

D R A F T

DATED

2010

SECTION 106 AGREEMENT

GLADEDAL (LINCOLN) LTD (1)

AND

BEN BAILEY HOMES LTD (2)

**REGARDING
THE FIRE STATION COMPTON GROVE BUXTON**

RF.EC.GLLIN001.014/DR1/04.10.2010

This Unilateral Planning Obligation is dated [] and is given by:

- (1) **GLADEDALE (LINCOLN) LTD** (Company No 03823030) whose registered office address is Ashley House Ashley Road Epsom Surrey KT18 5AZ ('the Owner')
- (2) **BEN BAILEY HOMES LTD** (Company No 03026597) whose registered office is Ashley House Ashley Road Epsom Surrey KT18 5AZ ('the Applicant')

1 Background

- 1.1 The Owner has entered into a Conditional Contract (dependent on the grant of Planning Permission for residential development) to purchase the land registered at HM Land Registry under title No DY407173 known as The Fire Station Compton Grove Buxton and shown for identification purposes only edged red on the Plan ('the Red Land')
- 1.2 High Peak Borough District Council ('the Council') is the local planning authority and local housing authority
- 1.3 The Applicant has by planning application number [] applied to the Council for planning permission to develop the Red Land by (*describe intended development*) ("the Application")
- 1.4 The Owner and the Applicant are willing to give an undertaking to perform the obligations set out in this Unilateral Planning Obligation in order to facilitate the grant of planning permission by ensuring that the Council can regulate the Development by securing the benefits contained in this undertaking

2 Interpretation

In this Unilateral Planning Obligation:

- 2.1 'the Act' means the Town and Country Planning Act 1990
- 2.2 'agreed' or 'approved' means agreed or approved in writing and given for the purpose of this Unilateral Planning Obligation
- 2.3 'the Application Site' means the Red Land
- 2.4 'the Development' means the development of the Application Site proposed in the Application or permitted by planning permission granted pursuant to the Application or carried out substantially in accordance with such planning permission
- 2.5 'Registered Social Landlord' means a registered social landlord within the meaning of the Housing Act 1996
- 2.6 'Social Housing Units' means the Dwellings referred to in Schedule 1 paragraph 1

- 2.7 'Specified Date' means the date upon which an obligation arising under this Unilateral Planning Obligation is due to be performed
- 2.8 Words importing the masculine include the feminine and vice versa
- 2.9 Words importing the singular include the plural and vice versa
- 2.10 Words importing persons include companies and corporations and vice versa
- 2.11 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
- 2.12 Any reference to a clause or schedule or plan is to one in or attached to this Unilateral Planning Obligation
- 2.13 In the absence of contrary provision any reference to a statute includes any statutory modification or re-enactment of it and every statutory instrument direction specification made or issued under the statute or deriving validity from it
- 2.14 References to any party to this Unilateral Planning Obligation 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 its respective functions as local planning authority and local housing authority

3 Enabling provisions

- 3.1 This Unilateral Planning Obligation is made pursuant to Section 106 of the Act Section 111 of the Local Government Act 1972 and all other enabling powers
- 3.2 The obligations contained in clause 5 of this Deed are planning obligations for the purposes of Section 106 of the Act and are entered into by the Owner and the Applicant with the intention that they bind the interest held by those persons in the Red Land and in respect of successors and assigns.

4 Commencement and determination

- 4.1 This Unilateral Planning Obligation shall come into effect on the date of the grant of the planning permission granted pursuant to the Application but the obligation in clause 5 shall become effective only on the commencement of a material operation as defined in Section 56(4) of the Act ("Material Operation") but for the purposes of this Unilateral Planning Obligation works involving soil investigations, archaeological investigations, demolition, site clearance, site preparation, the diversion and laying of services, the erection of fences and hoardings and the preparation of site access shall not constitute a Material Operation

4.2 If the planning permission granted pursuant to the Application shall expire before the commencement of a Material Operation or shall at any time be revoked then this Unilateral Planning Obligation shall be determined and shall have no further effect

5 Applicant's Covenants with the Council

5.1 The Owner and the Applicant covenant with the Council not to carry out or allow to be carried out any Material Operation on the Application Site before the grant of Planning Permission pursuant to the Application

5.2 The Applicant covenants with the Council to provide the Social Housing Units in accordance with Schedule 1

6 General

The Owner and the Applicant acknowledge and declare that:

6.1 the obligations contained in this Unilateral Planning Obligation are planning obligations for the purpose of Section 106 of the Act

6.2 this Unilateral Planning Obligation constitutes a deed

6.3 this Unilateral Planning Obligation is enforceable by the Council

6.4 this Unilateral Planning Obligation does not nor is intended to confer a benefit on a third party within the meaning of the Contracts (Rights of Third Parties) Act 1999

6.5 no person shall be liable for any breach of the covenants restrictions or obligations contained in this Unilateral Planning Obligation after that person has parted with its interest in the Application Site or the part of it in respect of which the breach occurs but without prejudice to liability for any breach subsisting prior to parting with such interest

6.6 the provisions of this Unilateral Planning Obligation shall not be enforceable against such successors in title to the Owner as owner or occupier of individual housing units within the Development

6.7 this Unilateral Planning Obligation may be registered as a local land charge in the Register of Local Land Charges maintained by the Council

6.8 that the Owner and the Applicant together have the sole proprietary interest in the Application Site and that there are no third party interests which would require any other party to give this Unilateral Planning Obligation

6.9 this Deed shall be determined and have no further effect if the Planning Permission granted pursuant to the Application expires before the commencement of any Material Operation on

the Red Land or is varied or revoked other than at the request of the Applicant or is quashed by a successful legal challenge.

IN WITNESS etc

SIGNED as a deed by
GLADEDALE (LINCOLN) LTD
acting by a director and the secretary

Director

Secretary

SIGNED as a deed by
BEN BAILEY HOMES LTD
acting by a director and the secretary

Director

Secretary

SCHEDULE 1
Social Housing

The Owner and the Applicant covenant with the Council:

- 1 to provide two 2 bedroom dwellings to a Registered Social Landlord to be made available for letting and to provide two 3 bedroom dwellings to a Registered Social Landlord to be made available for shared ownership for home buy purposes all such units shall not be occupied other than as Social Housing Units available for persons or families who are unable to compete for such housing units in the open market and on the basis that the rent or sale price is reduced directly or indirectly by means of public or private subsidies making such units affordable to such persons or families
- 2 not to occupy or cause or allow to be occupied any more than 15 non-Social Housing Units built on the Application Site before either:
 - 2.1 the Owner or the Applicant has transferred the Social Housing Units to a Registered Social Landlord; or
 - 2.2 the Owner or the Applicant has entered into a contract approved by the Council (such approval not to be unreasonably withheld or delayed) with a Registered Social Landlord for the construction and sale of the Social Housing Units which contract shall satisfy the purposes of paragraph 1 above and shall specify a long stop date for the completion of the construction of the Social Housing Units and their transfer to the Registered Social Landlord
- 3 that in any transfer of the Social Housing Units to a Registered Social Landlord the Owner or Applicant shall impose a restriction which satisfies the purposes of paragraph 1 above save that the transfer will acknowledge that such restriction shall not be binding on a mortgagee or chargee of any of the Social Housing Units and shall not prevent the sale of any social housing unit by the mortgagee or chargee in the exercise of its power of sale provided that the following conditions have been satisfied:
 - 3.1 that any power of sale available to such mortgagee or chargee shall only be exercised in the event of there being a default of any obligation to such mortgagee or chargee
 - 3.2 that such mortgagee or chargee provides evidence of such default to the Council

- 3.3 that such mortgagee or chargee shall give not less than 3 months' prior notice to the Council of its intention to exercise its power of sale to enable the Council to secure the transfer of the social housing unit to another Registered Social Landlord or to the Council on terms that will safeguard the social housing purposes set out in paragraph 1 above
- 3.4 that if such mortgagee or chargee (having used its reasonable endeavours) is unable within the said period of 3 months to agree terms with the Council or another Registered Social Landlord for the transfer of the social housing unit in accordance with paragraph 3.3 above then the mortgagee or chargee shall be entitled to exercise its power of sale and dispose of the social housing unit on the open market free from the restrictions set out in this Schedule