a rent (inclusive of applicable service charges) equal to or less than 80% of the open market rental value (or the maximum amount of local housing allowance payable for the Dwelling if this is lower).

"Application"

Means an outline application for mixed development of a hotel, boating marina, leisure complex, pub/restaurant, residential, holiday cabins and touring caravans with associated infrastructure to include access made to the Council by the Landowner on 6th September 2014 and allocated the reference 14/04047/OUT by the Council.

"Canal"

Means that part of the Llangollen Canal on, near or adjacent to the Site.

"Canal and River Trust"

Means the Canal and River Trust a charity registered with the Charity Commission no. 1146792 and a company limited by guarantee registered in England & Wales no. 7807276 whose registered address is at First Floor, North Station house, 500 Eider Gate, Milton Keynes MK9 1BB

"Choice Based Lettings System"

Means the Council's system for advertising Affordable Housing Dwellings as being available for occupation.

"Commencement of Development"

Means the date upon which the Development shall be implemented by the carrying out on the Site pursuant to the Planning Permission of a material operation specified in Section 56 of the Act PROVIDED THAT any works of or associated with demolition, site clearance, remediation works, environmental or archaeological investigations, site and soil surveys, erection of contractors work compound, erection of site office, erection of fencing to site boundaries and laying out of access roads and services shall for the purposes of this Agreement be deemed not to be material operations and "Commencement Date" shall be construed accordingly.

"Development"

Means the development in accordance with the Planning Permission.

"Discounted Rent Dwelling"

Means an Affordable Housing Dwellings to be constructed pursuant to the Planning Permission and transferred to a Registered Provider by the Landowner for allocation in perpetuity as rented housing as prescribed in the Fourth Schedule to this Agreement.

Lettings shall be made to persons under an assured shorthold tenancy and at a rent (inclusive of applicable service charges) that shall be no greater than 80% of the Market Rent for the Dwelling or the maximum amount of local housing allowance payable for the Dwelling (whichever is the lower).

The maximum annual rent increase for the Dwelling will be Consumer Price Index (CPI) + 1.0%. CPI will be taken as at September of the previous year (all items – percentage change over 12 months) as published by the Office of National Statistics (or any equivalent

data source published by them or their successors in title).

"Discounted Sale Dwelling"

Means an Affordable Housing Dwelling made available for freehold sale at the Formula Price and made available for Occupation as the occupiers only or principal home and in accordance with the terms prescribed in the Fourth Schedule to this Agreement.

"Dwelling"

Means a residential unit that may be built on the Site as part of the Development and reference to "Dwellings" shall be construed accordingly.

"Final Certificate"

means a certificate to be issued by the Council which shall be conclusive evidence that the Public Open Space has been constructed and maintained in accordance with and each Reserved Matters Application containing Public Open Space and the Public Open Space Specification to the reasonable satisfaction of the Council

Footbridge

Means a footbridge to be constructed on the Site over the Canal

"Formula Price"

Means the sum which is sixty per cent (60%) of the Open Market Value of a Discounted Sale Dwelling.

"Homes and Communities Agency"

Means the Homes and Communities Agency (HCA) or the Tenant Services Authority or any other body undertaking the previous functions of the Housing Corporation under the Housing and Regeneration Act 2008.

"Housing Allocations Policy and Scheme"

Means the Council's adopted policy and procedure for allocating Affordable Housing Dwellings to eligible persons from its housing waiting list.

"Interest"

Means interest at 4 per cent above the base lending rate of Barclays Bank plc from time to time.

"Local Lettings Plan"

Means a written agreement made between the Council and the Registered Provider that is permitted in accordance with the Housing Allocations Policy and Scheme and used to

help promote a sustainable mix and balance of residents at the development.

"Maintenance Period"

Means the period from the date of completion of the layout of the Public Open Space until the Final Certificate is issued and the Public Open Space has been transferred to a Management Company or Parish Council or where the Public Open Space is being retained by the Landowner a Management Company has been appointed to manage and maintain the Public Open Space

"Maintenance Scheme"

Means a scheme for the maintenance of the Public Open Space to include the detail prescribed in paragraph 4.4 of the Fifth Schedule to this Agreement

"Management Company"

means a management company to be approved in writing by the Council for the purposes of managing and maintaining the Public Open Space whether this shall be by way of appointment of a management company to manage and maintain the Public Open Space or by way of a transfer of the Public Open Space to a management company and in the event the management company is to be constituted by the Landowner then its memorandum and articles of association shall be created so that any profits are retained and applied to the maintenance of the Public Open Space and provided further that where a management company is proposed which is already in existence then details of its memorandum and articles of association shall show that any profits are retained and applied to the maintenance of the Public Open Space.

"Mortgagee in Possession"

Means a mortgagee of a Dwelling or the Site or part of the Site who has entered into possession of a Dwelling or the Site or part of the Site or who has appointed a receiver or administrative receiver under the security or has otherwise exercised its power of sale.

"Occupy/Occupation" and Occupied"

Means occupation for residential purposes 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 operations.

"Open Market Value"

Means the price which the Dwelling would be expected to fetch on the open market by a

willing vendor to a willing purchaser unfettered by the terms of this Agreement with that value being the average of no less than two written valuations obtained from two chartered surveyors or valuers accredited by the royal institution of chartered surveyors;

or

In the case of Shared Ownership Dwellings the price which the Dwelling would fetch on the open market by a willing vendor to a willing purchaser with that value being determined between the occupier and the Registered Provider in accordance with the provisions of the lease for such a Dwelling.

"Open Market Dwelling"

Means a Dwelling to be constructed on the Site pursuant to the Planning Permission and not made available for Occupation as an Affordable Housing Dwelling

"Parish Council"

Means Ellesmere Town Council

"Phase"

Means any individual phase within the Site as shown on the Phasing Plan to be submitted in accordance with this Agreement or such variation or amendments to such plan as may be submitted to and approved by the Council;

"Phasing Plan"

Means the phasing plan to be submitted to the Council in accordance with Part 1 of the Third Schedule and approved in writing by the Council

"Prevailing Target Rate"

Means the current prevailing target rate for affordable housing in accordance with the Supplementary Planning Document expressed as a percentage

"Plan 1"

Means the plan attached to this Agreement marked "Plan 1"

"Planning Permission"

Means the planning permission that may be granted by the Council in pursuance of the Application as set out in draft in the Second Schedule.

"Public Open Space"

means any area to be provided within the Site for recreation and amenity space purposes, which are to be permanently retained and maintained as an open amenity area accessible to the public to serve the Development in accordance with the Fifth Schedule which shall be calculated at 30m²

per bedroom as set out in policy MD2 of Shropshire Council's Site Allocations and Management of Development DPD adopted 17 December 2015 or such other planning policy or supplementary planning guidance that may be adopted to replace the same

"Public Open Space Commuted Sum"

means a commuted sum for maintenance of the Public Open Space (if the Public Open Space is to be transferred to the Parish Council) and the quantum of such commuted sum shall be agreed between the Landowner and the Parish Council prior to the date of transfer the quantum of which shall be based on the details set out in the Maintenance Scheme for a period of twenty years and such commuted sum shall be payable by the Landowner to the Parish Council upon the transfer of the Public Open Space to it

"Public Open Space Specification"

Means the specification approved in writing by the Council to include but not to be limited to

1. the design specification and landscaping, including any boundary treatments including fencing for the Public Open Space;
2. the exact location and dimensions of the Public Open Space; to include a GIS map as a shapefile ESRI format to include the following suffixes: .shp; .shx; .dbf
3. details of the provisions for the management of the Public Open Space whether by the transfer of the Public Open Space to a Management Company or where the Public Open Space is to be retained by the Landowner details of the Management Company appointed to manage and maintain the Public Open Space including details of any payments made by the Landowner to the Management Company to fund the maintenance of the Public Open Space
4. details of the provisions for the management of the Public Open Space in the event of a transfer of the Public Open Space to the Parish Council

"Public Open Space Works"

means the works to lay out plant construct and maintain the Public Open Space carried out and approved pursuant to the Fifth Schedule to this Agreement and in accordance with the Public Open Space

Specification as agreed in writing with the Council

"Registered Provider"

Means a housing association or registered social landlord or other body registered with the Homes and Communities Agency (which shall include any successor in title) as a provider of affordable housing in accordance with the provisions of the Housing and Regeneration Act 2008.

"Qualifying Purchaser"

Means a person who is resident within or employed within or has family connections within the administrative area of the Council who intends to purchase a Discounted Sale Dwelling and:

1. lacks his/her own housing or lives in housing which is agreed by the Council in its absolute discretion to be inadequate or unsuitable to meet his/her existing or future requirements whether because of its tenure size type design amenity location condition security or costs; and

2. is unlikely to be able to meet his/her housing needs at the Development without access to an Affordable Housing Dwelling.

"Qualifying Tenant"

Means a person who is resident within or employed within or has family connections within the administrative area of the Council who intends to rent a Discounted Sale Dwelling from the current occupier and:

1. lacks his/her own housing or lives in housing which is agreed by the Council in its absolute discretion to be inadequate or unsuitable to meet his/her existing or future requirements whether because of its tenure size type design amenity location condition security or costs; and

2. is unlikely to be able to meet his/her housing needs at the Development without access to an Affordable Housing Dwelling.

"Reserved Matters Application"

Means an application for consent for reserved matters pursuant to the Planning Permission

"Reserved Matters Approval"

Means any approval by the Council of matters reserved under the Planning Permission

"Restricted Staircasing"

Means the purchasing of a maximum of 80% of the equity interest in a Shared Ownership Dwelling from a Registered Provider pursuant to the terms of a Shared Ownership lease and or any other similar shared equity scheme.

"Retail Price Index"

Means the index published by the Office of National Statistics from time to time

"Sale Marketing Plan"

Means written evidence provided by the owner of a Discounted Sale Dwelling to the Council demonstrating to the Council's reasonable satisfaction that it will actively be offered for sale to Qualifying Purchasers at the Formula Price.

"Secondary Purchaser"

Means any person who is not a Qualifying Purchaser.

"Shared Ownership Dwellings"

Means the Affordable Housing Dwellings to be constructed pursuant to the Planning Permission and transferred to a Registered Provider for allocation to persons as a form of low cost home ownership on a part buy/part rent basis in accordance with a form of lease permitted by the Homes and Communities Agency and on the terms prescribed in the Fourth Schedule to this Agreement.

"Shropshire Housing Partnership"

Means any Registered Provider or constituted community land trust or other housing provider or registered charity working with the Council to provide Affordable Housing Dwellings.

"Site"

Means the land described in the First Schedule.

"Social Rented Dwellings"

Means the Affordable Housing Dwellings to be constructed pursuant to the Planning Permission and transferred to a Registered Provider for allocation to persons as rented housing as prescribed in the Fourth Schedule to this Agreement.

Lettings shall be made under an assured tenancy at a rent equal to or less than the prevailing target rent level (exclusive of applicable service charges) permitted by the Homes and Communities Agency through its national rent regime.

"Substantial Completion"

Means that a Dwelling is complete save in minor respects in relation to minor matters of

"Suitable Offer"

snagging and landscaping and which is available for immediate Occupation by a purchaser or tenant

Means a written offer made by a Qualifying Purchaser or the Council or a member of the Shropshire Housing Partnership or a Secondary Purchaser to purchase a Discounted Sale Dwelling from the occupier at the Formula Price and in accordance with the terms prescribed in the Fourth Schedule to this Agreement.

"Supplementary Planning Document"

Means Shropshire Council's Local Development Framework Supplementary Planning Document on the Type and Affordability of Housing (Adopted September 2012) or any subsequent modification or replacement thereof.

"Terms"

Means terms which provide for the transfer of the freehold interest in the Public Open Space to be agreed pursuant to a draft transfer providing that:

- a) The Public Open Space is transferred free from encumbrances other than those existing as at the date hereof including the provisions of this Agreement and with full title guarantee;
- b) It is at the consideration of £1;
- c) It does not include any terms which would restrict public access;
- d) It includes for the benefit of the Public Open Space the grant of any rights of access over any adjoining land which rights are reasonably required for the management and maintenance of the Public Open Space for its purpose as public open space and for water attenuation and surface water drainage purposes;
- e) The transfer shall include a covenant that the Public Open Space shall not be used for any purpose other than for public open space; and
- f) The transfer shall include a covenant to put into effect and comply with the Maintenance Scheme in full for the purposes of thereafter maintaining the Public Open Space for the lifetime of the Development.

2 CONSTRUCTION OF THIS AGREEMENT

- 2.1 Where in this Agreement reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Agreement
 - 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa
 - 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner
 - 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise
 - 2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it
 - 2.6 references to any party to this Agreement shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council the successors to their respective statutory functions
 - 2.7 the clause headings do not affect its interpretation
 - 2.8 references to the Site include any part of it
 - 2.9 "including" means "including, without limitation"
 - 2.10 any covenant by the Landowner not to do any act or thing includes a covenant not to wilfully and knowingly permit or allow the doing of that act or thing
 - 2.11 if any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of this Agreement is to be unaffected
 - 2.12 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
- ### 3. LEGAL BASIS
- 3.1 This Agreement is made pursuant to Section 106 of the Act section 111 Local Government Act 1972 and section 1 of the Localism Act 2011
 - 3.2 The covenants, restrictions and requirements imposed upon the Landowner under this Agreement create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council against the Landowner

4 **CONDITIONALITY**

- 4.1 This Agreement is conditional upon the Commencement of Development save for the provisions of Clauses 7.1, 7.2, 7.3, 13 and 14 which shall come into effect immediately upon completion of this Agreement

5 **THE LANDOWNER'S COVENANTS**

- 5.1 The Landowner covenants with the Council as set out in the Third, Fourth, Fifth and Sixth Schedules

6 **THE COUNCIL'S COVENANTS**

- 6.1 The Council covenants with the Landowner as set out in the Seventh Schedule

7 **MISCELLANEOUS**

- 7.1 The Landowner shall pay to the Council on completion of this Agreement the reasonable legal costs of the Council incurred in the negotiation, preparation and execution of this Agreement in the sum of £950

- 7.2 No provisions of this Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999

- 7.3 This Agreement shall be registered as a local land charge by the Council

- 7.4 Where the agreement, approval, consent or expression of satisfaction is required by the Landowner from the Council under the terms of this Agreement such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent approval or expression of satisfaction shall be given on behalf of the Council by the Area Planning Manager or the Housing and Enabling Manager (or their nominated representatives) PROVIDED THAT if the Council does not respond in writing within 25 Working Days of the receipt of a written request for agreement approval consent or expression of satisfaction receipt of such request having been acknowledged in writing by the Council then the matter shall be deemed approved in the form it was submitted to the Council.

- 7.5 Any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party

- 7.6 Following the performance and satisfaction of all the obligations contained in this Agreement the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Agreement

- 7.7 Insofar as any clause or clauses of this Agreement are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Agreement

- 7.8 This Agreement shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or without the consent of the Landowner it is modified by any statutory procedure or expires prior to the Commencement of Development

- 7.9 No person shall be liable for any breach of any of the planning obligations or other provisions of this Agreement after it has parted with its entire interest in the Site or any part thereof but without prejudice to liability for any subsisting breach arising prior to parting with such interest. 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 the retention of an interest for the purposes of this paragraph

7.10 Subject to the provisions of paragraph 1 of the Fourth Schedule the obligations contained in this Agreement shall not be binding upon or enforceable against owner-occupiers or tenants of the Open Market Dwellings constructed pursuant to the Planning Permission nor against those deriving title from them

7.11 The obligations contained in this Agreement shall not be binding upon or enforceable against any statutory undertaker or any person who acquires part of the Site or any interest in it for the purposes of the supply of electricity gas water drainage telecommunications or public transport services

7.12 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted after the date of this Agreement.

7.13 In consequence of the release given in clauses 7.11 this Agreement may be modified varied or released without the consent or approval of the parties listed in 7.11

8 MORTGAGEE EXEMPTION CLAUSES

8.1 It is hereby agreed and declared between the parties that the covenants contained in this Agreement relating to affordable housing shall not be binding on a mortgagee or chargee in possession of the Open Market Dwellings on the Site or a receiver or appointed by such mortgagee or chargee or a bona fide purchaser for value thereof from such a mortgagee or chargee in possession or receiver appointed (except in the case of a purchaser which is a Registered Provider) or the successors in title of such purchaser with the intent that the clauses in this Agreement relating to affordable housing shall cease to bind the Open Market Dwellings on the Site in perpetuity

8.2 It is further agreed and declared between the parties that the covenants contained in this Agreement shall not be binding on a mortgagee or chargee in possession of the Affordable Housing Dwellings on the Site or a receiver appointed by such mortgagee or chargee or a bona fide purchaser for value thereof from such a mortgagee or chargee in possession or receiver appointed (except in the case of a purchaser which is a Registered Provider) or the successors in title of such purchaser with the intent that the clauses in this Agreement shall cease to bind Affordable Housing Dwellings on the Site in perpetuity PROVIDED that:-

(i) such a mortgagee or chargee in possession or receiver appointed exercising any power of sale or leasing shall first use all reasonable endeavours over a period of three months to dispose of the Affordable Housing Dwellings on the Site to a Registered Provider and which Registered Provider shall covenant with the Council in accordance with the clauses in this Agreement that the said mortgagee or chargee or receiver shall as consideration for such disposal always be entitled to the greater of the sums as set out in (ii) below

(ii) if any such mortgagee or chargee or receiver is unable within the said period of three months to dispose of the Affordable Housing Dwellings on the Site in accordance with sub clause (i) above they shall next have given notice to the Council offering to transfer the Affordable Housing Dwellings on the Site to the Council at a consideration representing either the open market value thereof (being the value of the Affordable Housing Dwellings unencumbered by this Agreement) at the date of the notice subject to any leases or tenancies then subsisting and as if the clauses in this Agreement were not still in force the amount of such consideration to be agreed between the Council and the mortgagee or chargee or receiver and failing such agreement to be determined

by a Member of the Royal Institution of Chartered Surveyors acting as an expert and not as an arbitrator to be appointed by joint agreement of the parties (the costs of his appointment and acting to be met by the parties in equal shares) or the sum outstanding under any mortgages on the Affordable Housing Dwellings whichever shall be the greater AND either

- (a) the Council shall within 42 days of receipt of the notice given by the mortgagee or chargee or receiver have given notice in writing that it does not wish to acquire the Affordable Housing Dwellings on the Site or shall have failed to respond to such notice; or
- (b) if the Council, has served notice on the mortgagee or chargee or receiver pursuant to (a) above and it has failed to complete the transfer of the Affordable Housing Dwellings on the Site within eight weeks of the price having been agreed between the Council and the mortgagee or chargee or receiver or, in the absence of such agreement, within eight weeks of the price having been determined by the said expert

8.3 Shared Ownership Mortgage Exemption

8.3.1 It is agreed between the parties that in the event that a mortgagee or a chargee of a Dwelling that is occupied on the basis of a Shared Ownership Lease takes possession of the said Dwelling from the Leaseholder ("the Leaseholder") then, under this Agreement that said mortgagee or chargee must comply with the following procedures;

8.3.2 It shall give notice in writing to the Chief Executive of the Registered Provider or to any other Registered Provider that it may have transferred the Site or Dwellings of its possession and shall offer to dispose of the leasehold interest in the Dwelling at the price of the consideration of the equity share paid by the Leaseholder or the sum outstanding under any mortgage or charge on the Dwelling whichever is the greater ("the Offer")

8.3.3 The Registered Provider shall within twenty working days of receipt of the Offer notify the mortgagee or chargee of its decision either to accept the Offer or to decline it

8.3.4 If the Registered Provider decides to accept the Offer it shall complete the transfer of the leasehold interest in the Dwelling within thirty working days of the Offer acceptance and shall following completion of the transfer of the Dwelling pursuant to this sub-clause remarket the Dwelling in accordance with this Agreement to another purchaser

8.3.5 In the event that the Registered Provider shall decline the Offer the mortgagee or chargee shall give notice in writing to the Planning and Corporate Policy Manager of the Council of its intention to sell to it on the basis of the Offer in 8.3.2

8.3.6 The Council shall within twenty working days of the Notice notify in writing the mortgagee or chargee of its intention to either accept or decline the Offer

8.3.7 If the Council decides to accept the Offer it shall complete the transfer of the leasehold interest in the Dwelling within thirty working days of the Offer acceptance

8.3.8 In the event that the Council declines the Offer the mortgagee or chargee shall be free to market and dispose of the leasehold interest in the Dwelling subject to the provisions in this Agreement as it relates to the Shared Ownership Dwellings

8.3.9 In the event that the mortgagee or chargee shall dispose of the leasehold interest in the Dwelling in accordance with the provisions of clause 8.3.8 it shall apply the proceeds of sale in the following order:-

- (i) to itself to satisfy the amount owing under its mortgage or charge;
- (ii) to the Registered Provider in respect of any sums properly due under the lease;
- (iii) to apply any further sums in accordance with the mortgage or chargee's statutory obligations.

8.4 Discounted Sale Mortgagee Exemption

8.4.1 A Mortgagee in Possession of a Discounted Sale Dwelling shall not sell it other than as provided for within sub-clauses 8.4.2 and 8.4.3 of this Agreement.

8.4.2 The Mortgagee in Possession shall be free to sell the Discounted Sale Dwelling to any purchaser PROVIDED THAT the sale price shall be no more than the Formula Price or the sum necessary to recoup all of the mortgage debt and costs (whichever shall be the higher) unless the sale is pursuant to sub-clause 8.4.3 of this Agreement

8.4.3 If after a period of eight weeks from taking possession of the Discounted Sale Dwelling (with notice in writing having been sent by recorded signed for post to the Council by the Mortgagee in Possession on the commencement of that period or as soon as possible thereafter) it has not been sold or is not subject to a formal exchange of contracts pursuant to a sale in accordance with sub-clause 8.4.2 of this Agreement the Mortgagee in Possession shall be entitled to sell the Dwelling to any purchaser at Open Market Value and free from the restrictions contained in this Agreement

8.4.4 Where the Mortgagee in Possession sells the Discounted Sale Dwelling pursuant to sub-clause 8.4.3 of this Agreement it shall (after recouping all of the mortgage debt and costs) pay to the Council all of the difference between the sale price and the Formula Price (subject to the sale price exceeding the Formula Price) which sum the Council shall use to facilitate the provision of additional Affordable Housing Dwellings

8.4.5 Following completion of a sale by the Mortgagee in Possession pursuant to sub-clause 8.4.3 of this Agreement the Council shall within two weeks remove the provisions of this Agreement as they relate to the Dwelling from the local land charges register and also consent to removal of the land registry title Restriction

9. WAIVER

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

10. CHANGE IN OWNERSHIP

10.1 The Landowner agrees with the Council to give to the Council as soon as practically possible written notice of any change in ownership of any of its interests in the Site occurring before all the obligations under this Agreement have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site by reference to a plan

11. INTEREST

11.1 If any payment due under this Agreement is paid late, Interest will be payable from the date payment is due to the date of payment

- 12. VAT**
12.1 All consideration given in accordance with the terms of this Agreement shall be exclusive of any value added tax properly payable

- 13. JURISDICTION**
13.1 This Agreement is governed by and interpreted in accordance with the law of England

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

- 15. DISPUTE RESOLUTION**
15.1 In the event of any dispute or difference arising out of this Agreement between the parties (other than a dispute or difference relating to a matter of law or concerning the meaning or construction of this Agreement) such dispute or difference shall be referred to a person to be agreed between the parties who is a member of the Royal Institute of Chartered Surveyors or in the absence of agreement on the application of any party to be appointed by the President of the Royal Institute of Chartered Surveyors such person to act as sole expert in the determination of the dispute or difference and whose decision shall be final and binding upon the parties

Executed as a Deed on the date specified at the commencement of this Agreement

FIRST SCHEDULE

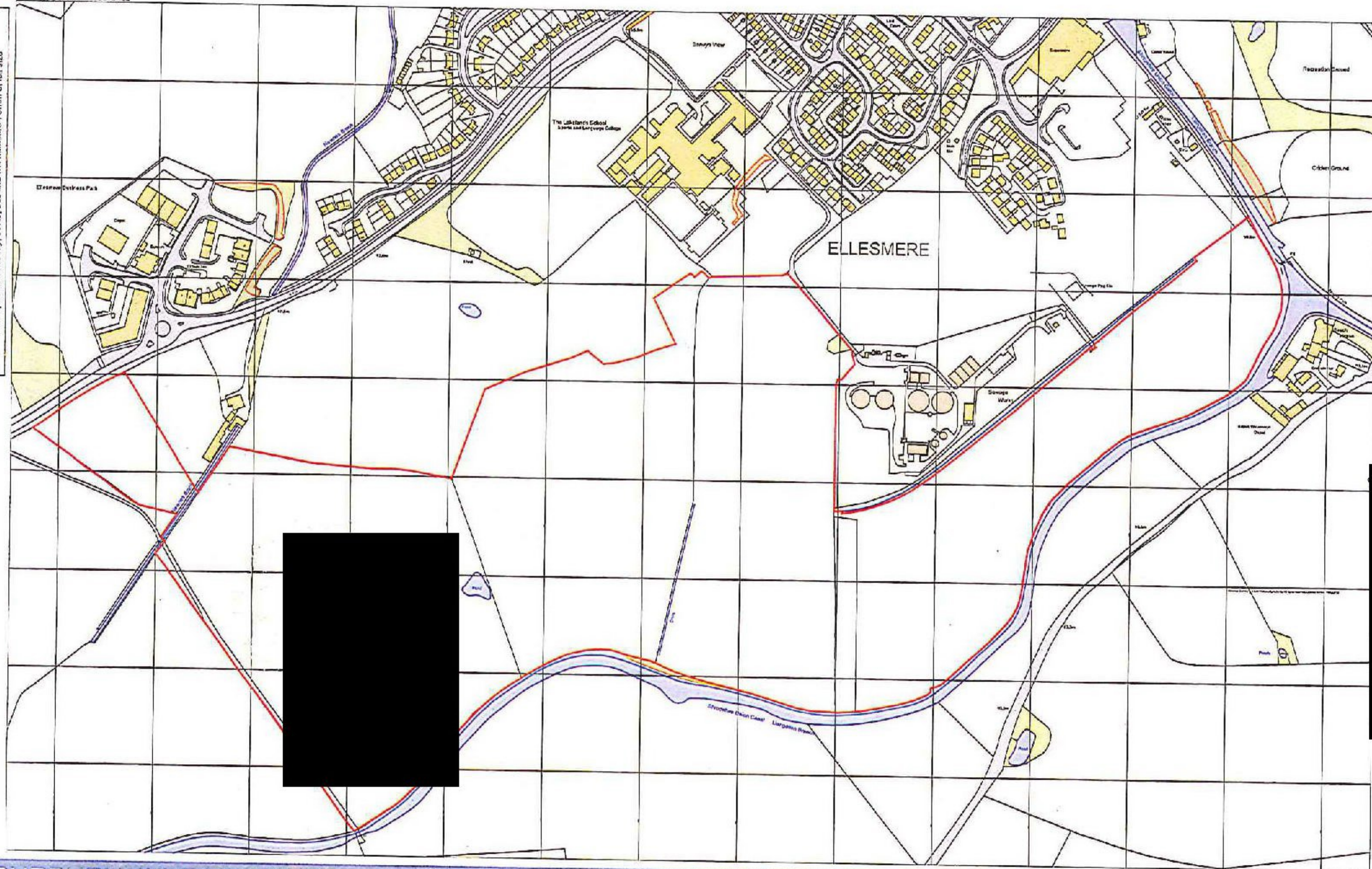
Details of the Landowner's Title, and description of the Site

ALL THAT freehold land at the Proposed Marina South of Canal Way, Ellesmere, Shropshire as the same is registered with absolute title at HM Land Registry under title number SL171708 and part of title number SL70744 and which is shown edged red on Plan 1.

When printed correctly, at A3, this line will measure 75mm at full size

• CHECK PRINTED SIZE

When printed correctly, at A3, this line will measure 75mm at full size



BURBURY_INVESTMENTS

ELLESMERE_CANALSIDE_DEVELOPMENT

Roberts **Limbrick**
ARCHITECTS

The Carriage Building, Bruton Way, Gloucester, GL1 1DG

T: 03333 405 500 E: mail@roberts-limbrick.com

Date: DEC_2015

Dwg title: S106_PLAN

Scale: 1:5000@A4
Subject to correct printing. See top left

Dwg No: 5614/PL15-A

This drawing is the copyright of Roberts Limbrick Ltd and should not be reproduced in whole or in part or used in any manner whatsoever without their written permission

SECOND SCHEDULE

Draft form of notice of planning permission

Planning Permission reference 14/04047/OUT in the draft form annexed to this Agreement to be issued pursuant to the Application.

THIRD SCHEDULE

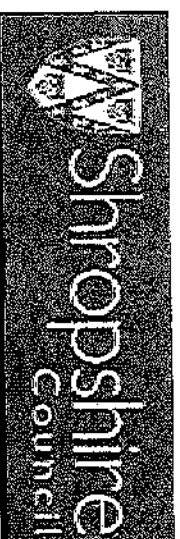
The Landowner's covenants with the Council

PHASING PLAN

The Landowner covenants with the Council as follows:

1. To submit with the first Reserved Matters Application the Phasing Plan for approval by the Council
2. To construct the Development in accordance with the Phasing Plan unless otherwise agreed in writing with the Council

DECISION NOTICE



DETERMINATION OF APPLICATION FOR OUTLINE PLANNING PERMISSION

Town and Country Planning Act 1990
Town and Country Planning (Development Management Procedure) (England) Order 2015

Location:	Proposed Marina South Of, Canal Way, Ellesmere, Shropshire
Proposed Development:	Outline application for mixed development of a hotel, boating marina, leisure complex, pub/restaurant, residential, holiday cabins and touring caravans with associated infrastructure to include access
Application No.	14/04047/OUT
Date Received:	6th September 2014
Applicant:	Burbury Investments Ltd

Shropshire Council hereby **GRANT OUTLINE PERMISSION** subject to the conditions listed below.

STANDARD CONDITIONS

1. For each phase of the development details of the layout and scale of the buildings, their appearance and landscaping, and the means of access other than that approved, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development of that phase begins and the development of that phase shall be carried out as approved.

Reason: The application is an outline application under the provisions of Article 4 of the Development Management Procedure Order 2015 and no particulars have been submitted with respect to the matters reserved in this permission.

2. Application for approval of the first phase reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission. All other applications for the approval of reserved matters shall be made to the local planning authority within 10 years from the date of this permission.

Reason: This condition is required to be imposed by Section 92 of the Town and Country Planning Act, 1990.

3. Each phase of the development hereby permitted shall begin not later than 2 years from the date of approval of that phase's reserved matters.

Reason: This condition is required to be imposed by Section 92 of the Town and Country Planning Act, 1990.

4. The reserved matters applications submitted as a result of this consent shall follow the principles set out on the revised indicative layout drawing PRSK25 rev O received 15th December 2015 and the XXX received XXX.

Reason: To ensure appropriate layout and scale of development in regard to the context and setting of nearby heritage assets and neighbouring properties.

5. Prior to the commencement of development and as part of the submission of the first reserved matters, general arrangements of the proposed link road through the site, its western roundabout junction onto the A495 and the internal link to Canal Way have been submitted to and approved in writing by the Local Planning Authority; the link road infrastructure shall be implemented in accordance with a phasing development scheme to be first submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure that the development highway infrastructure and completion of the link road is fully coordinated.

6. The first submission of Reserved Matters shall include a landscaping scheme which provides for a minimum of 6.5ha of semi-natural public open space and provision of circular walking routes through the site. The submitted details shall include a timetable when the open space and circular walking route is to be provided. The approved scheme shall thereafter be completed in accordance with the approved details and timetable.

Reason: To prevent increased recreational pressure on European sites.

7. As part of the reserved matters application a Flood Risk Mitigation Strategy shall be submitted for approval to the Local Planning Authority in consultation with the Environment Agency. The strategy shall be based upon the principles detailed within Section 3 of the Flood Risk Assessment by BWB Consulting (ref: BMW/2025/FRA rev B, dated May 2014) and shall include but may not be limited to:
- a) Details of ground levels pre and post development in relation to a fixed datum.
 - b) Verification of the flood model based upon the site levels to confirm flood outlines and flood storage benefits post-development, including calculations and details of maintenance thereafter.
 - c) Confirmation of areas of the development site subject to flood depths during flood events up to the 1 in 1000 year flood event.
 - d) Details of finished floor levels for all built development.
 - e) Details of road levels and the design of the proposed Newnes Brook access crossing.
- As set out in the proposed mitigation measures within the FRA, all floor levels should be set a minimum of 600mm above the relevant 100 year plus climate change flood level with all road access a minimum of 300mm above this level. The Flood Risk Mitigation Strategy will confirm the extent of flood risk improvement provided as a result of the development.

Reason: To ensure that there is no increase in flood risk and that flood betterment is provided post development. To ensure that the development and occupants are safe from flooding including climate change impacts for the lifetime of the development.

CONDITIONS THAT REQUIRE APPROVAL BEFORE THE DEVELOPMENT COMMENCES

8. No development, or phasing as agreed below, shall take place until the following components of a scheme to deal with the risks associated with contamination of the site are submitted to and approved, in writing, by the Local Planning Authority:
- a) A site investigation scheme, based on the Phase 1 Geo-environmental Assessment Report by BWB Consulting (dated July 2013, ref BMW/2025/01/V/2) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.

b) The site investigation results and the detailed risk assessment (1) and, based on these, an options appraisal and remediation strategy, if necessary, of the remediation measures required and how they are to be undertaken.

c) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in (2) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action. This should include any proposed phasing of demolition or commencement of other works.

d) Prior to occupation of any part of the development (unless in accordance with agreed phasing under part 3 above) a verification (validation) report demonstrating completion of the works set out in the approved remediation strategy (2 and 3). The report shall include results of any sampling and monitoring. It shall also include any plan (a "long-term monitoring and maintenance plan") for longer term monitoring of pollutant linkages, maintenance and arrangements for contingency action and for the reporting of this to the Local Planning Authority.

Any changes to these components require the express written consent of the Local Planning Authority. The scheme shall be implemented as approved.

Reason: To protect ground and surface waters ('controlled waters' as defined under the Water Resources Act 1991).

9. Prior to development commencing, a scheme for the phasing of development shall be submitted for approval to the Local Planning Authority. The scheme shall include details on timing and delivery of the Tetichill Brook watercourse engineering works and how this work relates to the phasing of development on the remainder of the site. The phasing scheme shall be informed by the pre and post development flood outlines. The scheme shall be implemented in accordance with the approved details, unless otherwise agreed in writing by the Local Planning Authority.

Reason: To ensure that, during all stages of construction, development will not increase flood risk elsewhere.

10. No development approved by this permission shall commence until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation (WSI). This written scheme shall be approved in writing by the Planning Authority prior to the commencement of works.

Reason: The site is known to hold archaeological interest.

11. Prior to commencement of development, including any works of demolition or clearance of vegetation, and as part of the submission of the first reserved matters, a Strategic Construction Environmental Management Plan (CEMP) shall be submitted to and approved in writing by the Local Planning Authority. The Strategic CEMP shall include an overview of:
- a 'Wildlife/habitat Protection Zones' where construction activities are restricted and where protective measures will be installed or implemented;
 - Protective measures (both physical measures and sensitive working practices, including lighting) to avoid impacts during construction (may be provided as a set of method statements);
 - A timetable to show phasing of construction activities to avoid harm to biodiversity features (e.g. avoiding the bird nesting season);
 - The role and responsibilities on site of an ecological clerk of works (EcCoW) or similarly competent person;
 - Persons responsible for:
 - i) Compliance with legal consents relating to nature conservation;
 - ii) Compliance with planning conditions relating to nature conservation;
 - iii) Installation of physical protection measures during construction;
 - iv) Implementation of sensitive working practices during construction;
 - v) Regular inspection and maintenance of physical protection measures and monitoring of working practices during construction;
 - vi) Provision of training and information about the importance of 'Wildlife protection zones' to all construction personnel on site.

Reason: To protect the water quality of the Shropshire Union Canal, watercourses on site and linking protected sites

12. Prior to commencement of development on each and every phase of the development phase specific Construction Environmental Management Plans (CEMP's) shall be submitted which shall detail:
- measures for control of discharges, run-off and polluting material and measures to control the emission of dust and dirt during construction from spreading off the site;
 - a phase specific appropriately scaled plan showing 'Wildlife/habitat Protection Zones' where construction activities are restricted and where protective measures will be installed or implemented;
 - Phase specific details of protective measures (both physical measures and sensitive working practices, including lighting) to avoid impacts during construction (may be provided as a set of method statements);
 - A timetable to show phasing of construction activities to avoid harm to biodiversity features (e.g. avoiding the bird nesting season);
 - The times during construction when specialist ecologists need to be present on site to over-see works;
 - Where required specific details of the role of the EcCoW or similarly competent person and the person responsible for subsections i) to vi) above.
- The CEMP shall be fully implemented in accordance with the approved details for the duration of the construction period associated with the phasing of the development.

Reason: To protect the water quality of the Shropshire Union Canal, watercourses on site and linking protected sites

13. Prior to commencement of development and as part of the submission of the first reserved matters, a Strategic Construction Traffic Management Plan (CTMP) which demonstrates how construction traffic will be managed during the phasing development of the site shall be submitted to and approved in writing by the Local Planning Authority. Prior to commencement of development on each relevant phase of the development phase specific CTMPs shall be submitted which demonstrate:
- a) control of discharges, run-off and material during the construction of the marina
 - b) the parking of vehicles of site operatives and visitors
 - c) storage of plant and materials used in constructing the development
 - d) measures to control the emission of dust and dirt during construction from spreading off the site

The CTMP shall be fully implemented in accordance with the approved details for the duration of the construction period associated with the phasing of the development.

Reason: In the interests of highway safety and local amenity.

14. No ground clearance, demolition, or construction work shall commence until an Arboricultural Method Statement and Tree Protection Plan has been submitted to and approved in writing by the local planning authority to ensure no damage to any retained trees or hedgerows within or adjoining the site. The approved scheme shall be retained on site for the duration of the construction works.

Reason: To prevent trees or hedgerows on site from being damaged during building works.

15. Notwithstanding any indication on the approved plans, no development approved by this permission shall commence until a scheme for the disposal of foul and surface waters for the entire site has been submitted to and approved in writing by the Local Planning Authority. For the avoidance of doubt, surface water must drain separate from the foul and no surface water will be permitted to discharge directly or indirectly into existing sewerage systems. The development shall be completed, maintained and managed in accordance with the approved details.

Reason: To ensure a satisfactory form of development and to prevent an undue increase in surface water run-off, to reduce the risk of flooding and to protect ground and surface waters ('controlled waters' as defined under the Water Resources Act 1991).

CONDITIONS THAT REQUIRE APPROVAL DURING THE CONSTRUCTION/PRIOR TO THE OCCUPATION OF THE DEVELOPMENT

16. Prior to the first commercial use or occupation of each land use as identified in the approved masterplan, a Flood Evacuation Management Plan specific to that land use shall be submitted to and approved in writing by the Local Planning Authority in consultation with the Local Authority Emergency Planning Officer and Emergency Services. The Plan shall include full details of proposed awareness training and procedure for evacuation of persons and property (including vehicles); and method and

procedures for timed evacuation. It shall also include a commitment to retain and update the Plan and include a timescale for revision of the Plan.

Reason: To minimise the flood related danger to people in the flood risk area.

17. If during development, contamination not previously identified, is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until the developer has submitted, and obtained written approval from the Local Planning Authority, a Method Statement for remediation. The Method Statement must detail how this unsuspected contamination shall be dealt with. A verification (validation) report demonstrating completion of the works set out in the method statement shall be submitted to and approved in writing by the Local Planning Authority. The report shall include results of any sampling and monitoring. It shall also include any plan (a "long-term monitoring and maintenance plan") for longer term monitoring of pollutant linkages, maintenance and arrangements for contingency action and for the reporting of this to the Local Planning Authority.

Reason: To ensure that any unexpected contamination is dealt with and the development complies with approved details in the interests of protection of ground and surface waters ('controlled waters' as defined under the Water Resources Act 1991).

18. No infiltration of surface water drainage into the ground is permitted other than with the express written consent of the Local Planning Authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to controlled waters. The development shall be carried out in accordance with the approval details.

Reason: To protect ground and surface waters ('controlled waters' as defined under the Water Resources Act 1991).

19. Piling or any other foundation designs using penetrative methods shall not be permitted other than with the express written consent of the Local Planning Authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to groundwater. The development shall be carried out in accordance with the approved details.

Reason: To protect ground and surface waters ('controlled waters' as defined under the Water Resources Act 1991).

20. Prior to being discharged into any watercourse, surface water sewer or soakaway system, all surface water drainage from parking areas and hardstanding associated with the marina, leisure complex, including the holiday accommodation, hotel and pub/restaurant shall be passed through an oil interceptor or other suitable scheme designed and constructed to have a capacity and details compatible with the site being drained. Roof water shall not pass through the interceptor.

Reason: To protect ground and surface waters ('controlled waters' as defined under the Water Resources Act 1991).

21. Prior to the commencement of work on the construction of the marina detailed design, specifications and materials for the proposed towpath bridge crossing over the new opening to the marina shall be submitted to and approved in writing by the Local Planning Authority. The bridge shall thereafter be constructed in accordance with the approved details.

Reason: To ensure an appropriate bridge design in terms of potential pedestrian traffic and in terms of design.

22. Prior to the commencement of work on the construction of the marina details of the means of providing access and parking for vehicles, plant and machinery for maintenance of the canal and towpath shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be made available prior to the closing off or cutting of the existing tow path and shall thereafter be maintained as available for use in perpetuity.

Reason: To ensure appropriate access to the towpath for maintenance vehicles and plant is retained.

23. Details of the measures to be implemented to ensure the continued operation and future maintenance of the water management structures within the site which are connected with the operation of the canal and its associated infrastructure, along with a timetable for the implementation of the measures shall be submitted for approval at reserved matters stage. The measures shall thereafter be implemented in accordance with the agreed details.

Reason: The operation of the existing water management structures within the site and their maintenance should not be adversely affected by the development works to protect the site from flooding and to ensure the water management functions of the structures to operate the canal and its associated infrastructure can continue.

24. Details of the measures to be implemented to abandon the water intake structures within the site shall be submitted for approval at reserved matters stage. The measures shall thereafter be implemented in accordance with the agreed details.

Reason: To protect the site from flooding.

25. Prior to occupation, a 'lighting design strategy for biodiversity' shall be submitted to and approved in writing by the local planning authority. The strategy shall:

a) Identify those areas/features on site that are particularly sensitive for bats and that are likely to cause disturbance in or around their breeding sites and resting places or along important routes used to access key areas of their territory, for example, for foraging; and
b) Show how and where external lighting will be installed (through the provision of appropriate lighting contour plans and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent bats using their territory or having access to their breeding sites and resting places.

All external lighting shall be installed in accordance with the specifications and locations set out in the strategy, and these shall be maintained thereafter in accordance with the strategy. Under no circumstances should any other external lighting be installed without prior consent from the local planning authority.

Reason: To minimise disturbance to bats, a European Protected Species

26. Prior to the first occupation of any of the dwellings or first use of any of the tourism/ commercial parts of the development hereby approved details of the location and design of bat boxes or bat bricks suitable for nursery or summer roosting for small crevice dwelling bat species in at least 5% of the new buildings shall be submitted to and approved in writing by the local planning authority. The approved details shall be implemented in full prior to the occupation of the dwellings/ buildings.

Reason: To ensure the provision of roosting opportunities for bats, which are European Protected Species

27. Prior to the first occupation of any of the dwellings or first use of any of the tourism/ commercial parts of the development hereby approved details of 12 artificial nests suitable for small birds such as house sparrow, swift and swallow shall be submitted to and approved in writing by the local planning authority. The approved details shall be implemented in full prior to the occupation of the dwellings/ buildings.

Reason: To ensure the provision of nesting opportunities for wild birds.

28. Prior to the first occupation of residential properties, a strategy for raising awareness amongst occupiers and visitors to the development of the open space provision and associated countryside footpaths, as alternatives to visiting Colemere Country Park, shall be submitted for prior approval to the LPA and will be implemented as approved for the lifetime of the development. The strategy could include measures such as information in home buyers packs, signage, information leaflets at key leisure points etc.

Reason: To protect Cole Mere SSSI and Ramsar site from adverse impacts caused by recreational pressure.

29. Prior to the first use of the marina for either mooring or maintenance of boats details of the sewage waste disposal and pump out facility, fuelling facilities and measures to prevent pollution of the canal shall be submitted to and approved in writing by the Local Planning Authority. The system shall thereafter be installed in accordance with the approved details and shall be retained for the lifetime of the use of the marina for moorings or maintenance.

Reason: To provide an appropriate foul sewage system for the marina and boat traffic.

30. Prior to the first use of the marina development details of the location and text of signage/information highlighting measures necessary to protect the Cole Mere Ramsar site from contamination by fuel, waste and the spread of invasive species shall be submitted to and approved by the Local Planning Authority. The approved signs/information shall thereafter be displayed and maintained and updated to include new best practice for the duration of the development hereby approved.

Reason: To avoid impacts from the approved marina development on Cole Mere Ramsar site, an internationally important wildlife site

31. Construction work, including the arrival of deliveries and unloading of deliveries, shall only be carried out between the following hours: Monday to Friday 07:30-18:00, Saturday 08:00-13:00. No work shall be permitted on Sundays or Bank Holidays without written consent from the Local Planning Authority.

Reason: to protect nearby residential amenity and the health and wellbeing of residents living in close proximity to the development.

32. No above ground works shall be commenced until full details of both hard and soft landscape works (in accordance with Shropshire Council Natural Environment Development Guidance Note 7 'Trees and Development') have been submitted to and approved in writing by the local planning authority. The landscape works shall be carried out in full compliance with the approved plan, schedule and timescales. Any trees or plants that, within a period of five years after planting, are removed, die or become, in the opinion of the Local Planning Authority, seriously damaged or defective, shall upon written notification from the local planning authority be replaced with others of species, size and number as originally approved, by the end of the first available planting season.

Reason: To ensure the provision, establishment and maintenance of a reasonable standard of landscape in accordance with the approved designsm

Informatives

1. The land and premises referred to in this planning permission are the subject of an Agreement under Section 106 of the Town and Country Planning Act 1990.

2. The above conditions have been imposed in accordance with both the policies contained within the Development Plan and national Town & Country Planning legislation. Where there are pre commencement conditions that require the submission of information for approval prior to development commencing at least 21 days notice is required to enable proper consideration to be given.

Your attention is specifically drawn to the conditions above that require the Local Planning Authority's approval of materials, details, information, drawings etc. In accordance with Article 21 of the Town & Country Planning (Development Management Procedure) Order 2010 a fee is required to be paid to the Local Planning Authority for requests to discharge conditions. Requests are to be made on forms available from www.planningportal.gov.uk or from the Local Planning Authority. The fee required is £97 per request, and £28 for existing residential properties. Failure to discharge pre-start conditions will result in a contravention of the terms of this permission; any commencement may be unlawful and the Local Planning Authority may consequently take enforcement action.

3. You are obliged to contact the Street Naming and Numbering Team with a view to securing a satisfactory system of naming and numbering for the unit(s) hereby approved. At the earliest possible opportunity you are requested to submit two suggested street names and a layout plan, to a scale of 1:500, showing the proposed street names and location of street nameplates when required by Shropshire Council. Only this authority is

empowered to give a name and number to streets and properties, and it is in your interest to make an application at the earliest possible opportunity. If you would like any further advice, please contact the Street Naming and Numbering Team at Shirehall, Abbey Foregate, Shrewsbury, SY2 6ND, or email: sn@shropshire.gov.uk. Further information can be found on the Council's website at: <http://new.shropshire.gov.uk/planning/property-and-land/name-a-new-street-or-development/>, including a link to the Council's Street Naming and Numbering Policy document that contains information regarding the necessary procedures to be undertaken and what types of names and numbers are considered acceptable to the authority.

4. The works to the Tetchill Brook would require the formal consent of the Lead Local Flood Authority as the watercourse is classed as an 'Ordinary Watercourse'. The proposed access over the Newnes Brook will require the formal consent of the Environment Agency as this watercourse is classed as 'Main River'. Each application must contain detailed sections and plans as well as supporting model data to verify the watercourse diversions and confirm crossings are adequately designed. We would look to ensure that the crossing over the Newnes Brook has a minimum freeboard of 600mm above the relevant 1 in 100 year plus climate change flood level.

5. During the development, where identified in the Strategic CEMP, an ecological clerk of works must be appointed and appropriate surveys and checks undertaken to ensure that legally protected species are not harmed. The England Biodiversity Strategy 2020 has a target of creating at least 200,000 ha of priority habitat, which includes rivers and wetlands, by 2020. With more, bigger and less fragmented areas for wildlife. This development could contribute to this target. The site if designed and maintained appropriately, has the potential to mature into a local wildlife site and be managed for the benefit of wildlife and people as an amenity for the town.

6. All species of bats found in the UK are European Protected Species under the Habitats Directive 1992, the Conservation of Species and Habitats Regulations 2010 and the Wildlife & Countryside Act 1981 (as amended). If a live bat should be discovered on site at any point during the development then work must halt and Natural England should be contacted for advice.

7. Badgers, the setts and the access to the sett are expressly protected from killing, injury, taking, disturbance of the sett, obstruction of the sett etc by the Protection of Badgers Act 1992. The site should be subject to an inspection for badger setts by an experienced ecologist immediately prior to the commencement of works on the site. No works should occur within 30m of a badger sett without a Badger Disturbance Licence from Natural England in order to ensure the protection of badgers which are legally protected under the Protection of Badgers Act (1992).

8. Where possible trenches should be excavated and closed in the same day to prevent any wildlife becoming trapped. If it is necessary to leave a trench open overnight then it should be sealed with a closefitting plywood cover or a means of escape should be provided in the form of a shallow sloping earth ramp, sloped board or plank. Any open pipework should be capped overnight. All open trenches and pipework should be inspected at the start of each working day to ensure no animal is trapped.

9. Water Voles are protected under the Wildlife & Countryside Act 1981 (as amended). Water Voles make burrows in stream banks and can be present up to 5m from the watercourse and can be disturbed by activity especially the use of heavy machinery and vibration occurring within 10m or so of the top of the bank. Care should be taken alongside the stream during the construction/ operation of the site. If works are proposed to the stream or banks in the future then an experienced ecologist should be engaged to provide advice prior to any works being carried out. An offence under the Wildlife & Countryside Act 1981 (as amended) is punishable by a fine of up to £5000 per individual animal impacted and/or a 6 month prison sentence.

10. The active nests of all wild birds are protected under the Wildlife & Countryside Act 1981 (As amended). An active nest is one being built, containing eggs or chicks, or on which fledged chicks are still dependent. All clearance, conversion and demolition work in association with the approved scheme shall be carried out outside of the bird nesting season which runs from March to September inclusive. Note: If it is necessary for work to commence in the nesting season then a pre-commencement inspection of the vegetation and buildings for active bird nests should be carried out. If vegetation cannot be clearly seen to be clear of bird's nests then an experienced ecologist should be called in to carry out the check. Only if there are no active nests present should work be allowed to commence.

11. We recommend that developers should:

1. Follow the risk management framework provided in CLR11, Model Procedures for the Management of Land Contamination, when dealing with land affected by contamination.
 2. Refer to the Environment Agency Guiding principles for land contamination for the type of information that we required in order to assess risks to controlled waters from the site. The Local Authority can advise on risk to other receptors, such as human health.
 3. Reference should also be made to: "Investigation of Potentially Contaminated Sites - Code of Practice (BS10175), published by the BSI.
- Developers should ensure that all contaminated materials are adequately characterised both chemically and physically, and that the permitting status of any proposed on site operations are clear. The recovery, treatment and disposal of contaminated soils and groundwater is regulated by waste legislation and requires an Environmental Permit. Treatment of contaminated soil by mobile plant requires a mobile treatment permit. Soil may be re-used on-site as part of a soil recovery operation by registering an exemption with the Environment Agency or by obtaining an Environmental Permit.
- It is recommended that developers should refer to our 'Position Statement on the Definition of Waste: Development Industry Code of Practice'.

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1. Follow the risk management framework provided in CLR11, Model Procedures for the Management of Land Contamination, when dealing with land affected by contamination.
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13. The developer is advised to contact Severn Trent Water to discuss the layout of the proposed housing in close proximity to the sewage works. The developer is advised to refer to the DEFRA code of practice and also undertake an odour survey.

We could perhaps also draw your attention to planning policy statement 23: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69223/pb1833-sewageodour-cop.pdf

14. If your proposed project requires **Building Regulations Approval** or you are unsure whether it does please contact us on **01743 258710**, email buildingcontrol@shropshire.gov.uk or visit our website www.buildshropshire.co.uk for pre-application advice and a competitive fee.

15. As part of the planning process, consideration should be given to the information contained within Shropshire Fire and Rescue Service's "Fire Safety Guidance for Commercial and Domestic Planning Applications" which can be found using the following link: <http://www.shropshirefire.gov.uk/planning-applications>

Approved Drawings

Plan Type	Plan No.	Date Received
Site Location Plan	SK13A	08.09.2014
Block Plan	PRSK25, Rev. REV P	15.12.2015
Other documents	PL05, Rev. REV A	30.03.2015
Other documents	PL08	30.03.2015

14/04047/OUT

Ian Kilby Development Manager
Date of Decision:

NOTES

Appeals to the Secretary of State

If the applicant is aggrieved by the decision of the Local Planning Authority to refuse permission for the proposed development or to grant it subject to conditions, then the applicant can appeal to the Secretary of State for the Environment under Section 78 of the Town and Country Planning Act 1990.

An appeal must be made within six months of the date of this notice, or 12-weeks if the scheme is for that of "household" development, or minor commercial application, or within 8 weeks in the case of advertisement appeals. The appeal must be made on a form which can be obtained from the Planning Inspectorate at Customs Support Unit, Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN or online at <https://www.gov.uk/government/organisations/planning-inspectorate>

Where an enforcement notice has been served on the same, or substantially the same, development as in the application within 2 years of the date the application was made, the period for receiving an appeal is 28 days of the date on the decision notice or the date by which the LPA should have decided the application. Where an enforcement notice was served after the decision notice was issued or after the end of the period the LPA has to determine the application, the period for receiving an appeal is within 28 days of the date the enforcement notice was served (unless this extends the normal 12 week deadline).

The Secretary of State can allow a longer period for giving notice of an appeal, but he will not normally be prepared to use this power unless there are special circumstances which excuse the delay in giving notice of appeal.

The Secretary of State need not consider an appeal if it seems to him that the Local Planning Authority could not have granted planning permission for the proposed development or could not have granted it without the conditions it imposed, having regard to the statutory requirements, to the provisions of any development order and to any directions given under a development order.

In practice, the Secretary of State does not refuse to consider appeals solely because the Local Planning Authority based their decision on a direction given by him.

Purchase Notices

If either the Local Planning Authority or the Secretary of State for the Environment refuses permission to develop land or grants it subject to conditions, the owner may claim that he can neither put the land to a reasonably beneficial use in its existing state nor render the land capable of a reasonably beneficial use by the carrying out of any development which has been or would be permitted.

In these circumstances, the owner may serve a purchase notice on the District Council requiring the Council to purchase the interest in the land in accordance with the provisions of Part VI of the Town and Country Planning Act 1990.

FOURTH SCHEDULE

The Landowner's covenants with the Council

AFFORDABLE HOUSING

1. Affordable Housing Dwellings

- 1.1 The Landowner covenants with the Council that prior to Commencement of Development it will submit to the Council for approval a provisional scheme for the phasing of the Development on the Site or a statement that the development of the Site is to be completed in one phase PROVIDED ALWAYS THAT the provisional scheme may be amended by the Landowner from time to time and any amended scheme which has been approved in writing by the Council (such approval not to be unreasonably withheld or delayed) shall from the date of that approval constitute the phasing scheme for the purpose of this clause AND PROVIDED THAT if the provisional scheme is not approved by the Council within 20 working days of submission to them for approval (with a letter referring to the Application, this Agreement and the consequences of this provision) receipt of such submission having been acknowledged in writing by the Council then it shall be deemed approved

- 1.2 The Landowner covenants with the Council that prior to the Commencement Date of each phase of Development identified pursuant to clause 1.1 of this Schedule it shall submit to the Council an Affordable Housing Plan with written confirmation of the agreed Affordable Housing Dwelling tenures Dwelling types and bed-space numbers on a plot by plot basis for the phase identified which shall be approved in writing by the Council

- 1.2 The Landowner covenants with the Council that not less than the Prevailing Target Rate as at the submission of the last of the reserved matters expressed as a whole number of the total number of Dwellings that will have been constructed on the Site pursuant to the Planning Permission by completion of the phase or phases will be Affordable Housing Dwellings.

In respect of each Reserved Matters Approval which includes Dwellings, the Landowner covenants with the Council:

- 1.3 The transfer of those Dwellings that are to be Affordable Rent Dwellings and/or Social Rent Dwellings and/or Discounted Rent Dwellings and/or Shared Ownership Dwellings pursuant to paragraphs 1.5 and 1.7 of this Schedule and the marketing of those Dwellings that are to be made available as Discounted Sale Dwellings pursuant to paragraph 1.9 of this Schedule shall be triggered by the Occupation of 50% of the Open Market Dwellings to be constructed within each Reserved Matters Approval on each phase of the Development.

- 1.4 The Affordable Housing Dwellings shall be made available as 70% either Affordable Rent Dwellings or Social Rent Dwellings or Discounted Rent Dwellings and 30% either Shared Ownership Dwellings or Discounted Sale Dwellings (or such other Affordable Housing Dwelling tenure type and mix as the Council may approve in writing) to be Occupied by in accordance with the provisions set out in the following clauses 1.5 to 1.9 (inclusive) to this Schedule.

Affordable Rent Dwellings and Social Rent Dwellings and Discounted Rent Dwellings

- 1.5 Save in the case where it is a Registered Provider the Landowner shall transfer each of the Affordable Housing Dwellings to a Registered Provider to be made available for Occupation as rented affordable housing
- 1.6 The Landowner covenants with the Council as follows:-
 - 1.6.1 Not to permit the occupation of any of the Affordable Rent Dwellings and/or Social Rent Dwellings and/or Discounted Rent Dwellings other than strictly in accordance with the procedures set out in the following sub-clauses 1.6.2 to 1.6.4 (inclusive) of this Schedule
 - 1.6.2 The Affordable Housing Dwellings referred to in sub-clause 1.6.1 of this Schedule shall at all times be allocated in accordance with the Council's adopted Housing Allocations Policy and Scheme and advertised as available for Occupation through its preferred Choice Based Lettings System (such policy and scheme and system may be amended and adopted from time to time by the Council upon prior notification to the Registered Provider)
 - 1.6.3 The Affordable Housing Dwellings referred to in sub-clause 1.6.1 of this Schedule shall at all times be managed in accordance with such published policies and procedures as may be adopted from time to time by the Registered Provider
 - 1.6.4 The Affordable Housing Dwellings referred to in sub-clause 1.6.1 of this Schedule shall at all times be allocated and managed in accordance with the requirements of sub-clauses 1.6.2 and 1.6.3 (inclusive) of this Schedule together with the requirements of any Local Lettings Plan agreed in writing by the Council in operation at that particular time

Shared Ownership Dwellings

- 1.7 Save in the case where it is a Registered Provider the Landowner shall transfer each of the Shared Ownership Dwellings to a Registered Provider to be made available for Occupation under this form of low cost home ownership
- 1.8 The Landowner covenants with the Council as follows:-
 - 1.8.1 Shared Ownership vacancies made available by the Registered Provider shall be advertised through the Council's preferred Choice Based Lettings System and in accordance with the requirements of the Council's adopted Housing Allocations Policy and Scheme (such policy and scheme and system may be amended and adopted from time to time by the Council upon prior notification to the Registered Provider) and provisions of any Local Lettings Plan agreed in writing by the Council in operation at that particular time
 - 1.8.2 Not to permit the Occupation of any of the Shared Ownership Dwellings otherwise than by a person who has acquired an interest in that Dwelling in accordance with the procedures set out in clause 1.8 of this Schedule save for the circumstances detailed in clause 1.8.7 of this Schedule.

1.8.3 The Shared Ownership Dwellings shall be marketed for acquisition on the basis of a purchase price of at least 25% of the Open Market Value with a rent payable to the Registered Provider by the occupier of no more than 2.75% of the retained equity at the Open Market Value.

1.8.4 The occupier of a Shared Ownership Dwelling shall have the right to increase his ownership share in the Dwelling by purchasing additional equity over time at a price reflecting the Open Market Value of the share being acquired at the date of acquisition BUT SUBJECT TO a maximum of 80% equity ownership through Restricted Staircasing

1.8.5 The occupier of a Shared Ownership Dwelling shall not dispose of their interest in it nor offer so to do until they have first offered it in writing at the applicable share of Open Market Value to the Registered Provider who within six weeks of service of any such offer must serve written notice on the said occupier either:-

- a) declining the offer; or
 - b) stating that it will accept the offer; or
 - c) declining the offer but nominating an alternative purchaser(s)
- 1.8.6 The acceptance by the Registered Provider of an offer made under sub-clause 1.8.5 (b) or (c) of this Schedule shall be on the following terms:-

- a) the amount payable in respect of the occupier's interest in the Shared Ownership Dwelling shall be the applicable share of Open Market Value; and
 - b) any purchaser(s) nominated by the Registered Provider under sub-clause 1.8.5(c) of this Schedule shall have satisfied the requirements of any Local Lettings Plan agreed in writing by the Council in operation at that particular time
- 1.8.7 If the Registered Provider does not serve a notice upon the occupier within the six week period specified in clause 1.8.5 of this Schedule or if the Registered Provider serves a notice in accordance with the provisions of clause 1.8.5(a) of this Schedule then the occupier may dispose of its interest in the relevant Shared Ownership Dwelling at the applicable equity share of Open Market Value but otherwise free from any occupancy restrictions and advertised as available for sale in any manner the occupier considers appropriate

Discounted Sale Dwellings

1.9 The Landowner covenants with the Council to provide a Sale Marketing Plan demonstrating that the Discounted Sale Dwellings will be offered for sale to Qualifying Purchasers at no more than the Formula Price for Occupation under this form of low cost home ownership and to dispose of them strictly in accordance with the provisions set out in the following sub-clauses 1.9.3 to 1.9.13 (inclusive) of this Schedule SAVE THAT in the case of the initial sale of a Discounted Sale Dwelling references to the occupier in those sub-clauses shall be taken to also mean the Landowner

- 1.9.1 The occupier of a Discounted Sale dwelling covenants with the Council as follows:-
- 1.9.2 The occupier of a Discounted Sale Dwelling shall not let it (or offer so to do) other than to a Qualifying Tenant under a shorthold tenancy and at the same level of rent as would be applicable to a Discounted Rent Dwelling
- 1.9.3 The occupier of a Discounted Sale Dwelling shall not sell it (or offer so to do) other than in accordance with an agreed Sale Marketing Plan at the Formula Price and to a Qualifying Purchaser (or to the Council or to a body nominated by the Council from the Shropshire Housing Partnership) pursuant to sub-clause 1.9.6 of this Schedule or otherwise to a Secondary Purchaser pursuant to sub-clause 1.9.9 of this Schedule
- 1.9.4 Before being permitted to market the Discounted Sale Dwelling the occupier shall first provide the Council with a Sale Marketing Plan evidencing the Formula Price and stating the actions to be taken to advertise the Dwelling for sale to Qualifying Purchasers and such a document shall serve as formal written notice to the Council of the occupiers intention to sell the Dwelling
- 1.9.5 The Council shall within two weeks of receipt of a complete Sale Marketing Plan grant written consent to the occupier (or be deemed to have granted the same) for marketing to commence in accordance with the information given in that document
- 1.9.6 For a period of twelve weeks from receipt of the Council's written consent under sub-clause 1.9.5 of this Schedule only Qualifying Purchasers (or to the Council or to a body nominated by the Council from the Shropshire Housing Partnership) shall be permitted to make a Suitable Offer and enter into terms with the occupier to purchase the Discounted Sale Dwelling in accordance sub-clause 1.9.7 of this Schedule
- 1.9.7 Any sale of the Discounted Sale Dwelling under sub-clauses 1.9.6 or 1.9.9 of this Schedule shall be on the following terms:-
- (i) the purchaser shall make a Suitable Offer to the occupier which shall be no more than the Formula Price;
 - (ii) the purchaser shall covenant with the Council to observe and perform the obligations set out in sub-clauses 1.9.1 to 1.9.13(inclusive) of this Fourth schedule;
 - (iii) the Dwelling shall be sold with vacant possession;
 - (iv) the sale shall be subject to the formal exchange of contracts within four weeks of the Suitable Offer being made with a completion date being no more than four weeks thereafter (or such other date for completion as may be agreed as binding between the parties); and
 - (v) the contract for sale shall be subject to the edition of the Standard Conditions of Sale current at the date of the Suitable Offer
- 1.9.8 In the event that the Discounted Sale Dwelling is purchased by the Council or by a nominated member of the Shropshire Housing Partnership such a purchaser may at its absolute discretion sell the Dwelling in accordance with the provisions of this Schedule or retain it for use as either a Discounted Rent Dwelling or a Shared Ownership Dwelling

1.9.9 If after a period of twelve weeks from receipt of the Council's written consent under sub-clause 1.9.5 of this Schedule the Discounted Sale Dwelling has not been sold or is not subject to a formal exchange of contracts pursuant to a sale in accordance with sub-clause 1.9.6 of this Schedule the occupier shall be entitled to sell the Dwelling to a Secondary Purchaser in accordance with sub-clause 1.9.7 of this Schedule

1.9.10 A Secondary Purchaser shall only be permitted to make a Suitable Offer and enter into terms with the occupier to purchase the Discounted Sale Dwelling pursuant to the provisions of sub-clause 1.9.9 of this Schedule

1.9.11 No freehold interest in any Discounted Sale Dwelling shall be transferred by the occupier to any purchaser other than subject to a covenant that:

"No disposition or sale to a third party within 80 years from the date of Commencement of Development shall take place at a price exceeding the Formula Price, as defined in an Agreement made under section 106 of the Town and Country Planning Act 1990 on 1 between (1) of and (2) Shropshire Council as certified by a Chartered Surveyor of not less than 10 years standing the evidence of which shall be provided to the Council"; and

1.9.12 Each purchaser of a Discounted Sale Dwelling shall:

within seven days of completion of the purchase apply to register this Agreement in the Charges Register of the Land Registry Title relating to that Discounted Sale Dwelling and to register the following Restriction in the Proprietorship Register of the title:-

"No disposition of the registered estate by the proprietor of the registered estate shall be registered without the written consent signed by Shropshire Council of Shirehall, Abbey Foregate, Shrewsbury, Shropshire SY2 6ND" (the "Restriction"); and

provide to the Council as soon as is reasonably possible a copy of the Land Registry Title following completion of the registration referred to in this clause

1.9.13 Provisions for a Mortgagee in Possession of a Discounted Sale Dwelling to dispose of their interest in that Dwelling are prescribed in clause 8.3 of this Agreement

2 Affordable Housing Contribution

2.1 The Affordable Housing Contribution comprises financial amounts due in respect of the balance of the Affordable Housing Contribution remaining after the on-site contribution has been calculated in accordance with the Supplementary Planning Document including any fractions remaining after on site Affordable Dwellings have been taken in to account and/or the outcome of other negotiations between the Council and the Landowner in respect of further commuted sum payments

2.2 In respect of each Reserved Matters Approval the Landowner covenants with the Council that it shall pay the Affordable Housing Contribution within 1 year of the Commencement of a material operation of the Development in respect of that Reserved Matters Approval in accordance with section 56(4) of the Act on practical completion of the Development in respect of that Reserved Matters Approval whichever date shall occur first and acknowledges the fact that the Council shall use 5% of the Affordable Housing Contribution for the administration of the delivery of

affordable housing in accordance with the Council's Type and Affordability of Housing Supplementary Planning Document and that any refund of any unallocated or unspent part of the Affordable Housing Contribution in accordance with clause 3 of the Fourth Schedule shall be reduced by such an amount

FIFTH SCHEDULE

The Landowner's covenants with the Council

PROVISION AND MAINTENANCE OF PUBLIC OPEN SPACE

1. Public Open Space

- 1.1 The Landowner covenants with the Council not to Commence Development on any phase or on any part of the Site in the event the Development is to be completed in one phase until it has secured Reserved Matters Approval for the Public Open Space in respect of that phase or for the whole of the Site in the event that the Development is to be completed in one phase and the Public Open Space Specification and Maintenance Scheme has been approved in writing by the Council.
- 1.2 In respect of each Reserved Matters Approval which includes Public Open Space, the Landowner covenants with the Council:
 - 1.3 To lay out and complete the Public Open Space in accordance with the details approved in the relevant Reserved Matters Approval and Public Open Space Specification
 - 1.4 Prior to the Commencement of Development to offer to transfer the Public Open Space to the Parish Council on the Terms.
 - 1.5 Not to allow more than 50% of the Dwellings within any Reserved Matters Approval or within the whole Development in the event the Development is to be completed in one phase to be Occupied until;
 - 1.5.1 it has laid out and completed the Public Open Space for that Reserved Matters Approval or for the whole of the Site in the event the Development is to be completed in one phase in accordance with the details approved in the relevant Reserved Matters Approval and Public Open Space Specification to the reasonable satisfaction of the Council and shall thereafter maintain the Public open Space for the Maintenance Period;
 - 1.5.2 In the event that 1.5.1 of this Schedule applies, it has offered to transfer the Public Open Space to the Parish Council on the Terms; and
 - 1.5.3 It has served notice on the Council to confirm that it has laid out and completed the Public open Space in accordance with paragraph 1.5.1 of this Schedule
 - 1.6 From the date the Public Open Space has been laid out and completed the Landowner shall:
 - 1.6.1 maintain the Public Open Space in accordance with the Reserved Matters Approval Public Open Space Specification for the Maintenance Period;
 - 1.6.2 allow free unrestricted use and access to the Public Open Space to the general public for the purposes of recreation at all times of the day and night

PROVIDED ALWAYS that nothing shall prevent the Landowner from preventing access to the Public Open Space in the event of an emergency or in the interests of health and safety or for security reasons

- 1.7 At least 6 weeks prior to the transfer of the Public Open Space to the Parish Council or Management Company or where the Public Open Space is being retained by the Landowner and a Management Company is to be appointed to manage and maintain the Public Open Space the Landowner shall:

1.7.1 serve notice on the Council inviting them to inspect the Public Open Space Works and issue a Final Certificate confirming that such works have been completed and maintained to its reasonable satisfaction, and

1.7.2 if the Council inspects the Public Open Space Works and identifies necessary remedial works, complete such remedial works to the reasonable satisfaction of the Council, and

1.7.3 upon completion of any remedial works serve notice on the Council inviting them to inspect the remedial works identified by them pursuant to paragraph 1.7.2 and issue a Final Certificate confirming that such works have been completed to its reasonable satisfaction

PROVIDED THAT if the Council fails to inspect the Public Open Space Works within 30 Working Days of receipt of a notice of invitation from the Landowner pursuant to paragraphs 1.7.1 or 1.7.3 fails to issue a Final Certificate within 30 Working Days of the inspection where no remedial works have been identified then the Final Certificate shall be deemed to have been issued at the end of those specified periods PROVIDED FURTHER THAT the inspection procedure identified in paragraphs 1.7.1 or 1.7.3 shall be repeated until such time as the Council issue or are deemed to have issued a Final Certificate in relation to the Public Open Space Works AND PROVIDED FURTHER THAT nothing shall prevent the Landowner undertaking the Public Open Space Works in phases or in individual component parts and seeking Final Certificates for each such phase or part of the Public Open Space Works.

Transfer

- 1.8 In the event the Public Open Space is transferred to the Parish Council the Landowner covenants to pay the Public Open Space Commuted Sum

- 1.9 If within 30 days of the Landowner's offer made pursuant to paragraph 1.4 above the Parish Council has not accepted the offer of the Public Open Space the Landowner shall either transfer the Public Open Space to a Management Company or retain ownership of the Public Open Space and appoint a Management Company to maintain and manage the Public Open Space on behalf of the Landowner

- 1.10 In the event the Public Open Space is retained by the Landowner and a Management Company is appointed to manage and maintain the Public Open Space the Landowner shall comply with the following:

1.10.1 prior to Occupation of any Reserved Matters Approval or any part of the Development where the Development is to be completed in one phase, in respect of the Public Open Space within that phase or the whole of the Public Open Space where the Development is to be completed in one phase:

1.10.1.1 the Landowner shall have appointed a Management Company to manage and maintain the Public Open Space and shall have provided details of the Management Company to the Council to include but not to be limited to details of the name, registered company number and registered office; and

1.10.1.2 the Landowner shall not permit the Occupation of any Dwelling within a Reserved Matters Approval or in the event the Development is to be completed in one phase any Dwelling within the Development unless and until a transfer of that Dwelling has been completed with the purchaser of that Dwelling that includes a covenant by the purchaser to pay the required contributions (being a fair proportion of the overall cost) to the Management Company in respect of the Dwelling (or part thereof) so that the Management Company can comply with the obligations contained in this Agreement in respect of the Public Open Space (or the relevant part of it as applicable);

1.10.2 To put into effect and comply with the Maintenance Scheme in full for the purposes of thereafter managing and maintaining the Public Open Space for the lifetime of the Development

1.11 In the event the Public Open Space is transferred to a Management Company the Landowner shall comply with the following:

1.11.1 Prior to the Occupation of any phase of the Development or any part of the Development where the Development is to be completed in one phase in respect of the Public Open Space within that Phase or the whole of the Public Open Space where the Development is to be completed in one phase:

1.11.1.1 the Landowner shall have formed a Management Company or chosen an existing Management Company to transfer to and shall have provided details of the Management Company to the Council to include but not to be limited to details of the name registered company number and registered office and

1.11.1.2 the Landowner shall not permit the Occupation of any Dwelling within a Reserved Matters Approval or in the event the Development is to be completed in one phase any dwelling within the Development unless and until a transfer of that Dwelling has been completed with the purchaser of that Dwelling that includes a covenant by the purchaser to pay the required contributions (being a fair proportion of the overall cost) to the Management Company in respect of the Dwelling (or part thereof) so that the Management Company can comply with the obligations contained in this Agreement in respect of the Public Open Space (or the relevant part of it as applicable);

1.11.2 To put into effect and comply with the Maintenance Scheme in full for the purposes of thereafter managing and maintaining the Public Open Space for the lifetime of the Development

1.12 No more than 75% of the Dwellings in any Reserved Matters Approval or of the whole Development where the Development is to be completed in one phase shall be permitted to be Occupied until such time as the whole of the Public Open Space within that phase or the whole of the Public Open Space for the Development where the Development is to be completed in one phase has been transferred to either

1.12.1 the Parish Council in accordance with the Terms and the Public open Space Commuted Sum has been paid to the Parish Council; or
1.12.2 to a Management Company in accordance with the Terms or in the event the Landowner retains ownership of the Public Open Space a Management Company has been appointed to manage and maintain the Public Open Space on the Landowners behalf and the management and maintenance responsibilities have been transferred to the Management Company; and

1.12.3 a Final Certificate has been issued or deemed to have been issued in relation to all parts of the Public Open Space within the relevant phase or for the whole of the Development where the Development is to be completed in one phase.

1.13 No use shall occur or be permitted of the Public Open Space for any other purpose than for public recreation for the lifetime of the Development

1.14 Not to carry out any development (within the meaning of Section 55 of the Act) on the relevant Public Open Space save as is appropriate to such an area (which shall first be agreed in writing with the Council) and to use such land only as amenity space in accordance with the Planning Permission and any Reserved Matters Approval(s)

2 Maintenance Scheme

2.1 Prior to the Commencement of Development the Landowner shall have submitted to and have approved in writing by the Council the Maintenance Scheme such approval to be given within 25 Working Days of request and deemed to be approved in the event the Council fails to respond within that timescale.

2.2 No Occupation of any Dwellings in the relevant Reserved Matters Approval or on the Site where the Development is to be constructed within one phase shall be permitted until the Council shall have approved or be deemed to have approved the Maintenance Scheme in writing,

2.3 The Landowner shall implement the Maintenance Scheme in full and shall thereafter comply with the Maintenance Schemes in all respects

Maintenance Scheme Provisions

2.4 The Maintenance Scheme shall be a written scheme for the maintenance of the Public Open Space prepared by the Landowner which shall include the following:

2.4.1 frequency of maintenance;

2.4.2 measures to replace any trees shrubs or turf which may die or become diseased following implementation of the Maintenance Scheme;

2.4.3 standard of maintenance and repair to be achieved

2.4.4 how the costs of maintenance shall be funded

SIXTH SCHEDULE

The Landowner's covenants with the Council

PROVISION OF LAND FOR CANAL FOOTBRIDGE

The Landowner covenants with the Council as follows:

1. To retain a vacant parcel of land, of a location and size to be agreed in writing with the Council, for a period of 10 years following completion of the hotel, leisure spa and car park to be constructed as part of the Development (whichever is the later) to be used for the construction of a footbridge over the Canal
2. Not to Commence Development unless and until the location and size of the vacant land to be retained under paragraph 1 of this Schedule has been agreed in writing with the Council
3. To transfer to the Council, Parish Council or Canal and River Trust within 10 years of completion of the hotel, leisure spa and car park to be constructed as part of the Development (whichever is the later), upon request from the Council, Parish Council or Canal and River Trust, a vacant parcel of land of a location and size to be agreed in writing with the Council(under paragraph 2 above) on the following terms:
 - 3.1 at a consideration of £1
 - 3.2 free from encumbrances other than those existing as at the date hereof including the provisions of this agreement
 - 3.3 with full title guarantee
 - 3.4 to include for the benefit of the Footbridge:
 - i. the grant of any rights of access over any adjoining land which rights are reasonably required for the construction, maintenance and repair of the Footbridge
 - ii. the grant of any rights of access for passing to and from over the Footbridge
4. If construction of the Footbridge has not been commenced within a period of 5 years following the transfer of land under paragraph 3 above, the Council, Parish Council or Canal and River Trust is to transfer the said land to the Landowner on similar terms who have agreed to accept the transfer of the said land.

SEVENTH SCHEDULE

The Council's Covenants

Issue of Planning Permission

1. The Council hereby covenants with the Landowner that it shall issue the Planning Permission within 14 days of the date of this Agreement

Discharge of obligations

2. At the written request of the Landowner the Council shall provide written confirmation of the discharge of the obligations contained in this Agreement when satisfied that such obligations have been performed

Repayment of Contributions

3. The Council covenants with the Landowner that if after a period of 10 years from the date of receipt of the final instalment of the Affordable Housing Contribution, it, or any part of it, remains unspent or unallocated it shall repay such unspent or unallocated sum to the party that initially made the payment to the Council

Use of Contributions

4. The Council covenants with the Landowner that it shall use the Affordable Housing Contribution to facilitate the provision of additional affordable and/or supported housing within the administrative area of the Council and for the monitoring and supervision of the obligations in this Agreement in accordance with clause 2.2 of the Fourth Schedule

Executed as a Deed on the date specified at the commencement of this Agreement

EXECUTED as a DEED by) *ALAN EVANS*

BURBURY INVESTMENTS LIMITED)

a company incorporated with British Virgin Islands)

by *ALAN EVANS* being)

the person who in accordance with the laws of that territory

is acting under the authority of the Company)

.....


authorised signatory

EXECUTED as a DEED by affixing

The COMMON SEAL of

SHROPSHIRE COUNCIL

in the presence of:-

Authorised Signatory

