

Warwick District Council

DEVELOPER CONTRIBUTIONS

SUPPLEMENTARY
PLANNING DOCUMENT

July 2020





Our agreement with Warrington for consent to develop Heald includes contributions from

- Country Park £268,800
- Education £280,245
- School transport £35,233
- GP surgery £267,400

Derby District Council Leathcote Park from us towards

- Indoor sports facilities £145,432
- Outdoor sports facilities £9,927
- Library £7,661
- Police £42,338

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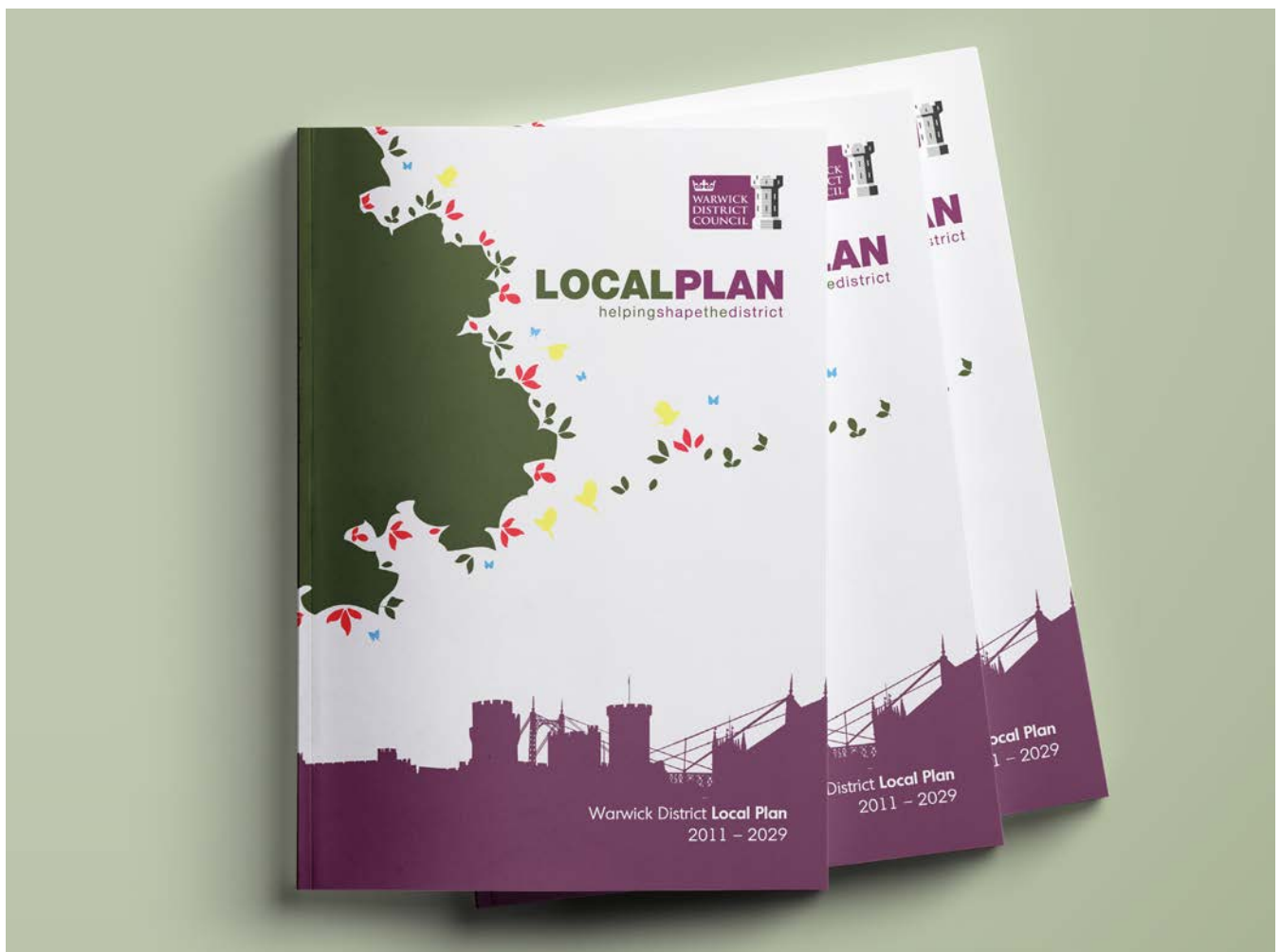
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PART 1

Purpose of this Document



The Warwick District Local Plan (adopted September 2017), sets out the planning policies for the growth and, in places, regeneration of the District to 2029.

It specifies a significant amount of growth for the district in terms of new homes required and development needed to provide economic growth and related employment opportunities. Given the amount of growth identified, this SPD will be an important document which sets out how the Council will secure developer contributions from eligible development. This will be an essential requirement in order to assist in the delivery of new and improved infrastructure that our communities require and to ensure that the planned growth is sustainable.

When determining a planning application, Local Planning Authorities (LPA's) consider the need to apply specific conditions, restrictions, activities, operations and contributions, necessary to make the development acceptable in planning terms. These are referred to as 'planning obligations' (also referred to as developer contributions).

The purpose of this Developer Contributions Supplementary Planning Document (SPD) is to provide clarity regarding Warwick District Council's approach to seeking developer contributions that are necessary to provide the physical, social and green infrastructure to support high quality development outcomes and sustainable planning objectives.

This SPD will explain:-

- How developer contributions will be secured (including the policy basis and procedures, types of contributions, methodology of calculation, timing and process of collection);
- Clarifies the relationship between planning conditions, planning obligations and the Warwick District Council Community Infrastructure Levy (CIL);
- Provides a mechanism to help ensure the timely provision of infrastructure to support growth:

This SPD comprises two parts:

Part One sets out Warwick Districts overall approach to securing planning obligations. In addition, it explains how the SPD complies with national and local policy, and deals with procedural matters relating to the drafting and enforcement of Section 106 matters.

Part Two sets out the types of obligation that the Councils may seek to secure from development. It also identifies the relevant policy basis, types of development to which the obligation may apply, thresholds over which the obligation may be sought and, where possible the basis on which the level of the obligation will be calculated.

The SPD will also provide prospective developers with clarity on the relationship between the various methods utilised to secure contributions. These include Section 106 planning obligations (or Unilateral Undertakings), Section 278 agreements under the Highways Act 1980 and the use of planning conditions. The document will also explain the relationship between the aforementioned and charges made on development associated with the Councils adopted Community Infrastructure Levy (CIL). This SPD will outline details of some of the key contributions often required and signpost potential developers to detailed advice that may be available with regard to specific infrastructure requirements.

The SPD will also include a series of issue specific S106 templates in order to try and regularise and expedite the efficient production of consistent legal agreements.

In the determination of planning applications for new development Warwick District Council must take into account a wide range of considerations required to ensure the acceptability of a proposal. One of these considerations is whether the development would generate a need for new or improved infrastructure, services or facilities, without which the development would be unacceptable in planning terms.

Local authorities must therefore ensure that such infrastructure needs are addressed and that new development is deemed acceptable. These developer contributions may, in some instances, be delivered directly by the developer, or by way of a financial contribution to the Council for it to arrange for the necessary investment to be made.



Legislative Context

National Planning policy context

The National Planning Policy Framework (NPPF) identifies that local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. It highlights that planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition (NPPF paragraph 54).

The NPPF (paragraph 56) restates the three statutory tests for planning obligations which are defined in the CIL Regulations and identifies that where obligations are being sought or revised, local planning should take account of changes in market conditions over time and, where appropriate, be sufficiently flexible to prevent development from being stalled (paragraph 57).

Section 106 of the Town and Country Planning Act 1990 (as amended) provides the mechanism for planning obligations to be secured from development. In addition, The Community Infrastructure Levy (CIL) Regulations 2010 (as amended) sets out additional legislation on the use of planning obligations.

Regulation 122(2) of the CIL Regulations defines that for a planning obligation to be taken into consideration when granting planning permission, it must be:

- Necessary to make the development acceptable in planning terms;
- Directly related to the development; and
- Fairly and reasonably related in scale and kind to the development

Regulation 123 of the CIL Regulations placed limitations on the pooling of planning obligations whereby no more than five separate planning obligations could be entered into to enable the funding or provision of a single infrastructure project. It is important to note that as of the 1st September 2019 new legislation (The Community Infrastructure Levy (Amendment) (England)) (No2) Regulations will have removed the pooling restriction's. Council's now have the flexibility to utilise multiple Section 106 contributions to fund a single infrastructure project (if necessary/ desirable) or to utilise S106 and CIL generated income for the same purpose (previously this was not permitted).

In relation to viability, NPPF paragraphs 34, 56 and 57 make it clear that development should not be subject to such a scale of obligations and policy burdens, that the viability of the scheme is threatened. It also identifies that authorities should assess the likely cumulative impact on development viability of all existing and proposed local standards and policies when taken together with national requirements, and that this cumulative impact should not put implementation of the plan at risk and should facilitate development throughout the economic cycle / plan period.

The emphasis on deliverability has further been strengthened by provisions within the Growth and Infrastructure Act 2013 which enable developers to apply to the local planning authority to modify affordable housing requirements set out in section 106 agreements where the requirements would make the development economically unviable.

National Planning Guidance (PPG) states that obligations must be fully justified and evidenced, and where affordable housing contributions are being sought, obligations should not prevent development from progressing. It also highlights that where local planning authorities require affordable housing obligations or tariff style contributions to infrastructure they should be flexible in their requirements and policies should be clear that such obligations will take into account specific circumstances.

It should be noted that the National Guidance (NPPF) identifies that in order to prevent overburdening small schemes contributions for affordable housing and tariff style obligations should only be sought from major developments. The definition of major development is 'for housing, development where 10 or more homes will be provided, or the site has an area of 0.5 hectares or more. For non-residential development it means additional floorspace of 1,000 sq.m or more, or a site of 1 hectare or more, or as otherwise provided in the Town and Country Planning (Development Management Procedure) (England) Order 2015.

Local Policy Context

Warwick District Council Local Plan 2011-2019

The Local Plan sets out the overarching development strategy for the District to 2029. It includes strategic policies, allocations and designations for the future change and growth of Warwick District. This plan also includes local policies for Development Management purposes.

https://www.warwickdc.gov.uk/info/20410/new_local_plan

Policy DM1, (Infrastructure Contributions) sets out the rationale for seeking developer contributions, whilst Policy DM2 (Assessing Viability) sets out the framework for the consideration of any viability concerns that may arise. (See appendix 1)

Other key planning policy documents include:

Supplementary Planning Documents (SPD's). SPD's expand upon and provide further detail to policies in Development Plan Documents.

https://www.warwickdc.gov.uk/info/20794/supplementary_planning_documents_and_other_guidance

The Infrastructure Delivery Plan

This is a live document adjusted over time and contains the physical, green and social infrastructure required to support development over the Local Plan period.

https://www.warwickdc.gov.uk/info/20376/planning_policy/1200/infrastructure_delivery_plan

It should also be noted that the Council's Local Development Scheme (LDS) sets out the intended programme for the preparation of key planning policy documents throughout the plan period. It should be consulted periodically as it will highlight when new SPD'S (that may influence developer contributions) will be emerging.



Types of Developer Contributions

What are planning Obligations?

A planning obligation is secured by either a deed of agreement or a unilateral undertaking made under planning legislation (Section 106 of the Town and Country Planning Act 1980 (as amended)) in association with a planning permission for new development. It is normally applied to aspects of development that cannot be controlled by imposing a planning condition or by the use of other statutory controls.

Planning obligations are legally binding and enforceable if planning permission is granted. The obligations remain with the title holder of the land in question. They can cover almost any relevant issue such as the provision and funding of types of infrastructure or services and future maintenance.

Planning obligations should only be used where it is not possible to address the unacceptable impact of development through a planning condition (NPPF, paragraph 54).

In addition, CIL Regulation 122 states that the use of planning obligations should only be sought where they meet all of the following three tests:

- They are necessary to make a development acceptable in planning terms
- They are directly related to a development
- They are fairly and reasonably related in scale and kind to the development

Planning obligations are linked to the land within the planning application, rather than the person or organisation that develops the land. It is, therefore, recorded as a land charge, and obligations under it run with the land ownership until they are fully complied with.

It should be noted that where Neighbourhood Plan policies apply they are not expected to seek contributions in excess of the Local Plan policy requirements. Any that might seek to do so must be the subject of a Neighborhood Plan viability assessment.

What is Community Infrastructure Levy (CIL)?

CIL is a levy which allows local authorities to fund infrastructure by charging on new development in their area, CIL contributions raised will go towards the costs of infrastructure. Warwick District Council (WDC) completed the necessary consultation exercises and underwent a successful CIL Inspection: CIL has now been formally adopted by the Council with effect from 18th December 2017. Once adopted CIL is fixed, non-negotiable and enforceable.

The principle is that all eligible developments must pay the CIL charge, alongside any S106 planning obligations; the CIL charging rates are based on viability testing, and an identified need for infrastructure. The process for securing CIL payments is set out in the Charging Schedule and is summarised in the table below. Further information can be found on the Council's website and in the CIL element of the National Planning Practice Guidance.

Figure 1.

Community Infrastructure Levy (CIL) Process Overview table:

STEPS	COMMUNITY INFRASTRUCTURE LEVY
1	Alongside Planning Application, applicant / agent completes and submits a 'determining whether a development may be CIL liable form' including the relevant floorspace and development type details. An Assumption of Liability Notice should be included with the application.
2	The Council will determine the levy based on the current CIL Charging Schedule.
3	Once in receipt of the relevant forms WDC produces a draft Liability Notice, in consultation with the Agent / Applicant to ensure details are correct before being issued.
4	When planning permission is granted and an Assumption of Liability form has been received, a Liability Notice will be issued and the Levy rate will be registered.
5	Where a party wishes to apply for relief / exemption from the CIL levy, they are required to submit the relevant CIL relief / exemption forms to the Council prior to the commencement of development. Relief / exemptions will be considered and where they are granted Liability Notices will reflect this. No development can be 'self-assessed', all potential exemptions must be applied for and granted by WDC.
6	Liable party is required to submit a Commencement Notice prior to any works starting on site.
7	Once an Assumption of Liability Notice and Commencement Notice have been received, a Demand Notice/s will be issued (if relevant) to the person/s liable to pay the CIL in accordance with the CIL Payment Instalments policy. Where a Commencement Notice is not submitted the payment will be due in full on the presumed commencement date.
8	On final payment of the outstanding CIL charge, the Council Land Charges Section will remove the CIL liable amount from the Land Charges Register.

The CIL Charging Schedule that sets out the financial requirements with regard to particular land uses can be viewed at: -

https://www.warwickdc.gov.uk/downloads/file/4740/cil_charging_schedule_final

WDC is responsible for collecting CIL monies due. A proportion of the money collected is distributed to Town and Parish councils in which developments fall; 15% - 25% of the total amount received dependant on whether a Neighbourhood Plan has been adopted. This proportion must be spent to support the impact of developments on local communities.

It is not intended that CIL replaces S106 agreements. S106 agreements will be used alongside CIL to secure infrastructure requirements. S106 infrastructure may be physically off-site, but must be clearly linked to the development site and needed to make the development acceptable in planning terms. Unlike funding from S106, CIL funds can be spent on a wide range of infrastructure to support development without the need for a direct geographical or functional relationship with the development.

The relationship between CIL and Section 106

CIL monies are intended to provide for infrastructure support rather than specifically to make development proposals acceptable in planning terms. Government guidance specifies that site specific mitigation will still be sought through the use of planning obligations.

The Council produces an Annual Infrastructure Statement in order to indicate its priority infrastructure projects to be financed from CIL income over a specified 12 month period.

Planning Conditions

Planning conditions cannot require the transfer of land ownership or the payment of monies. They are attached to planning permission and set out details or required standards, timeframes and works which must be carried out at prescribed stages in the development process. They may also require further details to be submitted in order to make a proposal acceptable.

The NPPF paragraph 55 states that planning conditions should only be attached to a planning permission where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.

Where there is a choice between imposing planning conditions and entering into a planning obligation to manage the impacts of a new development, the use of planning conditions is always preferable.

However, planning conditions;

- Cannot be used to secure financial contributions
- Cannot be used in relation to land outside the application site; and
- Can be appealed by the applicant if they believe them to be unreasonable

Where the above restrictions cause an issue in appropriately mitigating the impact of development; the LPA may use a planning obligation.

Section 278 Agreements

Where a development requires works to be carried out on the existing adopted highway, an Agreement will need to be completed between the developer and Warwickshire County Council under Section 278 of the Highways Act 1980. Examples of such works could be the construction of new access/ junction improvement of the highways/ junctions, or safety related works such as traffic calming or improved facilities for pedestrians and cyclists.

Figure 2.

Summary of Planning Mechanisms used for mitigation against the impacts of development

MECHANISM	DETAILS	EXAMPLE USES
Planning Conditions	To make otherwise unacceptable development permissible – these may restrict the use of development, or require specific, approval via a discharge of condition prior to commencement	Noise and odours Landscaping Materials Working Hours
S106 Planning Obligations	To make otherwise unacceptable development permissible by imposing controls that cannot be secured by planning conditions. These may be financial or non-financial and provided on or off site.	Provide affordable housing Address site specific impacts Deliver essential Infrastructure
S278 Highways Agreements	Agreements to provide for alterations to the adopted highway to be funded by developers	Highway Improvements

Procedures/ Process

General approach

It is the purpose of this SPD, once adopted to give developers guidance of the scope of developer contributions that they will have to consider as part of their intended development process. In many instances this will embrace contributions towards CIL, S106 and or S278 agreements.

Albeit that previous pooling restrictions did, in some instances, curtail the use of planning obligations it is expected that in many instances (where appropriate) planning obligations will still be sought for infrastructure matters related to the following: -

- Affordable Housing
- Air Quality Initiatives
- Outdoor Sports Facilities/ Playing pitches
- Indoor Sports Facilities
- Health Infrastructure – Local GP Surgeries / health centres and Hospitals
- Community Safety / Policing
- Biodiversity Offsetting
- Open space and Green Infrastructure
- Sustainable Drainage Systems (SuDS)
- Education
- Highways and Transport
- Local Labour Agreements
- Libraries
- Community Halls
- Other Infrastructure which is required to mitigate the direct impact of a development.

It should, however, be noted that this is a general guide and development proposals will continue to be assessed on a case by case basis with the individual circumstances of each site being taken into consideration when identifying infrastructure requirements.

Planning Obligations

The Local Planning Authority (LPA) will assess each application to determine if a planning obligation is needed and if so what it should address. It will do this in consultation with other public bodies responsible for infrastructure provision. Warwickshire County Council, for example, is a major provider of services and infrastructure.

The LPA, and other key agencies, will use planning obligations to:

- Secure general planning requirements that are necessary to allow the development to be permitted and where this cannot be achieved by way of planning conditions
- Ensure that there is satisfactory infrastructure to allow the development to proceed and that the infrastructure provided will be maintained: and

- Offset relevant adverse impacts, for example, on the environment, education, social, emergency services, recreational and community facilities and transport that arise from the development where the impact might otherwise have been refused because of those adverse impacts.

Process

Pre-Application Discussions

As part of any pre-application discussions the LPA will seek to agree the requirements and Heads of Terms for any planning obligation.

It is the Council's strong preference, where applications and associated planning obligations are more complex, that negotiations occur, and agreement on Heads of Terms is achieved, prior to the submission of a planning application. Pre-application discussions can help to resolve potential problems and issues which may otherwise delay the determination of a planning application.

It is recommended in the Council's Validation List that draft Heads of Terms accompany any application that requires a planning obligation. Indeed, the Local Validation list will be a useful starting point to shape/ identify the range of issues / infrastructure that a development is likely to need to consider and address.

The Council's Local Validation List can be seen at: -

https://www.warwickdc.gov.uk/downloads/file/4958/local_validation_list_-_adopted_may_2018

Unilateral Undertakings

In cases where a planning obligation is only dealing with financial contributions the LPA will encourage developers to make a unilateral undertaking and to make the relevant contributions on the granting of planning permission and / or at different stages of the development.

Cross Boundary Applications

Where a planning application site falls partly in another local planning authority area the Council will, as far as possible, work to coordinate proportionate planning obligation requirements with that authority. If, however, agreement cannot be reached, the Council will seek obligations for the portion of the site that falls within Warwick District.

Viability

The Council will seek to secure a fair and reasonable developer contribution without adversely affecting the ability for new development to take place across the District. Paragraph 57 of the NPPF emphasises the need for consideration of viability and costs in plan making and decision taking processes. It is recognised that some development proposals may be unable to meet all of the relevant policy and planning obligation requirements while remaining economically viable and deliverable, either in whole or part.

As the Council recognises the wider benefits of development to the District in terms of the associated outputs from the development such as regeneration or helping meet housing need then, in such circumstances the Council will consider a request from the developer, applicant, or landowner to reduce the level of planning obligations on the basis that it is not financial viable to provide or pay (whether in part or full) any Section 106 planning obligation requirements or charges deemed necessary and appropriate.

Such requests must clearly demonstrate to the Council what the developer, applicant or landowner is prepared to fund in terms of planning obligations, the reasons why the development cannot support the full planning obligation requirements (such as high abnormal costs), including comprehensive evidence which must include an Economic Viability Assessment (EVA) in order for the Council to take it into account as a material consideration.

The assessment should be submitted, if possible, at the pre-application stage of the planning process to enable the request to be considered and verified by the Council.

EVA's should be accompanied by a detailed explanatory statement which clearly shows the residual value of the land and therefore the price payable is not sufficient to incentivise the landowner to release the land for the proposed development and would otherwise hold the land undeveloped until a time where their incentivised price could be reached.

Developers will be required to work on a fully 'open book' basis and the EVA must contain prices, costs and assumptions that reflect the proposed development including anticipated sales prices supported by comparable market evidence and costs supported by tendered quotations or BCIS data.

All viability submissions will be carefully considered by the Council. Once submitted the Council's professional advisors will review the information provided to support a reduction in the required planning obligations to initially determine if sufficient information has been provided to support the request. Following this the Council's advisors will carry out an independent appraisal of the site to determine if acceptable development would be viable which would bring forward development of the site.

The land value and the developer's return elements of the appraisal will be determined as to what is sufficient to incentivise both parties to sell and develop the scheme. These will broadly be reflective of the returns currently being sought and accepted within the market, including any adjustment to account for the market risk of the scheme. Developers return will typically range between 17.5% and 22.5%.

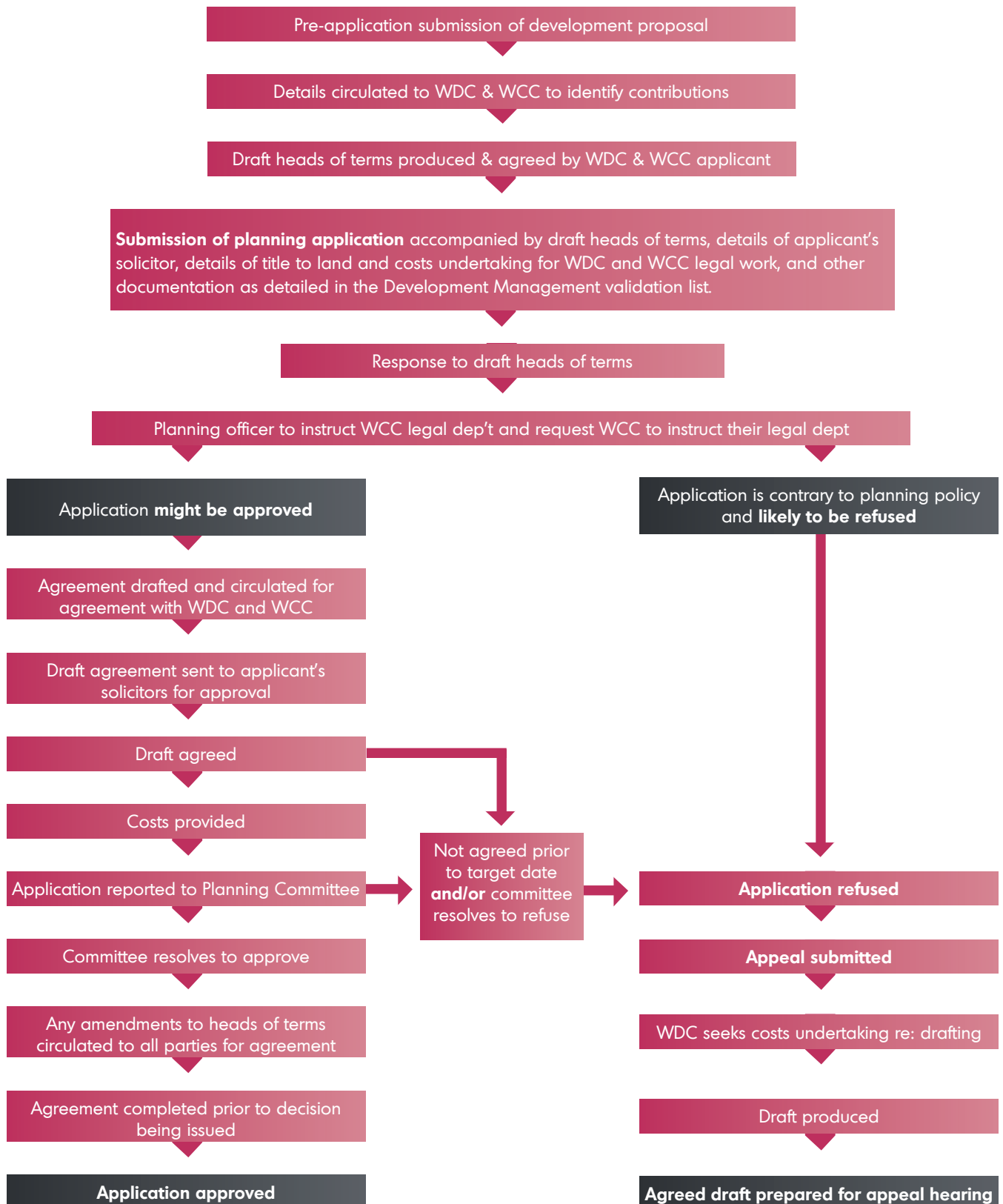
The Council will not take into account the price paid or agreed by the applicant for the land whilst reviewing the viability assessment, but will consider what a reasonable land value would be which is sufficient to incentivise the land owner to sell or develop for the proposed scheme based upon a number of factors including case law, market conditions and guidance.

Negotiation of reduced contributions

The Council is under no obligation to accept a reduction in the required level of planning obligations and may ultimately refuse the planning obligation if the applicant will not provide these. If it can be demonstrated that a scheme is unable to fund the required section 106 contributions and this is accepted by the Council, then the Council will consider the cumulative benefit of the scheme. The Council will also consider how the need for required obligations can/may be met from an alternative source than the developer with a view of negotiating a reduced requirement from the scheme.

Figure 3

Development Contributions – The Section 106 Process



Securing Timing of Payments/ Fees

Financial contributions (apart from legal costs, which are usually paid prior to the completion of the agreement), and standard administration charges will need to be paid prior to the implementation of planning permission or in accordance with a programme of agreed stage payments.

Prior to the making of a Planning Obligation, the developer should note the financial contributions payable and the corresponding triggers or payment dates as specified in the agreement.

The developer should notify the Council, or County Council if relevant of a trigger point being reached and their intention to pay the financial contribution. When a trigger point has been reached the Council will calculate the total financial contribution payable and will provide a copy of this calculation to the developer. Once the developer has agreed the calculation the Council will issue an invoice to the developer for the agreed sum. The Council will not accept payment of any financial contribution unless accompanied by a valid invoice. The Council will, if necessary charge interest on late payment in line with the terms set in the agreement.

Upon receipt, financial contributions will be held in a specific account before being transferred to the relevant internal departments or third parties (e.g. other public sector bodies, parish council etc.) responsible for spending the contribution. The District Council will work with the County Council to expedite the transfer of monies to other agencies quickly and efficiently.

The Section 106 agreement will include a clause detailing how and when any unspent funds will be refunded. Given that a unilateral undertaking, necessarily, does not have the Council as a party, there cannot be any obligations on the Council to return any unspent monies.

All receipts and spending of financial contributions and the discharge of Section 106 obligations will be recorded and monitored by the Council. This will be achieved by the publication of a quarterly monitoring report as well as the Council's annual Infrastructure Funding Statement.

Please note that financial contributions paid to Warwickshire County Council (i.e. those relating to highways and education and relevant administration and monitoring fees) will be subject to a different process and developers are advised to refer to WCC's guidelines or contact the WCC Infrastructure Team at: - infrastructureteam@warwickshire.gov.uk for further information.

Fees

The Council's legal costs of preparing a Planning Obligation will be borne by the developer. These costs will be based on an hourly rate and will depend on the complexity of the agreement and the length of time taken to settle the draft and proceed to completion. The Council will therefore require developers to provide a 'cost undertaking' to pay for the Council's reasonable fees, prior to it being able to instruct its acting solicitors. It should be noted, that the Council's reasonable fees will need to be met even if the planning obligation is not completed.

Standard unilateral undertakings will be subject to an administration charge covering legal costs and if necessary the transfer of money to third parties.

Monitoring and Enforcement

The Council monitors all planning obligations and will work with developers to ensure that financial contributions and non-financial obligations are delivered on-time. Monitoring fees will be charged in order to undertake such work. The monitoring fee will be derived using a formula that considers the complexity of the agreement (the number of obligations in a particular agreement), the number of officer hours required the monitoring officer's salary rate and the number of years it is estimated that monitoring will be required for a particular development.

Monitoring activities will include: -

- the request, management and distribution of financial contributions and other obligations associated with the deed;
- monitoring on-line systems for planning officers, managers and the public domain;
- checking recording and updating each trigger-point (timing requirement);
- physical monitoring of the development site (site visits)

The monitoring fee (and its calculation) will be stipulated in each agreement. The monitoring fees formula is shown in full in the template S106 document (Appendix 3 of this SPD).

Enforcement

Where there is evidence of non-compliance with a Planning Obligation (such as the non-payment of financial contributions, failure to comply with an obligation, or failure to notify the Council of a due payment or event as required), the Council will seek to recover all reasonable administration costs incurred. This could include, for example, site visits, the recovery of any unpaid monies and / or correspondence.

If it is clear that matters within the planning obligation are not being complied with, the Councils Legal Team may be instructed to take appropriate action to secure compliance. This could include for example, seeking a court injunction.

Indexation

Contributions are based upon the costs of infrastructure. Financial contributions will therefore be indexed (i.e. index –linked to inflation) to ensure that they retain their 'original' real value. The base date and appropriate index to be applied will be set out in the legal agreement.

Where a formula has been set for the calculation of contribution levels (e.g. contractor rates), any cost figures will be updated periodically to take account of inflation and are the sums required at the time of negotiation.

All payment levels will be subject to an inflation factor adjusted according to the fluctuations between the date of the obligation and the quarter period in which payment is due to the District Council, the County Council will also adjust payments to it but these may be subject to different measures of inflation.

PART 2

Developer Contributions

This part of the SPD sets out the key types of contributions that the Council may seek to secure from development and how it identifies with the relevant policy basis, types of development to which the obligation will apply, thresholds over which the obligation will be sought and, where possible the basis on which the level of obligation will be sought. Contributions covered by this SPD relate primarily to residential developments. Non-residential development requirements, such as those associated with retail and commercial development will be considered on a case by case basis.



Threshold for Contributions – Residential development

Developer contributions will be required from all residential development on sites of 10 or more dwellings or where the site has an area of 0.5 hectares or more. The Council will have regard to the whole development site in applying the site size threshold, regardless of whether applicants seek to subdivide, fragment or phase proposals.

Affordable Housing

The NPPF requires Councils to set their own policies where affordable housing is needed and sets out a requirement to undertake a strategic Housing Market Assessment (SHMA) in order to understand and meet objectively assessed affordable housing needs.

As evidenced by the most recent SHMA and the updated Assessment of Housing Need for Coventry and Warwickshire (which included an assessment of affordable housing need in each local authority area), Warwick District has a high level of need for affordable housing. The Council's Local Plan sets out its Affordable Housing Policy requirement in Policy H2 (Affordable Housing).

For the purposes of the Council's affordable housing policy the definition of affordable housing applied is that as set out in the NPPF (Annex 2). This includes social rented, affordable rented and intermediate tenure housing provided to eligible households.

The amount of affordable housing, the form of its provision (tenure), its specific location on site and the means of delivery of the affordable element of the proposal will be subject to negotiation at the time of the planning application. The viability of the development may be a consideration in such negotiations.

It is the Council's policy position that in the majority of cases affordable housing should be provided on site in order to ensure that developments contribute towards creating mixed and balanced communities. Affordable housing should be integrated within the development and in larger developments provided in a variety of locations. The quality of the affordable housing should be such that it is not readily identified as being any different to the market housing provided.

Commuted Sums and Off-site Provision

There may however be instances where the location, setting or characteristics of the development are not compatible with delivering the type of affordable housing required. In such cases the Council and the developer may jointly agree either to use an alternative site, to be provided by the developer, for the provision of affordable housing and, or a financial contribution that is broadly the equivalent value to the cost of the developer of providing the affordable homes on –site.

Perpetuity

Where appropriate, the Council requires affordable housing to be provided in perpetuity through the planning obligation agreement. In order to ensure wherever possible, affordable housing continues to be available to those in housing need, and managed to acceptable standards. The Council prefers the legal interest and management of the affordable housing produced through the planning obligation to be transferred to a Registered Provider, the Council or equivalent.

Restrictions on development

When applicable there will be a restriction on commencing the development, or phases therein, until the affordable housing details (e.g. location, type etc.) have been approved by the Council, and thereafter there will be an obligation to comply with the approved details. The Council will impose a restriction on the development or subsequent phase., preventing occupation of the private / open market units on site until such time as the affordable housing units are either completed and / or transferred to a Registered Provider (or the Council).

Detailed Supplementary Planning Guidance with regard to Affordable housing is provided on the Council's website.

Air Quality

Promoting sustainable development is a key focus of the adopted Local Plan. The need to consider the effects of development on air quality, and how it can contribute towards improvements and mitigate against adverse impacts, is identified as a key challenge to ensuring sustainable development. The criteria for the assessment of development proposals and the mitigation measures with regard to air pollutants is set out in detail in Air Quality and Planning Supplementary Planning Document. This can be viewed on the Council's website.

Reducing travel by car and managing traffic congestion is a major challenge. Maximising the opportunity to shift from dependency on cars to sustainable modes of transport is also identified as a key policy objective.

Air quality is a particular issue in a number of specific locations within Warwick District's towns. These areas have been declared Air Quality Management Areas (AQMAs) and Clean Air Zones (CAZ). Given that transport is a primary cause of air quality issues in these places any development that may add to the problems must identify an appropriate mitigation strategy.

Local Plan Policy TR2 (Traffic Generation) requires development that results in significant negative impacts on air quality within the defined Air Quality Management Areas and Clean Air Zones on the health and wellbeing of residents in the locality to undertake necessary mitigation measures to be agreed with the County Council.

All new development within or immediately adjacent to Local AQMAs, or those with traffic routed through and AQMA may be subject to Section 106 agreements which require measures to offset increases in local pollutant emissions, and/ or make an appropriate financial contribution towards improvement measures or air quality monitoring.

The following are examples of mitigation measures that may be required: -

- Measures during the construction of new development including dust control, site monitoring and plant emissions
- Improved access to public transport
- The provision of on-site and off-site facilities for cycling and walking
- The management of car parking
- Traffic management
- Road Infrastructure

- Green Travel Plans
- Monitoring of Air Pollution

With regard to traffic, the Council will calculate the contributions sought based on the scale of the development and the trip generation for different uses. A full list of potential air quality mitigation measures can be viewed in chapter 5 of the Air Quality SPD.

Outdoor Sports Facilities

The Council recognises the important role that spatial planning has in supporting healthy lifestyles and that it is important that sufficient land is made available for outdoor sports provision. As the population of the District grows, new teams will be generated which will put stress on, or exceed current playing pitch provision.

The Adopted Local Plan sets out a range of Policies in its section on Healthy, Safe and Inclusive Communities that will assist in the delivery of additional outdoor sports facilities to cater for population growth during the plan period. The provision of outdoor sports facilities also forms an integral part of the Public Open Space SPD (adopted April 2019). This can be viewed on the Council's website.

The Council's key strategy for the provision of sports pitches focuses on the ongoing development of key hubs. These hubs will require a variety of work, including but not limited to new pitches and facilities as well as improvements to existing pitches to allow for increased rates of usage. There may, however be development sites that generate demand that it is inappropriate to meet in a hub environment, and these sites will be expected to contribute towards other, appropriate projects.

To identify and quantify its need in relation to sports pitches, the Council regularly updates its Playing Pitch Strategy (PPS) that reviews team generation rates as well as the current available infrastructure capacity across a range of sports. Where a deficiency is demonstrated then a plan is put in place to address this, and it is appropriate that developments that are contributing to the increased demand contribute to the costs of providing increased infrastructure. The costs of these improvements are estimated in the PPS. The use of the Sport England calculator will also be utilised in shaping future requirements and the relevant costs.

The latest Playing Pitch Strategy was produced in 2018 and is available on the Council's website at: **www.warwickdc.gov.uk/info/20733/council_policies_and_plans/388/strategies_and_policies#sports**

Section 106 Agreements will specify necessary contributions to individual (physical) projects, however in some circumstances, the payment of a commuted sum for pitch maintenance may prove to be appropriate.

Indoor Sports Facilities

In a complementary strategy to outdoor sports provision, the Council identifies and plans for the necessary provision, expansion or improvement of indoor sports facilities across the District. Where there are identified deficiencies in provision contributions will be sought from development to finance new or make enhancements to existing indoor sports facilities.

The Council periodically refreshes its evidence used to underpin the production of an Indoor Sports Facilities Strategy. From this study new requirements are identified and estimates of the related costs are quantified.

The latest data on indoor sports facilities is in the Indoor Sports and Leisure Strategy that can be viewed at :

www.warwickdc.gov.uk/info/20733/council_policies_and_plans/388/strategies_and_policies#sports

Section 106 Agreements will specify necessary contributions to individual (physical) projects, however in some circumstances, the payment of a commuted sum for maintenance may prove to be appropriate.

Health

There are two main types of health provision: primary and secondary (acute) health care. Primary care focuses on the treatment of minor injuries and illnesses, and deals with minor surgery and the ongoing treatment of chronic conditions these services are provided by GP'S at doctors' surgeries or health centres. Secondary care covers care, provided predominantly at hospitals for conditions that cannot be dealt with by primary care services. It includes medical and mental health services.

New residential development will be expected to contribute towards the provision of additional health care infrastructure generated by its population growth where there is insufficient existing capacity. It should be well located to serve the development. This may include financial contributions and/ or the provision of land and buildings to enable the provision of doctor's surgeries/ health centres and other health facilities to serve the local population, or the upgrading or extension of current facilities and services in some locations.

The impacts of proposed developments on health should be assessed at the earliest stage of the design process to avoid negative impacts and ensure positive health outcomes for the community as a whole. Subject to an identified need in the locality, contributions may be sought for the following health infrastructure:

New health facilities (these may be co-located with other health or social care providers);

- Construction costs for additional facilities/ extensions, adaptations or alterations which are required to meet the needs of the development
- Finance to ensure that the health services have the appropriate infrastructure available to deliver their service commitments.

Warwick District's acute and community health services are provided by the South Warwickshire NHS Foundation Trust (SWFT); they also provide for the healthcare needs of the population of Stratford District. Accordingly, developer contributions are also sought from residential development in both of these localities in order to enable the appropriate and timely delivery of healthcare infrastructure / services across South Warwickshire.

At the local, primary care level the NHS South Warwickshire Clinical Commissioning Group (CCG) is responsible for ensuring that there is an appropriate network of NHS doctors surgeries with the necessary capacity / ability to provide for localised health care.

When planning applications are registered SWFT and the CCG will be consulted in order that they may assess and inform the District Council of any identified need for a developer contribution. In some instances, large residential allocations may require the provision of new 'bespoke' surgeries to provide local healthcare needs. In these instances, negotiations may include the necessary provision of a package of land and finance to enable a surgery to be provided.

Community Safety and Policing

Warwickshire Police is the police force that covers Warwick District. Warwickshire Police have advised that the anticipated planned growth in the District will place a significant extra demand on existing police resources. The Council will therefore require residential development (where required and appropriate), and certain non-residential developments that may have resource implications for policing to contribute towards the delivery of infrastructure to serve new developments and mitigate against their impact upon existing police resources.

Contributions may include the following: -

- Staff set-up costs – the cost of equipping and setting up new officers required to police new communities and neighbourhoods (not salary).
- Provision of new vehicles and bikes
- Premises- contributions towards the adaption/ alterations or extension of existing premises for new officers to base themselves or work out of
- Mobile IT – provision of suitable kit and equipment to enhance the mobility and flexibility of officers when working

Requirements and contributions will be assessed on a site by site basis when a specific need or item of infrastructure that is directly related to the development is identified. The costs relating to the proposed infrastructure items or area-based initiatives will be applied proportionately to the size or the potential occupancy of the development. Some non residential developments may also create further requirements for police infrastructure, an example being those that may have an impact on the nighttime economy

Biodiversity Offsetting

Helping to secure improvements to biodiversity is one of the key roles in achieving sustainable development. The loss of habitats and species, is a key issue to be addressed as wildlife and habitats have a wide variety of positive functions that contribute to ecosystems, food provision and the regulation of climate.

National policy aims to halt the net loss of biodiversity and is striving for gains. This is reflected in Local Plan policies NE2 (Protecting Designated Biodiversity and Geodiversity Assets) and policy NE3 (Biodiversity).

New developments are required to avoid negative impacts on existing biodiversity. Where this is not possible, mitigation measures should be identified; if these are not possible on site, then they should be offset elsewhere as a compensatory measure.

Warwickshire County Council Ecology Services will assess the impact of developments on their locations. Using their biodiversity impact assessment calculator, a Biodiversity Impact score is produced if it indicates that there will be a net loss of then mitigation via an offsetting scheme will be required. The offsetting scheme will require the identification of an alternative (receptor site or sites) accompanied by a management plan for the provision and maintenance over a minimum of a thirty-year period. If no alternative sites can be provided, then the developer can enter into agreement with the County Council to fund improvements to a site promoted by the County Council.

Further information regarding biodiversity offsetting can be obtained from the County Council at : <https://www.warwickshire.gov.uk/biodiversityoffsetting>

Open Space and Green Infrastructure

The Local Plan seeks to ensure that new development safeguards and enhances the area's existing Green Infrastructure by creating new, and improving the quality and capacity of existing open spaces as well as connectivity within the green spaces network.

Residential as well as certain employment development employing over 100 full time equivalent employees), will be expected to contribute to the quality of Warwick District's open spaces and green infrastructure networks. The amount and type of contribution will be proportionate to the scale of the development and the likely impact on the local open spaces/ green spaces network.

The Local Plan policy position regarding the protection, provision and maintenance of open spaces and sport / recreational facilities is set out in Policies HS1 to HS7.

Each development site represents unique opportunities for open space provision and applicants should engage with officers of the District Council's Development Management team and Green Spaces team at an early stage in the planning process.

Residential and appropriate non- residential development should comply with the open space standards that are detailed in the Public Open Space Supplementary Planning Document (SPD) that was approved in April 2019. This SPD gives very detailed guidance on how the Council will seek physical and financial contributions towards the creation and maintenance of open spaces (of various typologies).

It is the ambition of the SPD to ensure that new development brings forward public open space that reflects and replicates the District's historical levels of open space. In doing so it will ensure that existing and emerging communities have appropriate levels of access to high quality green space networks.

The Public Open Space Supplementary Planning Document also includes details regarding playing pitch requirements, areas for play and social interaction for children and youths, allotments and sustainable urban drainage schemes. Information regarding the design and management of such assets is also included as well as template Section 106 Agreements.

Specific guidance on the adoption/transfer, management and maintenance requirements relating to open space and SuDS are set out in the SPD and are a very important consideration that should be addressed and agreed early in the planning process.

The Open Space SPD can be viewed on the Council's website:

Sustainable Drainage Systems (SuDS)

There are areas in the District that have been identified as being at risk of flooding. Flood risk arises from rivers, canals, sewers, surface water and ground water. Policies FW1 and FW2 of the adopted Local Plan seek to manage and reduce flood risk by using a sequential testing approach to development.

Developers will therefore have to demonstrate that account has been taken of flood risk from all sources, and that the proposed development incorporates mitigation and management measures appropriate to the use and its location. The Council also requires developers to improve water efficiency and reduce surface water run-off through the use of a range of Sustainable Drainage Systems (SuDS).

Details of the requirements associated with the provision of SuDS is located within the Council's Public Open Space SPD (April 2019).

Flood defence measures that may be deemed necessary to a development to mitigate specific impacts of that development, (including SuDS) will normally be sought through a planning condition. However, in certain circumstances a section 106 agreement may be required.

Education (including primary, secondary, pre-school, further education and special needs education)

The NPPF (paragraph 72) states that the Government attaches great importance to ensuring that sufficient choice of school places is available to meet the needs of existing and new communities. This approach is further developed in the adopted Local Plan as it is accepted that housing proposals will generate the need for additional educational capacity for all age groups and to support those pupils with special educational needs.

Warwickshire County Council (WCC) has a statutory responsibility to ensure that there are sufficient school and childcare places available to local children and young people living within the county of school age and whose parents want their children to be educated by the state. It is important that these places are available within a reasonable travel distance for all those of school age occupying new residential development. Warwick District has worked with WCC to establish future requirements that include adding capacity to existing schools and where necessary, the planning and delivery of new schools. Much of this is itemised in the Council's Infrastructure Delivery Plan.

Residential developments will be required to contribute towards the provision of educational infrastructure where there is not enough spare capacity in existing appropriate schools to meet the needs generated by the development. This may include financial contributions and / or the provision of land and buildings to enable new schools to be provided or for existing schools to be extended. Developments which are of such a scale as to require the provision of a new school will be expected to fully fund the most appropriate size of school which would be sufficient to accommodate the projected pupil generation. Where a new school is serving the needs of multiple developments, the cost of the school will be shared proportionately across the relevant developments.

Where a new development is proposed in an area with sufficient projected capacity, no financial contribution will be required; however, where the proposed development would result in insufficient projected capacity a contribution will be required. If there is insufficient capacity to accommodate the increase in pupils likely to be generated by a development and the development itself cannot enable the necessary provision, then Warwickshire County Council will raise objection to the development.

It is in the interests of the developer and to potential residents to ensure that schools are able to accommodate the additional pupils generated by their development. It is recommended that developers contact the County Council's education team at the earliest possible stage to ascertain whether there would be a requirement for additional education provision within the locality of their proposed development.

[www.warwickshire.gov.uk/obligations-service- area/education-early-years-provision/1](http://www.warwickshire.gov.uk/obligations-service-area/education-early-years-provision/1)

In circumstances where it is not possible to provide school places within a reasonable walking distance an additional contribution towards the cost of providing transport for children to school may be required. The contribution will reflect the cost of providing the transport for a defined period of time. It must be stipulated that this is a fall –back position that will be reluctantly utilised (as the overriding majority of new development should be in suitable sustainable locations with acceptable levels of access to schools).

The planning policy approach for seeking contributions from appropriate development is set out in Policy DM1 – Infrastructure Contributions that defines the general approach of seeking contributions to provide school places at existing or expanded schools. Policy DS12 specifically allocates land for new schools required to support the large scale housing growth at Kenilworth and South of Warwick and Leamington.

The requirement to consider contributions towards educational facilities will apply to all urban and rural residential developments which are likely to generate demand for school places. Contributions will not be sought from studio or one bedroom dwellings, institutional accommodation exclusively for undergraduate students or from sheltered/ elderly housing and other specialist housing developments where children will not live.

Highways / Transport

It is critical to the successful and sustainable growth of Warwick District that transport improvements are delivered. Warwickshire County Council (WCC) is responsible for the maintenance of the local highway network within Warwick District. WCC also produces the Warwickshire Local Transport Plan and is responsible for traffic management and road safety as well as further responsibilities in relation to public transport, school transport and public rights of way.

www.warwickshire.gov.uk/directory/30/publications/category/179

The Warwickshire Transport Plan provides the strategic framework for transport in the County. It sets out likely transport infrastructure requirements and priorities for Warwick District aimed at tackling congestion, promoting sustainable travel, safer roads, improving public health and wellbeing, and improving the street environment. Specific schemes are itemised in the Warwick District Infrastructure Delivery Plan.

The District Council's strategy, as set out in the adopted Local Plan for managing growth is to locate development in sustainable locations and identify appropriate and deliverable measures to meet the transport needs of the District. The transport objectives of the policies included in the Local Plan (policies TR1 to TR5) are consistent with the Local Transport Plan and focus on a number of high priority options, including;

- Improvements to buses and rail developments
- Improvements to major congestion hotspots
- Cycle parking and cycle and pedestrian routes to key destinations

- Better integration of transport and land uses planning to reduce the need to travel
- Improved public transport information
- Improved pedestrian crossing facilities
- School / business travel plans
- Improvements to the Rights of Way Network

All new developments will be required to provide financial and / or in-kind contributions to mitigate the transport impacts of the development. This will support delivery of the infrastructure and services needed to facilitate travel by sustainable modes. It will also enable improvements to be made to the local and strategic road and rail networks.

www.warwickshire.gov.uk/obligations-service-area/transport/1

Where there is likely to be a transport impact there will be a requirement for developers to support any planning application with a Transport Assessment (TA). The type and level of any contributions towards transport infrastructure provision will be considered in the TA and negotiated with the Highway Authority (WCC).

Detailed technical pre-application discussions with WCC on the transport assessment are essential for major developments.

Direct infrastructure provision, financial and other contributions (including those for bus services) towards mitigating measures will be included in a planning obligation (Section 106). The implementation of any physical changes to the highway network required to accommodate, or mitigate the effects of a proposal will be managed through a highways agreement with the Highway Authority (Section 278 Agreement). For major schemes it will be necessary to define the highways agreements at the time planning permission is granted. In such cases the highways agreement will be referred to in, and linked to, the planning agreement. This will ensure certainty and transparency of implementation requirements and costs for all parties.

In addition to local transport mitigation, S106 contributions will be required for strategic transport schemes (identified in the IDP) related to the impacts of cumulative growth.

Developers may also be required to prepare and agree the content and implementation of a Travel Plan to mitigate the impact of a development on the transport system and environment. This will be a standard requirement for major developments and depending on the nature of the development, the Plan may be secured by either a condition or planning obligation. Travel Plans for major development will normally include targets for modes of travel to and from the site and monitoring arrangements. There will be a need for financial commitments and incentives and/ or penalties for non-compliance.

In instances where a development may be served by a road that is not to be adopted, the Council will require agreement to be put in place to enable access for Council refuse collection and for the necessary maintenance and management of Council adopted open space, SuDS etc.

Development and delivery of Local Employment and Training Strategies – Local Labour Agreements

Warwick District Council will support and promote the use of local people and business through the construction and implementation stages of proposals, particularly major proposals that generate significant levels of employment through the development phase. The practicalities of implementing

such strategies are recognised. Developers who may wish to contest this approach will be required to substantiate their case for non-compliance.

It will seek agreement with developers to secure appropriate planning obligations for employment and training initiatives as part of development proposals.

In common with most other local authorities, applications for major development to Warwick DC will be expected to develop and implement an 'Employment and Skills Plan' (ESP) identifying opportunities for employment and up-skilling of local people through the implementation of the development. These ESP's will support the priority aims of Supporting Prosperity and Sustainable Communities that the District Council has identified in the emerging local plan and corporate policy documents.

An ESP will be required for developments that are for 100 (or more) dwellings or 5000 sq.m (or more) of commercial development.

This approach will be applied by the Council wherever possible to ensure that :-

Local people benefit from new job opportunities created by major developments in the District. Local people are provided with opportunities to gain skills needed for employment in growth industries. Local people have access to lifelong-learning and the promotion of "learning communities¹". The environmental impact of unnecessary travel is minimised by maximising local employment opportunities.

The Council will ask developers to prepare and submit an ESP as part of the planning process and it will be subject to discharge post-decision through the use of appropriate conditions.

Delivery would be via s106 (discussed pre-submission and prior to determination – planning permission will be granted subject to the completion and signing of a s106 in cases where agreement is outstanding at the time of determination).

If a development qualifies, the applicant will be asked to liaise with the Council's Economic Development Team, to determine the content of the ESP and help the applicant network with appropriate partners in the community such as colleges / schools, jobcentres, training bodies etc. ESP details will be subject to negotiation on a site-by-site basis. Companies with established training programmes will be able to have them taken into account.

The ESP may refer to opportunities being provided both during the construction phase (for the developer and subcontractors) and the occupation phase (primarily in the case of commercial developments and therefore aimed at the occupier). There may also be cases where a financial contribution towards support agencies may discharge relevant elements of the ESP.

The objectives of this plan are to:

- Demonstrate the use of local labour from within the developer's project team and the wider company;
- Where feasible (economically and practically), procure goods and services from local contractors;
- Encourage sub-contractors and suppliers to support employment from the local community;
- Demonstrate recruitment and training opportunities within the contractor's company;

¹A learning community is a group of people who share common academic goals and attitudes, who meet semi-regularly to collaborate on classwork. Such communities have become the template for a cohort-based, interdisciplinary approach to higher education.

- Provide opportunities for local residents to access jobs created during the construction phase of the development and subsequent occupation;
- Reduce economic inactivity in the local area, and
- Support the development of skills within the local community

Contents of the ESP can include:

1. Recruitment through Jobcentre Plus and other local employment vehicles;
2. Work trials and interview guarantees to those attending jobs clubs;
3. Pre-employment training;
4. Apprenticeships;
5. Vocational Training (NVQ);
6. Work experience (14-16 years, 16-19 years and 19+ years);
7. School, college and university site visits;
8. Construction Skills Certification Scheme (CSCS) Cards;
9. Supervisor training;
10. Leadership and Management Training;
11. Support with transport, childcare and work equipment;
12. In-house training schemes; &
13. Financial support to pre-employment jobs clubs [etc.].

Previous ESP's for applications within Warwick District have included (but not exclusively):

- Financial Support for an Employee Support "Gold Programme" for the removal of barriers to Employment;
- Financial Support for Jobs Clubs to enhance opportunities for local unemployed;
- Support for Jobs Clubs and guarantees for interviews for those accessing the jobs clubs;
- Support for, and attendance at, annual Jobs Fair (where appropriate);
- The encouragement of suppliers to buy and employ locally;
- The creation of training opportunities and apprenticeships;
- Supporting local unemployed people to reskill (including CSCS or safety certs) with local providers e.g.: Warwickshire College;
- 16-19 years – skills/training transition into work;
- Site visits for Warwickshire College Construction course students;
- Advertising job vacancies through jobs clubs and JCP for a period before they go on general release;
- Contractors: to seek to employ labour locally;



- To encourage subs to look to hire machinery and operators (eg: excavators, road sweepers, etc.) from local plant hire firms;
- Encourage sub-contractors to liaise with local training providers;

Pre-employment:

- Offer of apprenticeships to locals;
- Operate local workshops in conjunction with JCP and college to advise potential applications on how to prepare for job applications and interviews;
- Partner with local training providers to equip local candidates with the skills required pre-employment;
- Promote job opportunities through other avenues.

A Pro forma for Local Labour Agreement and further information is attached to this SPD as Appendix 2 (below).

Other Contributions

The list of types of Infrastructure and developer contributions required set out above should not be considered exhaustive as there may be situations where other contributions will be sought towards mitigating the impact of a specific development. In these instances, specific obligations will be negotiated on a case by case basis between the applicant, The Council and any other relevant third party. For example, the canal network is a recognised multi-functional District-wide asset. In appropriate, circumstances they may wish to secure contributions for canal enhancement works from development.

LOCAL PLAN POLICIES

Appendix 1



Plan Delivery Policies

DM1 Infrastructure Contributions

Development will be expected to provide, or contribute towards provision of:

- a) Measures to directly mitigate its impact and make it acceptable in planning terms, and
- b) Physical, social and green infrastructure to support the needs associated with the development.

Infrastructure and mitigation measures will be provided in a timely manner to support the objectives of the Plan.

The Council will, where appropriate, seek to secure site-specific infrastructure investments and / or contributions as well as off-site contributions and / or investments. The nature and scale of these will be related to the form of development and its potential impact on the site and surrounding area. The cumulative impact of developments will also be taken into account.

Developer contributions in the form of Planning Obligations and / or Community Infrastructure Levy (CIL) will contribute towards strategic infrastructure required to support the overall development in the Plan.

The Council will work in partnership with infrastructure providers and other delivery agencies in updating the Infrastructure Delivery Plan to ensure an up to date evidence base regarding infrastructure requirements and costs is maintained.

Explanatory Text

- 6.1** New development places pressure on existing infrastructure, such as schools, roads, open spaces, sports facilities, health facilities, emergency services and community halls. It is therefore important that new development proposals provide for or, contribute towards, investment in infrastructure. This is key to ensuring that cohesive communities and a good quality of life are achieved for both existing communities and emerging communities.
- 6.2** This policy seeks to support policies elsewhere within the Local Plan to ensure that appropriate mechanisms are in place to secure these contributions. The Community Infrastructure Levy (CIL) will be a key part of this. CIL contributions will be required from all viable development types (except those exempted within the CIL scheme) to contribute towards strategic offsite infrastructure. In parallel with the CIL scheme, contributions will also be sought towards the provision of on-site infrastructure and other offsite infrastructure that is not included with the CIL Regulation 123 list. This will be negotiated through planning obligations (e.g. section 106 agreements).
- 6.3** It is important that the cumulative impacts of all the development proposed in this Plan are taken into account in agreeing contributions. Some infrastructure impacts occur as a result of an accumulation of development. For instance, it may be the case that a particular development does not in itself trigger the need for a new road junction, but in combination with other developments a new road can be demonstrated as necessary. In this case, it is important that all developments contribute, not just the development that comes forward at the time the junction requirement is triggered. For this reason, the cumulative impacts of development will be considered in calculating appropriate levels of infrastructure contributions.

- 6.4** A key aspect of this policy will be the Infrastructure Delivery Plan (IDP). This will set out what infrastructure is required, when it is required, how much it will cost and what part of the overall cost will require contributions from development. It is important that this is kept up to date along with the evidence base that informs the IDP.

DM2 Assessing Viability

Developments will be expected to comply with the policies set out elsewhere in this Plan (including those policies that refer to the provision and funding of infrastructure), unless it can be demonstrated that the policies will result in the development being unviable.

Applicants should discuss viability concerns with the Council at the earliest possible stage in the development process.

Proposals that are unable to comply with the Plan's policies on viability grounds must be accompanied by a detailed Viability Assessment. The Viability Assessment will be independently reviewed by a viability specialist appointed by the Council at the applicant's expense.

Where the Viability Assessment demonstrates that the Plan's policies are likely to impact on the viability of a proposal, the applicant should discuss the implications of this with the Council.

Explanatory Text

- 6.5** National planning policy requires that careful attention is given to viability and the costs of development. For plans to be deliverable, development must be viable and should not be subject to obligations and policy burdens that undermine viability. Development should provide competitive returns to a willing landowner and willing developer.
- 6.6** The Council has undertaken a viability assessment of the proposals in this Plan, including requirements for affordable housing and development standards. The viability assessment has also been cross-referenced to the likely infrastructure costs associated with the Plan. This work indicates that as a whole, the Plan's proposals are viable; in the main, development proposals should be able to comply with the policies of the Plan and contribute to the costs of infrastructure through the CIL scheme without threatening viability.
- 6.7** However, specific circumstances may arise that mean planning obligations and policies make a development unviable that would otherwise contribute positively to the delivery of the Plan. In these cases, applicants will be expected to demonstrate how planning obligations and policies result in the development being unviable by preparing a Viability Assessment. The Viability Assessment should be undertaken in accordance with the RICS guidance note on "Financial Viability in Planning" or any updates of this guidance.
- 6.8** The Council will appoint a viability specialist to undertake an independent review of the Viability Assessment. Where this independent review supports the case that planning obligations and policies will result in the development being unviable, the Council will negotiate with applicants to agree which policies or planning obligations will be compromised and to what extent. The applicant will be required to fund the independent review of the Viability Assessment

Delivery and Monitoring

DELIVERY AND MONITORING ACTIVITIES	
Area of Activity	Description of Activity
An on-going assessment of Plan viability	<ul style="list-style-type: none"> Factors affecting the viability of the Plan and the delivery of specific proposals within the Plan will be monitored on an annual basis. This will include changes to land values, the housing and the employment markets, development costs and the impact of the planning obligations and policies associated with this Plan. Where these factors indicate a significant change, the Plan Viability Assessment will be reviewed. This in turn will inform the need to review the CIL scheme and the policies of the Plan
Development Plan Documents to align with this Plan	<p>Within the Plan period, the Council will seek to adopt three Development Plan Documents to align with the Plan:</p> <ul style="list-style-type: none"> Gypsy and Traveller Site Allocations DPD Canalside DPD Leamington Town Centre Area Action Plan
Development Briefs and Supplementary Planning Documents	<p>To support the delivery of the Plan, the Council will review or adopt Development Briefs and Supplementary Planning Documents / Guidance in relation to the following:</p> <ul style="list-style-type: none"> Parking Standards; Residential Design; Affordable Housing; Sustainable Buildings; Green Space; Health Impacts (in conjunction with Public Health); East of Kenilworth Development Brief; Whitnash East / South of Sydenham Development Brief.
An Infrastructure Delivery Plan	<p>An Infrastructure Delivery Plan (IDP) will be prepared and maintained, setting out:</p> <ul style="list-style-type: none"> Infrastructure requirements associated with the Plan and any DPDs prepared that align with this Plan The costs of infrastructure requirements Sources of funding for infrastructure Infrastructure delivery mechanisms and responsibilities The IDP will be supported by a sound evidence base, prepared and maintained in partnership with infrastructure providers The IDP will be reviewed on at least a biannual basis to take account of updated evidence, changing opportunities and requirements and market forces

DELIVERY AND MONITORING ACTIVITIES

Area of Activity	Description of Activity
The potential to use compulsory purchase orders to bring forward essential elements of the Plan	<ul style="list-style-type: none"> The Council will consider the use of compulsory purchase order (CPO) powers to ensure land is available to deliver essential infrastructure and other essential elements of the Plan
Ongoing work relating to duty to co-operate	<ul style="list-style-type: none"> The Council will continue to co-operate with other councils and bodies to ensure that cross-border issues of strategic significance are addressed. This will cover a range of issues including housing provision, employment land, green belt and infrastructure planning and delivery.
Neighbourhood Plans	<ul style="list-style-type: none"> The Council will support the preparation and adoption of Neighbourhood Plans. Neighbourhood Plans should be in general conformity with the policies and proposals in this Local Plan. In particular, they should conform with, and plan positively to support, the policies set out in the Development Strategy chapter of this Local Plan. On adoption of the Local Plan, the Council will provide further guidance to neighbourhood planning groups relating to strategic policies in the Local Plan. Where Neighbourhood Plans come forward and are "made", they will be encompassed as part of the Development Plan for the area. In recognition of the importance of neighbourhood plans to local people and places, the Council will give weight to policies within "made" neighbourhood plans in line with national policy, including ensuring that non-strategic policies set out in neighbourhood plans take precedence over Local Plan policies where these are in conflict. The Council will ensure that priorities identified in neighbourhood plans for enhancing or providing new facilities will be aligned with the infrastructure delivery plan. Information on local infrastructure requirements will be established, reviewed and updated alongside the district-wide Infrastructure Delivery Plan. In accordance with national regulations, a meaningful proportion of CIL funds will be passed to the relevant parish or spent by the District Council on behalf of the community in which the development is located.
Reviewing the Plan	<ul style="list-style-type: none"> Throughout the Plan period, the Council will monitor evidence and issues that could render the Plan out of date and as a result could trigger a review or partial review. The circumstances in which the Plan will be reviewed are set out in Policy DS19. Policy DS19 also commits the Council to undertaking a comprehensive review of circumstances before 31st March 2021 to assess whether a partial or full Plan review is required.

The development management process	<ul style="list-style-type: none"> · The process for determining planning applications is central to the delivery of the Local Plan. Planning applications will be determined in accordance with the policies and proposals in this Plan and national planning policy. To aid the process for determining planning applications, applicants should understand the relevant sections of the Plan and any support documents and guidance and should ensure that proposals comply with the proposals and policies prior to submission. To assist in this, the Council welcomes pre-application discussions. Where proposals do not accord with the Plan's proposals and policies they will not normally be approved.
Monitoring the Local Plan	<ul style="list-style-type: none"> · The delivery and impact of the Plan's proposals and policies will be monitored on an annual basis. This information will be collated and presented in an annual monitoring report. The annual monitoring data will be used to assess the ongoing effectiveness of the Plan and to inform decisions about the need to review the Plan and associated documentation.

LOCAL LABOUR AGREEMENT
(PREFERRED FORMAT AND FURTHER CONSIDERATIONS)

Appendix 2

WARWICK DISTRICT COUNCIL
Local Labour Agreement

**Between Warwick District Council
and**

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX for XXXXXXXXXXXXXXXXXXXX

Planning Application Number:	
Date:	

Introduction

Building upon initial commitments made in the main planning application (identified above), this document provides the basis of the Local Labour Agreement (LLA) made between Warwick District Council (the Council) and ***** (the Owner). This LLA relates to both the construction and operational (delete as appropriate) phases of this development.

Context

***** and the Council have a mutual interest in the successful development of **** to ensure that it supports the local economy and benefits the broader community. The development of the site carries potential employment benefits for the local area, with the applicant proposing the creation of a number of new full and part time posts at a variety of skill levels and occupations and offers the creation of new facility which will offer new opportunities for both local businesses and individuals.

Warwick District residents may benefit significantly from this investment. Developments such as this one present residents with an excellent opportunity to gain employment and improve skills locally, where possible using public transport, cycling and walking as part of the implementation of the local travel plan.

The careful management of developments such as this will help shape the local labour force to meet industry requirements, raise ambitions and aspirations and help residents to understand better the employment and training opportunities available to them.

The Agreement

6.5 Na

1. In the event where the Development is considered likely to employ **10 or more** people:
 - 1.1. The Owner shall in connection with the **construction** of the Development:
 - 1.1.1. Submit an Employment and Skills Plan (ESP), substantially in the form of that set out in Appendix A to this Agreement, to the Council for its written approval at least [] months before the commencement of the Development on site, such approval to include the date by which the ESP and Method Statement are to be implemented by the Owner;
 - 1.1.2. Comply with and implement the approved ESP and Method Statement and provide the Council with information as required to demonstrate its compliance with the ESP and Method Statement;
 - 1.1.3. Provide to the Council on a monthly (or quarterly) basis a report outlining the achievements during the previous month against the ESP and Method Statement and the employment and skills Key Performance Indicator, and provide details of the various employment and skills activities delivered in the month;
 - 1.1.4. Attend a meeting with the Council (to be convened by the Council) after the completion of the Development to review the completed Development and the Owner's performance against the Key Performance Indicators and related targets (including the performance of the employment and skills Key Performance Indicator), the ESP and Method Statement and to consider the scope for further improvement on future Developments.

- 1.2. The Council covenants with the Owner that within 28 days of the submission by the Owner of the ESP and Method Statement the Council shall either approve the ESP and Method Statement in writing or suggest reasonable amendments thereto in writing save that if at the end of the 28 day period the Council has not approved the ESP and Method Statement or provided comments in writing suggesting appropriate amendments to the ESP and Method Statement such failure to comment in writing shall be taken as approval of the ESP and Method Statement.
2. In the event where the Development is regarded as likely to employ **less than 10** people the Owner shall in connection with the **construction** of the Development:
 - 2.1. Use reasonable endeavours to ensure that:
 - 2.1.1. [50%] of employment opportunities generated during the construction phase should be for Local People;
 - 2.1.2. All new temporary and permanent vacancies including apprenticeships not identified in the Employment and Training Plan to be reported to Jobcentre Plus in advance of recruitment; Jobcentre Plus will promote vacancy details to local job seekers and are able to match suitable candidates to job specifications for consideration by the developer/contractor and sub-contractor(s);
 - 2.1.3. [50%] of the businesses contracted and sub-contracted in the construction phase of the Development to be Local Businesses;
 - 2.1.4. All sub-contracting and tendering opportunities to be advertised locally to make Local Businesses aware of the opportunities, timescales and procedures to be adopted in tendering for available work.
 - 2.2. The Owner shall use reasonable endeavours to provide promptly the monitoring information required. The monitoring information will include the submission to the Council every 6 months from project commencement headline non-identifiable information as agreed by this LLA in the format at Appendix C.
3. Where applicable, the Owner shall in connection with the **operation** of the Development use reasonable endeavours to:
 - 3.1. Ensure that [50%] of employment opportunities generated at the operational phase should be for Local People;
 - 3.2. Work with Jobcentre Plus in the development and implementation of an Employment and Training Plan to deliver a targeted recruitment and training campaign linked directly to the operational jobs within the Development to prepare the local labour market and match suitable candidates to job specifications including:
 - 3.2.1. Guaranteed job interviews for local unemployed residents who have undertaken specific pre-employment training related to the development, the target for which is [25%] of the starting workforce;
 - 3.2.2. All new vacancies to be advertised in local newspapers such as the Leamington Courier, Warwickshire Telegraph and on the Universal Jobmatch online service;
 - 3.2.3. To recruit [] apprentices, provide [] work experience placements for those unemployed, [] work experienced placements for those aged 14-18 years in education associated with the operation of the Development;

- 3.3.** Provide promptly the monitoring information required. The monitoring information will include the submission to the Council every 6 months from project commencement headline non-identifiable information as agreed by this LLA in the format at Appendix C.
- 4.** The Owner shall issue a written statement to its prospective contractors and sub-contractors at the stage of tendering for work and contracts associated with the construction of the Development. This will state that any company invited by the Owner shall be given clear written details of the obligation to use all reasonable endeavours to abide by the sites LLA, and subsequently that company must include a similar term within its contracts.
- 5.** The Owner shall issue a written statement to its prospective operator associated with the operation of the Development. This will state that any company invited by the Owner shall be given clear written details of the obligation to use all reasonable endeavours to abide by the sites LLA obligations.

Appendix A: LLA Headline Information – Employment and Skills Plan for Construction Phase

Appendix B: LLA Headline Information - Pro-forma for Construction Phase

Appendix C: LLA Headline Information - Pro-forma for Operational Phase

Marketing and public relations

Where positive evidence arises of relevance to this LLA, the Council will be happy to work with [*****], where reasonable time allows, on media releases.

Equal opportunities

[*****] will offer equal opportunity to all, regardless of race, colour, nationality, ethnic origin, sex (including gender reassignment), marriage, disability or age. All applicants and employees will be treated equally in respect of recruitment, promotion, training, pay and other employment policies and conditions. Reasonable adjustments will be made to accommodate those with special needs.

Defining 'local'

A local person or business is defined here as a person resident within Warwick District Council's geographical boundaries (the local area) at the time of their initial application for employment in relation to the Development.

Local procurement is defined as the procurement of goods or services from a company or company branch located within the Coventry and Warwickshire area.

Review

[*****] and the Council reserve the right to make changes if required due to unforeseen changing circumstances. Any changes must be agreed in writing by both parties and both parties must act reasonably.

This LLA will be valid for five years, after which it should be reviewed.

We the undersigned, commit to this Local Labour Agreement, and pledge to use reasonable endeavours to fulfil the conditions above.

.....

For and on behalf of

Warwick District Council

Dated.....

.....

For and on behalf of

[XXXXXXXXXXXXXXXXXXXXXXX]

Dated.....

LLA Headline Information

Appendix A to LLA Agreement with *****

Pro-forma for Construction Phase for small projects

When completed please email to: economic.development@warwickdc.gov.uk

Date	
Author	
Site Name	
Developer	
Main Contractor	
End User operation(s)	
% of businesses contracted and sub contracted that are local businesses	
Brief details of sub-contracting and tendering opportunities advertised locally to make Local Businesses aware of the opportunities, timescales and procedures to be adopted in tendering for available work	
Number of Local People Employed	
Brief details of all new vacancies to be advertised in local newspapers such as the Leamington Courier and on the JCP service	

% of employment opportunities generated for Warwick DC residents	
Number of guaranteed job interviews for local unemployed residents who have undertaken specific pre-employment training related to the development	
Number of apprentices (starts and completions)	
Number of work experience placements for those unemployed	
Number of work experience placements for those aged 14 – 18 years in education	
Number of work experience placements for those aged 14 – 18 years in education	
Additional labour market measures	
Anticipated new vacancies	

LLA Headline Information

Appendix B to LLA Agreement with *****

Pro-forma for Construction Phase for small projects

When completed please email to: economic.development@warwickdc.gov.uk

Date	
Author	
Site Name	
Operator	
% of businesses contracted and sub contracted that are local businesses	
Brief details of sub-contracting and tendering opportunities advertised locally to make Local Businesses aware of the opportunities, timescales and procedures to be adopted in tendering for available work	
Number of Local People Employed	
Brief details of all new vacancies to be advertised in local newspapers such as the Leamington Courier and on the JCP service	

% of employment opportunities generated for Warwick DC residents	
Number of guaranteed job interviews for local unemployed residents who have undertaken specific pre-employment training related to the development	
Number of apprentices (starts and completions)	
Number of work experience placements for those unemployed	
Number of work experience placements for those aged 14 – 18 years in education	
Additional labour market measures	
Anticipated new vacancies	

Additional Information

Planning Agreements

A Planning Agreement is a legal document (a deed) which can be entered into by “any person with an interest in the land”, but who is usually the developer who is seeking planning consent.

The inclusion of community benefit clauses in planning agreements (e.g. requiring planners to target jobs created in their development) can ensure the number of job opportunities for local residents is maximised.

Conditions / Section 106 Agreements

It is suggested that the following models may be considered as example clauses to be included in the Section 106 Agreement but each agreement would have its own customised clauses drawn up by the Council's legal service, policy and development management teams to ensure agreements deliver targets and planned outcomes.

Condition:

The development permitted by this planning permission shall not be started by the undertaking of a material operation as defined in section 56(4)(a-b) of the Town and Country Planning Act 1990 until details of a Local Labour Agreement have been agreed in writing with the Local Planning Authority.

Item:

The developer shall pay the Council (or such other party as the Council shall direct in writing) the sum of £xx,xxx) for the provision of vocational training facilities for the local community.

Item:

The developer shall use all reasonable endeavours to create a minimum of xxx construction apprenticeships for local young people and endeavour to employ xx % from the local community.

Item:

The developer shall use all reasonable endeavours to source or procure a proportion of materials and services from local providers.

TEMPLATE OF DRAFT SECTION 106 REQUIREMENTS

Appendix 3

**Planning Obligation by Deed of Agreement under
Section 106 of the Town and Country Planning Act 1990**

**Relating to the development of land at
Planning Reference No. W**

Dated : 2019

(1) WARWICK DISTRICT COUNCIL

(2) WARWICKSHIRE COUNTY COUNCIL

(3)

(4)

**Warwick District Council
Riverside House
Milverton Hill
Leamington Spa
CV32 5HZ
DX 29123 Leamington Spa 1
Tel: 01926450000
Fax: 01926 456611**

DATE

2019

Parties

- (1) **Warwick District Council** of Riverside House Milverton Hill Leamington Spa CV32 5HZ ("the Council")
- (2) **Warwickshire County Council** of Shire hall, Warwick CV34 4RR ("the County Council")
- (3) ("**the Owner**")
- (4) ("**the Mortgagee**")

Introduction

- 1** The Council is the local planning authority for the purposes of the Act for the area in which the Site is situated.
- 2** The County Council is the Education Authority and Highway Authority for the area in which the Site is situated.
- 3** The Owner is the freehold owner of the Site which is registered at HM Land Registry under Title Number WK.
- 4** The Mortgagee is proprietor of a legal charge registered at HM Land Registry against Title Number WK
- 5** The Owner has submitted the Application to the Council and the parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed.
- 6** The Council resolved on _____ to grant the Planning Permission under planning reference number W subject to the prior completion of this Deed.

Now this Deed Witnesses as Follows:

Operative Part

1 Definitions

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

"Act"	means the Town and Country Planning Act 1990 as amended "Affordable Housing" means affordable housing as defined in the National Planning Policy Framework
"Affordable Housing Scheme"	means a scheme providing for the types, size and tenure of the Affordable Housing Units and the percentage rent (relative to local market rents) to be paid for the Affordable Rented Units.
"Affordable Housing Units"	means 40% (rounded up to the nearest whole number) of the total number of Dwellings to be constructed on the Application Site which will be provided for the purposes of Affordable Housing and shall be comprised of
"Affordable Rented Units"	means Affordable Housing to be constructed pursuant to the Affordable Housing Scheme and in accordance with Part 1 of the Third Schedule and shall be let at a rent of no more than the mid-point between target Social Rent and 80% of market rent (inclusive of service charges where applicable) or such other rent level as shall be permitted to be charged by a Registered Provider or as a Registered Provider shall otherwise be permitted to charge as a matter of law.

"Air Quality Type 3 the Air Mitigation Contribution"	means the sum of £ to be applied towards Quality Provision and which shall be paid in accordance with the Part [] of the Third Schedule
"Air Quality Provision"	means the provision of air quality monitoring equipment and/ or provision of other assistance or support in respect of projects relating to air quality monitoring and management within the Council's area described as "Type 3" mitigation in the Council's "Air Quality and Planning Supplementary Planning Document (January 2019) at the absolute discretion of the Council. For the avoidance of doubt "Type 3" mitigation shall include a feasibility study evaluating the efficacy of available mitigation measures implemented within the Council's Air Quality Management Areas.
"Allotment Contribution"	means the sum of £ towards the development of allotments in, or if not within 5 years, towards the improvement of allotments in which shall be paid in accordance with Part 2 of the Third Schedule
"Application"	means the application for full planning permission dated submitted to the Council for the Development and allocated reference number W
"Application Site"	means the land which is the subject of the Application and against which this Deed may be enforced as shown edged red on the Plan.
"Bus Service Contribution"	means the sum of £ to be applied towards [the enhancement of the existing bus service, provision of a new bus stop along and for the maintenance of the bus shelter for a 5 year period and which shall be paid in accordance with Part 2 of the Third Schedule.
"Commencement of Development"	means the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and "Commence" "Commenced" and "Commence Development" shall be construed accordingly.
"Contributions"	means the and reference to "Contribution" shall be construed accordingly.
"Cycle Link Contribution"	means the sum of £ to be applied towards and which shall be paid in accordance with Part 2 of the Third Schedule

"Development"	means the Development of the Application Site by the
"Dwellings"	means the Affordable Housing Units and the Open Market Housing Units and reference to "Dwelling" shall be construed accordingly.
"Education Contribution"	<p>means the sum of £ to be applied as follows in accordance with Part 1 of the Fourth Schedule:</p> <p>£ towards making necessary adaptations to existing schools to support the attendance at the school identified in a child's EHC Plan (hereinafter known as "the Secondary SEN Contribution"</p> <p>£ towards the provision of teaching facilities at (hereinafter known as "the Primary Contribution")</p> <p>£ towards making necessary adaptations to existing schools to support the attendance at the school identified in a child's EHC Plan (hereinafter known as "the Primary SEN Contribution ")</p>
"Help To Buy Agent"	means agents appointed by Homes England to administer sales of Shared Ownership housing in the West Midlands.
"Highways Contribution"	means the sum of £ to be applied towards and which shall be paid in accordance with Part 1 of the Fourth Schedule
"Home Choice Allocation Scheme"	means the Council's choice-based lettings scheme which relates specifically to the Affordable Housing Units or where this allocation scheme is superseded the Council's housing allocations scheme in force at the time.
"Homes England"	means a body established under Part 1 of the Housing and Regeneration Act 2008 (as amended) as the national housing and regeneration agency for England or any such successor national housing and regeneration agency for England.
"Indoor Sports Facilities Contribution"	means the sum of £ to be applied towards and which shall be paid in accordance with Part 2 of the Third Schedule.
"Interest"	interest at 4% per cent above the base lending rate of the HSBC Bank Plc from time to time
"Library Contribution"	means the sum of £ to be applied towards improving, enhancing and extending the facilities or services at. This may include purchase of additional stock, targeted collections, additional seating/study spaces or related facilities, improved family facilities and targeted promotions to inform new residents of services available to them and shall be paid in accordance with Part 1 of the Fourth Schedule.

"Management Company"	means a fully constituted company capable of managing and maintaining the Public Open Space and/or SUDS, a copy of its memorandum and articles of association having been provided to and approved by the Council prior to the transfer of the Public Open Space and/or SUDS.
"Monitoring Fee"	<p>means the sum paid to the Council for the purpose of monitoring and supervising compliance with the obligations contained in this Deed which shall be calculated as follows:</p> <p>Monitoring Fee = A x B x C x D</p> <p>Where:</p> <p>A = Number of Obligations to be monitored</p> <p>B = £39.64 (Calculated by WDC Finance and based on the monitoring Officer's salary and supporting infrastructure requirements)</p> <p>C = 5 (number of hours of officer time handling each contribution. Max of 8 site visits per year)</p> <p>D = number of years for the expected monitoring of the Application Site</p>
"National Planning Policy Framework"	means the National Planning Policy Framework dated February 2019 or where the National Planning Policy Framework has been superseded such successor document.
"National Rent Regime"	means the regime under which the rents for tenants of Social Rented Units are set by The Regulator of Social Housing or its equivalent successor body.
"Occupation" and "Occupied"	means occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations
"Off-Site Play Provision Contribution"	means the sum of £ to be applied towards enhancing or improving play area and which shall be paid in accordance with Part 2 of the Third Schedule.
"Open Market Housing Units"	means dwelling houses constructed pursuant to the Planning Permission which are not Affordable Housing Units.
"Outdoor Sports Facilities provision Contribution"	means the sum of £ to be applied towards the and improvement of and which shall be paid in accordance with Part 2 of the Third Schedule.
"NHS Hospital Improvements Contribution"	means the sum of £to be applied towards and shall be paid in accordance with Part 2 of the Third Schedule.

"NHS Doctors Surgeries Contribution"	means the sum of £ to be applied towards the improvement and/or extension of Medical Centre and shall be paid in accordance with Part 2 of the Third Schedule
"Plan"	means the plan attached to this Deed
"Planning Permission"	means the full planning permission subject to conditions to be granted by the Council pursuant to the Application as set out in the Second Schedule.
"Planning Obligations"	means those obligations contained in the Third Schedule and the Fourth Schedule to this Deed and reference to "Planning Obligation" shall be construed accordingly.
"Police Infrastructure Contribution"	Police Infrastructure Contribution means the sum of £ to be applied towards the provision of equipment, vehicles and premises for the Safer Neighbourhood Team and which shall be paid in accordance with Part 2 of the Third Schedule
"Protected Tenant"	means any tenant or leaseholder who: <ul style="list-style-type: none"> (a) has exercised the right to acquire an Affordable Rented Unit or a Social Rented Unit (as the case may be) pursuant to the Housing Act 1996 or any statutory provision for the time being in force; or (b) has exercised any statutory right to buy an Affordable Rented Unit or a Social Rented Unit; or (c) purchased 100% of the equitable shares of a Shared Ownership Unit so that the said leaseholder or purchaser owns the Dwelling.
"Registered Provider"	means a registered provider of social housing as defined in Part 2 of the Housing and Regeneration Act 2008 who is registered with the Regulator of Social housing pursuant to Chapter 3 of Part 2 of the said Act and has not been removed from the register pursuant to Section 118 or Section 119 of that Act and which is party to the District Council's Joint Commissioning Partnership or if not a party to the District Council's Joint Commissioning Partnership or if not a registered provider of social housing as defined in Part 2 of the Housing and Regeneration Act 2008 as otherwise agreed in writing by the Council (acting reasonably).
"Regulator of Social Housing"	means a body established under section 80A of the Housing and Regeneration Act 2008 (as amended) as the body responsible for the regulation of social housing providers in England and shall include any predecessor (where the context so allows) or successor regulatory body for social housing providers.
"Relevant Index"	means the appropriate index utilised and calculated in accordance with the [] Schedule.

"Rights of Way Contribution"	means the sum of £ towards improvements to public rights of way within a 1.5 mile radius of the site which for the avoidance of doubt are footpaths numbers and which shall be paid in accordance with Part 1 of the Fourth Schedule
"Section 73 Consent"	means a planning permission granted pursuant to Section 73 of the 1990 Act which varies and/or removes any condition to which the Planning Permission and/or to which such planning permission granted pursuant to Section 73 of the 1990 Act was granted subject to.
"Serviced Condition"	means access to services including roads sewers gas electricity water and telecommunications up to the boundary of each Affordable Housing Unit rendering them ready for immediate Occupation.
"Shared Ownership"	means Affordable Housing Units where an initial equity share is sold by the Registered Provider to qualifying persons under the Home Choice Allocation Scheme and via the Help To Buy Agent with a rent charged on the unsold equity. Where Shared Ownership is allowed the initial mortgage cost for each Shared Ownership Unit must be no more than three and a half times the average household income of newly forming households within Warwick District
"Shared Ownership Lease"	means a lease including the covenants set out in the Shared Ownership Lease published by the Regulator Of Social Housing granted to a qualifying person by the Registered Provider on an equity share basis whereby the qualifying person shall pay for the initial percentage in multiples of 25% or such other multiples of percentage of equity share the Registered Provider in conjunction with the Council may require PROVIDED THAT such initial percentage SHALL NOT exceed 75% in the first instance and the qualifying person being entitled to purchase the remaining percentage of equity share in further tranches to enable 100% ownership.
"Shared Ownership Unit"	means such Affordable Housing Units that will be made available by way of a Shared Ownership Lease with a Registered Provider.
"Social Rented"	means Affordable Housing where the rents are subject to the National Rent Regime.
"Affordable Housing SPD"	means the Council's Supplementary Planning Document in respect of Affordable Housing dated January 2008 or where this document is superseded the Supplementary Planning Document in respect of Affordable Housing currently adopted by the Council

"Sustainable Travel Pack Contribution"	means the sum of £75 per Dwelling to be used for the purpose of providing information packs to be provided to the initial Owner and/ or occupiers of the Dwellings to promote sustainable travel and road safety in the local area to be applied in accordance with Part 1 of the Fourth Schedule.
"Warwick District"	means the geographical area falling under the jurisdiction of the Council.
"Working Days"	means any day upon which the London clearing banks are open for business.

2 Construction of this Deed

- 2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and 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 Deed 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 and County Council the successors to their respective statutory functions save where specifically provided to the contrary by this Deed.

3 Legal Basis

- 3.1 This Deed is made pursuant to Section 106 of the Act.
- 3.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council and the County Council in their respective statutory capacities against the Owner, the successors in title of the Owner and any persons claiming through or under the Owner an interest or estate in the land or any part thereof.
- 3.3 To the extent that any of the obligations contained in this Deed are not planning obligations within the meaning of the Act, they are entered into pursuant to powers contained in Section 111 of the Local Government Act 1972 and Sections 1 to 8 of the Localism Act 2011.

4 Conditionality

This Deed is conditional upon:

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

SAVE FOR the provisions of Clauses 8.1, 15, 16 and 17 legal costs clause arbitration jurisdiction and delivery clauses which shall come into effect immediately upon completion of this Deed.

5 The Owner's Covenants

- 5.1 The Owner covenants with the Council to observe and perform the covenants as set out in the Third Schedule.
- 5.2 The Owner covenants with the County Council to observe and perform the covenants as set out in the Fourth Schedule.

6 The Council's Covenants

- 6.1 The Council covenants with the Owner to observe and perform the covenants as set out in Part 1 of the Fifth Schedule; and
- 6.2 The County Council covenants with the Owner to observe and perform the covenants as set out in Part 2 of the Fifth Schedule.

7 Confirmation of Interest

The Owner hereby warrants and confirms that apart from the parties hereto there are no other persons with a legal and equitable interest in the Site or any part thereof.

8 Miscellaneous

- 8.1 The Owner shall pay to the Council and County Council on completion of this Deed the reasonable legal costs of the Council and County Council incurred in the negotiation, preparation and execution of this Deed.
- 8.2 The Owner shall notify the Council's Head of Development Services and the Housing Strategy Manager in writing of the Commencement of Development.
- 8.3 It is hereby agreed and declared that unless specifically agreed no provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999
- 8.4 This Deed shall be registrable as a local land charge by the Council.
- 8.5 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Council and/or the County Council under the terms of this Deed or the Owner is required to serve notice upon the Council and/or the County Council:
 - (i) such agreement, approval or consent or expression of satisfaction shall be given in writing and shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction;
 - (ii) shall be given on behalf of the Council by the Head of Development Services and on behalf of the County Council by the Strategic Director of Communities or their nominee;

- 8.6 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall upon written request from the Owner effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.
- 8.7 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.
- 8.8 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or expires prior to the Commencement of Development.
- 8.9 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 8.10 Nothing in this Deed 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 (whether or not on appeal) after the date of this Deed.
- 8.11 Nothing contained or implied in this Deed shall prejudice or otherwise affect the rights powers duties and obligations of the Council in the exercise of its functions either as Local Planning Authority or in any other capacity and that all rights powers duties and obligations under any public and private statutes byelaws and regulations may be as fully and effectually exercised as if the Council was not a party to this Deed.
- 8.12 If there is any conflict between the terms of this Deed and any conditions attached to the Planning Permission the latter shall take precedence.
- 8.13 If there is any conflict between the terms of this Deed and the terms of any previous agreement the terms of this agreement shall take precedence.

9 Monitoring

- 9.1 The Owner hereby agrees to notify the Council and the County Council of the Commencement of Development within 21 (twenty one) days of the occurrence of the same PROVIDED THAT default in giving notice or confirming the date by exchange of correspondence shall not prevent the Commencement of Development or the operation of this Deed.
- 9.2 The Owner hereby agrees to notify the Council and where appropriate the County Council of the reaching of any of the Occupation or completion thresholds contained in this Deed such notification to be given within 7 (seven) days of the reaching of such threshold PROVIDED THAT default in giving notice shall not prevent the continuation of the Development or operation of this Deed.
- 9.3 Immediately upon the Commencement of Development the Owners shall pay to the Council the Monitoring Fee which shall be used by the Council for the purpose of monitoring and supervising compliance with the obligations contained in this Deed.

10 Mortgagee's Consent

The Mortgagee acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Site shall be bound by the obligations contained in this Deed and that the security of the mortgage over the Site shall take effect subject to this Deed SAVE THAT the Mortgagee shall have no liability under this Deed unless it takes possession of the Site in which case it will be bound by the obligations contained in Seventh Schedule.

11 Notices

- 11.1 Any notice consent or approval required to be given under this Deed shall be in writing and shall be delivered personally or sent by prepaid first class post or Recorded Delivery post or facsimile transmission.
- 11.2 The address for service of any such notice consent or approval as aforesaid shall be on the Council, the County Council and the Owner at the addresses aforesaid or such other address for service as shall have been previously notified in writing by the Council, the County Council and the Owner to all the other parties to this Deed save that payments of any monies to the Council shall be addressed specifically for the attention of the Head of Development Services and detailing the obligations to which the payment relates.
- 11.3 The address for service of any such notice consent or approval as aforesaid shall be on the County Council addressed to the Strategic Director of Communities, Communities, Barrack Street, Warwick CV34 4SX SAVE THAT payments of monies to the County Council shall be addressed for the attention of the Infrastructure Delivery Manager, Communities, Barrack Street, Warwick CV34 4SX.
- 11.4 A notice consent or approval under this Deed shall be deemed to have been served as follows:
- 11.4.1 if personally delivered at the time of delivery
 - 11.4.2 at the expiration of forty eight hours after the envelope containing the same was delivered into the custody of the postal authority within the United Kingdom
 - 11.4.3 if sent by facsimile transmission at the time of successful transmission
- 11.5 In proving such service it shall be sufficient to prove that personal delivery was made or that the envelope containing such notice consent or approval was properly addressed and delivered into the custody of the postal authority in a prepaid first class or Recorded Delivery envelope (if appropriate) or that the facsimile was successfully transmitted on a tested line as the case may be.

12 Waiver

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

13 Change in Ownership

The Owner agrees with the Council to give the Council immediate written notice of any change in ownership of any of its interests in the Site occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation purchased by reference to a plan.

14 Indexation

Any sum referred to in the Third Schedule shall be increased by an amount equivalent to the increase in the Relevant Index from the date of this Deed (or if later, the date the amount (where not fixed in this Deed) is finally agreed or determined) until the date on which such sum is payable.

15 Interest

If any payment due under the Third Schedule is paid late, Interest will be payable from the date payment is due to the date of payment.

16 VAT

All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.

17 Arbitration

In the event of any dispute or difference arising out of this Deed between the parties (other than a dispute or difference relating to a matter of law or concerning the meaning or construction of this Deed) such dispute or difference shall be referred to a sole arbitrator to be agreed between the parties and being a member of the Royal Institution of Chartered Surveyors or in the absence of agreement on the application of any party by the President of the Royal Institution of Chartered Surveyors and in these respects these presents shall be construed as a submission to arbitration within the meaning of the Arbitration Act 1996 the cost of such referral to be borne equally by the Parties.

18 Jurisdiction

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

19 Delivery

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

20 Liability of Individual Household Utility Companies and Registered Providers

20.1 The covenants contained in this Deed shall not be enforceable against individual purchasers or lessees or their respective mortgagees and successors in title of each of the Dwellings on the Application Site constructed pursuant to the Planning Permission or any Protected Tenant nor shall any obligation be enforceable against utility companies in relation to any parts of the Application Site acquired by them for electricity sub-stations gas governor stations or pumping stations or any of the operational functions of such companies or against anyone whose only interest in the Application Site or any part of it is in the nature of the benefit of an easement or covenant.

20.2 The covenants contained in this Deed shall not be enforceable against any Registered Provider acquiring an interest in the Application Site pursuant to Part 1 of the Third Schedule to this Deed SAVE THAT such Registered Provider shall be bound by the provisions of the said Part 1 of the Third Schedule.

21 Further Section 73 Consent

21.1 If any Section 73 Consent is granted after the date of this deed:

21.2 the obligations in this deed shall relate to and bind such Section 73 Consent; and

21.3 the definitions of Application, Development and Planning Permission (other than for the purpose of clause 1) shall be construed to include reference to (respectively) the planning application for the Section 73 Consent the development permitted by the Section 73 Consent and the Section 73 Consent itself.

Provided that:

21.4 nothing in this clause shall fetter the discretion of the Council or the County Council in determining any planning application for a Section 73 Consent and the appropriate planning obligations required in connection with the determination of the same;

21.5 to the extent that any of the obligations in this deed have already been discharged at the date that a Section 73 Consent is granted they shall remain discharged for the purposes of the Section 73 Consent; and

21.6 the Council and the County Council reserve the right to insist upon the completion of a separate planning obligation by deed of agreement in connection with any Section 73 Consent if they (acting reasonably) consider it desirable to do so.

21.7 In the event of a different s.106 obligation agreed by the Council being binding on any Section 73 Consent, this obligation shall not apply to that Permission if that separate s.106 obligation expressly states that it is in substitution for the obligations in this obligation

22 Execution

This Deed may be executed in any number of counterparts each of which when executed and delivered shall be an original and all the counterparts together shall constitute one and the same instrument.

23 Severability

If any part of this Deed shall be declared unlawful or invalid by a court of competent jurisdiction or a Planning Inspector or the Secretary of State on Appeal finds that one or more of the Planning Obligations are not compliant with the CIL Regulations then (to the extent possible) the offending provisions or each one or more of the Planning Obligations as the case may be will be severed from this Deed and the remainder of this Deed shall continue with full force and effect.

FIRST SCHEDULE
[Details of the Owner's Title, and description of the Site]

SECOND SCHEDULE
[Form of notice of planning permission]

THIRD SCHEDULE

The Owner's Covenants with the Council

Part 1: Affordable Housing

- 1.1. Prior to the Commencement of Development the Owner shall submit the Affordable Housing Scheme for the approval of the Council and shall notify the Council in writing of the anticipated date for completing the construction of the Affordable Housing Units within the Development and shall use reasonable endeavours (and shall demonstrate to the reasonable satisfaction of the Council that such endeavours have been made) to enter into a binding contract ("the Contract") with a Registered Provider for the construction and sale of the Affordable Housing Units within 6 months of the date of Commencement of the Development to such Registered Provider at a price in accordance with paragraph 1.2.
- 1.2. The price to be paid by the Registered Provider to the Owner for the transfer of the Affordable Housing Units shall be a percentage of the value of the properties if they were sold on the open market (as at the intended date of the exchange of contract in respect of the Affordable Housing Units) to be agreed between the Owner and the Registered Provider being such a percentage to enable the Affordable Housing Units to be made available without the need for the Registered Provider to apply for Homes England grant funding and to enable the Shared Ownership Units to be made available to purchasers at a mortgage cost of each unit to be no more than three and a half times the average household income of newly forming households within Warwick District
- 1.3. The terms of the Contract relating to the type and size of the Affordable Housing Units and the rent to be paid for the Affordable Rented Units shall be in full accordance with the Affordable Housing Scheme and the Contract shall provide for the transfer of the freehold or leasehold title of the Affordable Housing Units on the following terms:
 - 1.3.1. The Owner will deduce good and marketable freehold or leasehold title to the Affordable Housing Units and will transfer the Affordable Housing Units with full title guarantee with vacant possession and subject to all existing entries under title number [insert title no.] as at the date of this Deed but otherwise the transfer shall be free from any other rights or encumbrances save for any existing rights and encumbrances and such other rights reservations and covenants as are reasonably necessary to enable the Owner to develop the rest of the Application Site and those disclosed as at the date of this Deed;
 - 1.3.2. The Transfer shall grant rights of access and passage of services and other rights reasonably necessary for the beneficial enjoyment of the Affordable Housing Units
- 1.4. The Owner covenants that the Affordable Housing Units shall be allocated to persons registered on Home Choice Allocation Schemes.
- 1.5. The Affordable Housing Units shall not be Occupied other than as Affordable Housing SAVE THAT this Deed SHALL NOT be binding or enforceable against any mortgagee or chargee or receiver appointed by the mortgagee or chargee which shall have the benefit of a legal mortgage or charge secured against all or any of the Affordable Housing Units and any person who shall derive title directly or indirectly from such mortgagee or chargee or receiver appointed by the

mortgagee or chargee (other than a Registered Provider) Provided Always that the mortgagee or chargee or receiver appointed by the mortgagee or chargee or any successors in title to such mortgagee, chargee or receiver shall have obtained a Certificate from the Council (acting reasonably) stating that it has followed the procedure set out in the Seventh Schedule to this Deed nor shall this Deed be binding or enforceable against any Protected Tenant

- 1.6. Subject always to paragraphs 1.5, 1.9 – 1.14 below the Owner covenants not to dispose of their interest in the freehold of the Affordable Housing Units or any part thereof (except by way of mortgage) other than to a Registered Provider
- 1.7. The Owner covenants that it will require in the contract that the Registered Provider shall keep the Council's Housing Strategy & Development Officer for the time being informed in writing as to the addresses of the Affordable Housing Units
- 1.8. The Owner covenants to require in the Contract that the rent to be charged by the Registered Provider for the Social Rented Units when first let and for all subsequent lets must conform to Regulator of Social Housing's 'Regulatory Framework for Social Housing in England from April 2015' or such other amount as may be permitted by any subsequent publication then in force and the rate of increase shall be no greater than the rate stipulated in Annex A of aforementioned publication or if such rate of increase shall cease to be or otherwise not stipulated by the Regulator of Social Housing the rents shall be increased by no greater than Retail Price Index + 1% per annum.
- 1.9. If despite having used reasonable endeavours the Owner is unable to enter into a contract with a Registered Provider for the sale of the Affordable Housing Units in accordance with the provisions of this Schedule within 6 months from the Commencement of Development then the Owner may at any time afterwards give notice to the Council ("the First Affordable Housing Notice") stating that it has failed to enter into a Contract in which event the provisions of paragraph 1.10 shall apply
- 1.10. If the Owner serves a First Affordable Housing Notice in respect of the Development then the Council may at any time within 3 months of the service of the First Affordable Housing Notice nominate by written notice to the Owner ("the Nomination Notice") any other affordable housing provider ("the Nominee") to purchase the Affordable Housing Units within that Development for an alternative affordable housing scheme proposed by the Owner and as approved by the Council but otherwise on the terms set out in this Schedule.
- 1.11. If the Council serves a Nomination Notice in respect of the Development in accordance with paragraph 1.10 the Owner shall use reasonable endeavours (and shall demonstrate to the reasonable satisfaction of the Council that such endeavours have been made) to enter into a contract with the Nominee for the sale of the Affordable Housing Units within the Development in accordance with the provisions of this Schedule within 6 months of the date of service of the Nomination Notice.
- 1.12. If after service of the First Affordable Housing Notice the Council fails to serve a Nomination Notice or following the service of a Nomination Notice within 6 months of the Owner having used their reasonable endeavours fail to enter into a Contract with the Nominee within 6 months of the date of service of the Nomination Notice in accordance with paragraph 1.11 then the Owner shall make an offer in writing to transfer the Affordable Housing Units in a Serviced Condition to the Council, freehold, free from incumbrances, with vacant possession and with

full title guarantee for a price of the lower of the actual build costs of the Affordable Housing Units as demonstrated by the Owner on an open-book basis or a valuation-based estimate of the Affordable Housing Units to be carried out by the Valuation Office Agency and the Council shall confirm in writing within 14 days whether it will accept the offer and if accepted then on completion of such transfer the Owner shall be deemed to have provided the full number of Affordable Housing Units in discharge of their obligations under this Schedule.

- 1.13. If the offer described in paragraph 1.12 above is not accepted by the Council then the Owner may serve a notice on the Council (the "Payment Notice") stating that it will pay to the Council a sum (the "Housing Contribution") which will be calculated by the Council in accordance with the Eighth Schedule in place of the Owner providing the Affordable Housing Units and the provisions of paragraph 1.14 shall take effect.
- 1.14. On service of the Payment Notice in respect of the Development then:
 - 1.14.1. The Owner shall pay to the Council the Housing Contribution within 20 working days of the Payment Notice being served on the Council;
 - 1.14.2. On payment of the Housing Contribution the Owner shall be entitled to sell or otherwise dispose of the Affordable Housing Units as Open Market Housing Units free of all obligations and restrictions
- 1.15. The Owner covenants with the Council that the Affordable Housing Units to be built on the Application Site shall be constructed according to the standards required by building regulations in force at the relevant time
- 1.16. The Owner covenants that the Affordable Housing Units shall be provided for disposal to a Registered Provider in a Serviced Condition and in any event of any disagreement as to whether the Affordable Housing Units are in a Serviced Condition a dispute shall be taken to have arisen which shall be dealt with under the provisions of Clause 17 of this Deed
- 1.17. Where all or some of the Affordable Housing Units shall be provided for disposal to a Registered Provider or the Council the Owner covenants with the Council not to cause suffer or permit Occupation of more than 50% of the Open Market Housing Units until 50% of the Affordable Housing Units have been transferred in a Serviced Condition to a Registered Provider or the Council in accordance with the provisions of this Schedule.
- 1.18. If 1.17 applies the Owner covenants with the Council not to cause suffer or permit Occupation of more than 95% of the Open Market Housing Units until all of the Affordable Housing Units have been transferred in a Serviced Condition to a Registered Provider or the Council in accordance with the provisions of this Schedule and any outstanding Housing Contribution (if any) has been paid to the Council in accordance with the provisions of this Schedule.
- 1.19. The Owner covenants with the Council to notify the Council's Housing Strategy & Development Officer of sales of the Open Market Housing Units in stages of 25% within 14 days of completion of the sale of the last Open Market Housing Unit in each stage of 25%.

Part 2: Financial Contributions

Air Quality Type 3 Mitigation Contribution

1. The Owner covenants with the Council to pay the Air Quality Type 3 Mitigation Contribution to the Council prior to Occupation of 50% of the Dwellings.

Outdoor Sports Facilities Contribution

2. The Owner covenants with the Council to pay the Outdoor Sports Facilities Contribution to the Council in two instalments as set out below.
 - 2.1. 1st Installment: 50% of the Contribution prior to the Occupation of 50% of the Dwellings
 - 2.2. Final Installment: 50% of the Contribution prior to the Occupation of 90% of the Dwellings

Indoor Sports Facilities Contribution

3. The Owner covenants with the Council to pay 50% of the Indoor Sports Facilities Contribution to the Council prior to the Occupation of 50% of the Dwellings and the remaining 50% of the Indoor Sports Facilities Contribution to the Council prior to the Occupation of 90% of the Dwellings

NHS Doctors Surgeries Contribution

4. The Owner covenants with the Council to pay 50% of the NHS Doctors Surgeries Contribution to the Council prior to the Occupation of 50% of the Dwellings and the remaining 50% of the NHS Doctors Surgeries Contribution to the Council prior to the Occupation of 90% of the Dwellings

Police Infrastructure Contribution

5. The Owner covenants with the Council to pay 50% of the Police Infrastructure Contribution to the Council prior to the Occupation of 50% of the Dwellings and the remaining 50% of the Police Infrastructure Contribution to the Council prior to the Occupation of 90% of the Dwellings

Nhs Hospital Improvements Contribution

6. The Owner covenants with the Council to pay 50% of the NHS Hospital Improvements Contribution to the Council prior to the Occupation of 50% of the Dwellings and the remaining 50% of the NHS Hospital Improvements Contribution to the Council prior to the Occupation of 90% of the Dwellings

Allotments Contribution

7. The Owner covenants with the Council to pay 50% of the Allotments Contribution to the Council prior to the Occupation of 50% of the Dwellings and the remaining 50% of the Allotments Contribution to the Council prior to the Occupation of 90% of the Dwellings.

Off-Site Play Provision Contribution

8. The Owner covenants with the Council to pay 50% of the Off-Site Play Provision Contribution to the Council prior to the Occupation of 50% of the Dwellings and the remaining 50% of the Off-Site Play Provision Contribution to the Council prior to the Occupation of 90% of the Dwellings.

Part 3: Biodiversity Offsetting

Definitions:

"Biodiversity Impact Assessment"	means the use of the current and locally adopted Defra Biodiversity Offsetting metrics to calculate the biodiversity impact of the scheme measured in Biodiversity Units as at the date of this Deed.
"Biodiversity Loss"	means a negative Biodiversity Unit score
"Biodiversity Offsetting Scheme"	means a scheme which will deliver biodiversity enhancements which shall not be less than the Biodiversity Impact Assessment score
"Biodiversity Units"	means the product of the size of an area, and the distinctiveness and condition of the habitat it comprises to provide a measure of ecological value
"DEFRA Biodiversity Offsetting Metric"	the Defra mechanism to quantify impacts on biodiversity that allows biodiversity losses and gains affecting different habitats to be compared and ensure offsets were sufficient to compensate for residual losses of biodiversity
"Reserved Matters"	in respect of this Part 3 means the details to be approved by the Council or the Secretary of State in relation to the landscaping of the area in question, the layout of the area in question and its relationship with adjoining development
"WCC Financial Contribution Calculator"	means the mechanism used to calculate the fixed sum contribution being in accordance with the methodology set out in Appendix 1 attached to this Deed

The Owner covenants with the Council as follows:

- 1.1 The approved Reserved Matters shall not result in a Biodiversity Impact Assessment score for the Development as a whole greater than Biodiversity Units or such other number as may be proposed by the Owner and agreed by the Council.
- 1.2 Where there is a Biodiversity Loss, Commencement of Development (here including site clearance, demolition work, remedial work in respect of any contamination or other adverse ground conditions, the erection of a site office and the creation of a site compound) shall not take place until a Biodiversity Offsetting Scheme has been submitted to and approved in writing by the Council ("the Approved Scheme"). The Approved Scheme shall be approved with the purpose of ensuring that the Development shall not result in a Biodiversity Loss in accordance with the National Planning Policy Framework; unless otherwise agreed with the Council
- 1.3 The Approved Scheme shall either
 - 1.3.1 include: -
 - 1.3.1.1 the identity of an appropriate receptor site or sites;
 - 1.3.1.2 a management plan for the provision and maintenance of such offsetting measures for not less than thirty (30) years from the date of implementation of the Approved Scheme;
 - 1.3.1.3 the provision of contractual terms to secure the delivery of the offsetting measures; or
 - 1.3.2 provide for a fixed sum contribution to be paid to Warwickshire County Council within three (3) months from the date of the approval of the Reserved Matters or prior to the Commencement of Development (whichever is the later) such sum to be calculated using the WCC Financial Contribution Calculator ("the Bio-Diversity Contribution"). The Bio-Diversity Contribution for the Development as a whole shall not exceed three hundred and twenty four thousand one hundred and sixteen pounds (£) and the County Council shall use the contribution to enhance and secure long term management of biodiversity within the vicinity of the Application Site; or
 - 1.3.3 provide for a Bio-Diversity Contribution in conjunction with the proposals pursuant to paragraph 1.3.1 above of this Part 3
- 1.4 If paragraph 1.3.1 above applies the Owner covenants to implement the Approved Scheme and not to carry out any changes to the Approved Scheme without the written consent of the Council.

Part 4: Employment

1. The Owner covenants with the Council that:
 - 1.1 at least twenty (20) Working Days before Commencement of Development it shall submit a local employment and training strategy in relation to the construction phase of the Development to the Council for its approval (such approval not to be unreasonably withheld or delayed); and
 - 1.2 it shall implement the local employment and training strategy for the construction phase of the Development by the date set out in the approval of the Council
- 2 The Council covenants with the Owner that within twenty (20) Working Days of the submission by the Owner of the local employment and training strategy for the construction and operational phases of the Development, the Council shall either approve the local employment and training strategies or suggest reasonable amendments therein in writing SAVE that if at the end of the twenty eight (28) day period the Council has not approved the local employment and training strategies or provided comments in writing suggesting appropriate amendments to the local employment training strategy such failure to comment in writing shall be taken as approval of the terms of the obligations set out in the submitted local employment and training strategies

Part 5: Open Space

Definitions:

- “Grounds Maintenance Contract” means the Council’s contracts with providers of grounds maintenance including but not exhaustively, the management and maintenance of hard and soft landscaping; and play areas.
- “Public Open Space Completion Certificate” means a certificate issued by the Council to the effect that the Public Open Space has been laid out in accordance with the Public Open Space Scheme to the reasonable satisfaction of the Council and the issue of an Public Open Space Completion Certificate shall commence the Public Open Space Maintenance Period in respect of the whole or the part of the Public Open Space to which the Public Open Space Completion Certificate relates
- “Public Open Space Final Certificate” means a certificate issued by the Council which shall be conclusive evidence that the Public Open Space has been properly maintained during the Public Open Space Maintenance Period to the effect that the Public Open Space is finally complete and any defects which have become manifest since the issue of the Public Open Space Completion Certificate have been remedied and all outstanding works identified in the aforementioned Certificate have been completed together with, where applicable any outstanding works required by the ROSPA Final Inspection Report

"Public Open Space Maintenance Period"	means a period of at least 12 months commencing with the issue of the Public Open Space Completion Certificate and ending with the issue of the Public Open Space Final Certificate
"Public Open Space"	means the areas to be provided within the Application Site for public recreation and amenity space to meet the standards specified within the Public Open Space SPD in accordance with the Public Open Space Scheme and any Reserved Matters Application and [for outline applications] provided in a location to be agreed in writing with the Council. OR [for full planning applications] to be provided in the location coloured blue for identification purposes on the Plan {} which are to be permanently retained and maintained as public open space to serve the Development
"Public Open Space Commuted Maintenance Sum"	means the sum that shall be paid by the Owner to the Council prior upon the Public Open Space Transfer for the purposes of future maintenance of the Public Open Space to be calculated in accordance with the formula set out in Part [] of the [] Schedule
"Public Open Space off-site contribution"	means a sum which shall be calculated in accordance with the Public Open Space SPD in order to meet any shortfall in Public Open Space provision in accordance with para [] of Part [] of the [] Schedule. Any Public Open Space Balancing Contribution shall be used for the provision of off site open space and/or towards the enhancement of existing off site open space provision and shall be paid in accordance with para [] in Part [] of the [] schedule
"Public Open Space Scheme"	<p>means a written detailed scheme: of works for the laying out and maintenance of the Public Open Space to include</p> <ul style="list-style-type: none"> (i) the design, specification and landscaping including any play equipment and associated equipment, boundary treatments (ii) the programme for the delivery of the Public Open Space Works (iii) details of the maintenance programme that shall be implemented to repair and replace equipment, facilities or landscaping to be submitted to and approved in writing by the Council <p>For the avoidance of doubt the Public Open Space Scheme is a separate and an additional requirement to any requirement to submit a landscaping scheme in accordance with a planning condition imposed upon the Planning Permission or as part of any Reserved Matters approval.</p>
"Public Open Space Works"	means the works to be carried out in accordance with the approved Public Open Space Scheme

"Public Open Space SPD"	means the Council's Supplementary Planning Document in respect of Public Open Space dated April 2019 or where this document is superseded the Supplementary Planning Document in respect of Public Open Space currently adopted by the Council
"Royal Society for the Prevention of Accidents (RoSPA) Report"	means a report and risk assessment issued by an independent qualified assessor and dated not more than 11 months prior to the date on which it is provided to the Council confirming the safety of all elements of the Public Open Space including any SUDS, play area equipment and associated equipment on the Public Open Space
"Royal Society for the Prevention of Accidents (RoSPA) Final Inspection Report"	means a report and risk assessment issued by an independent qualified assessor and dated no more than three months prior to the date on which it is provided to the Council confirming the safety of all elements of the Public Open Space including any SUDS play area equipment and associated equipment on the Public Open Space at the end of the Public Open Space Maintenance Period

The Owners hereby covenant and undertake as follows:

Public Open Space Delivery

1. Commencement of Development shall not take place until
:
 - 1.1. the Owners have submitted the Public Open Space Scheme to the Council which for the avoidance of doubt shall be separate and additional to any landscaping scheme or any other scheme required to be submitted in accordance with a planning condition; and
 - 1.2. the Council has approved the Public Open Space Scheme in writing (such approval not to be unreasonably withheld or delayed)
2. Prior to Occupation of 70% of the Dwellings the Owner shall complete the Public Open Space to the reasonable satisfaction of the Council as evidenced by the Public Open Space Completion Certificate.
3. Upon the completion of the Public Open Space Works the Owners shall notify the Council in writing
4. 40 Working Days from receipt of the Notice served pursuant to paragraph 3 above the Council shall inspect the Public Open Space Works and shall, if satisfied that the works have been carried out in strict accordance with the Public Open Space Scheme and the Owner has provided to the Council a satisfactory ROSPA Report together with transferable guarantees and warranties relating to play area equipment and other associated equipment, issue the Public Open Space Completion Certificate.
5. In the event that the Council inspects the Public Open Space Works and identifies necessary remedial works (which it will notify to the Owners in writing within 15 Working Days of the inspection having been carried out), the Owners shall carry out such remedial works to the reasonable

satisfaction of the Council and send written Notice to the Council to re-inspect the Public Open Space.

6. The procedure set out in paragraphs 3, 4 and 5 shall be repeated in respect of the Public Open Space Works until such time as the Council either;

6.1 issues the Public Open Space Completion Certificate or;

6.2 fails to inspect the Public Open Space Land within 40 Working Days of the receipt of a written Notice where proof of delivery to the Councils Head of Development Services can be provided, in which case the Public Open Space Completion Certificate shall be deemed to have been issued 40 Working Days following receipt of the Notice or;

6.3 fails to issue the Public Open Space Completion Certificate within 40 Working Days of the inspection where no remedial works have been identified in which case the Public Open Space Completion Certificate shall be deemed to have been issued 40 Working Days following the inspection

Public Open Space Maintenance

7. The Owner shall;

7.1 maintain the Public Open Space in strict accordance with the Public Open Space Scheme until such time as the Public Open Space is transferred to the Council and

7.2. from the date the Public Open Space Certificate of Practical Completion is issued or deemed issued allow free unrestricted use and access of the Public Open Space for the general public at all times of the day and night PROVIDED THAT use and access maybe restricted in the following circumstances:

7.2.1 in the event of emergency such that access and use by the general public should be prevented by reasons of health and safety

7.2.2 in the event that any works to the Public Open Space need to be undertaken which would necessitate, as a direct result of the said works, access and use by the general public being prevented PROVIDED THAT if any such closure is to last longer than 7 Working Days or for more than 10 Working Days in any 3 month period then the Owner shall first obtain the Council's prior written approval to the closure.

8. The Owner shall notify the Council in writing at the end of the Public Open Space Maintenance Period and invite the Council in writing to inspect the Public Open Space with a view to issuing the Public Open Space Final Certificate

9. 40 Working Days from receipt of the Notice served pursuant to paragraph 8 above the Council shall inspect the Public Open Space and shall, if satisfied that the Public Open Space has been properly maintained during the Public Open Space Maintenance Period and the Owner has provided to the Council a satisfactory ROSPA Final Inspection Report together with any transferable guarantees and warranties relating to play area equipment and other associated equipment not previously supplied to the Council shall issue the Public Open Space Final Certificate.

10. In the event that the Council inspects the Public Open Space and identifies necessary works (which it will notify to the Owners within writing within 15 Working Days of the inspection being carried out) the Owners shall carry out remedial works to the reasonable satisfaction of the Council and send written Notice to the Council to re-inspect the Public Open Space.
11. The procedure set out in paragraphs 8, 9 and 10 shall be repeated in respect of the Public Open Space until such time as the Council either
 - 11.1 issues the Public Open Space Final Certificate; or
 - 11.2 fails to inspect the Public Open Space within 40 Working Days of the receipt of a written Notice where proof of delivery to the Councils Head of Development Services can be provided in which case the Public Open Space Final Certificate shall be deemed to have been issued 40 Working Days following receipt of the Notice; or
 - 11.3 fails to issue the Public Open Space Final Certificate within 40 Working Days of the inspection where no remedial works have been identified in which case the Public Open Space Final Certificate shall be deemed to have been issued 40 Working Days following the inspection.

Public Open Space Transfer

12. The Owner shall continue to maintain the Public Open Space in accordance with the Public Open Space Scheme and permit unrestricted public access in accordance with paragraph 7 above until its transfer.
13. Prior to commencement of development the Owner shall offer to transfer the Public Open Space Land to the Council on the terms set out in the Ninth Schedule hereto, such offer to be in writing, addressed to the Head of Development Services and served on the Council via recorded delivery ("the Offer"). For the avoidance of doubt the Owner shall pay the costs of the transfer of the Public Open Space and the transfer will contain a covenant that the Public Open Space shall not be used for anything other than amenity open space for the enjoyment of the general public and the Council shall confirm in writing whether it accepts the Offer within 40 Working Days of receipt of the Offer.
14. Where the Council confirms in writing that it does not accept the Offer the Owner may elect to transfer the Public Open Space to a Management Company.
15. Where the Public Open Space is transferred to a Management Company under paragraph 14 above the Management Company shall be expected to meet the requirements set out at Appendix 1 of the Public Open Space SPD and the Councils written approval shall be required before the transfer shall take place.
16. On completion of the transfer of the Public Open Space Land to the Council the Owners shall pay to the Council the Public Open Space Commuted Maintenance Sum

Formulae For Calculation Of Open Space Maintenance Sum

17. The Open Space Maintenance Sum shall be calculated in accordance with the following formula:

$((\text{Rate} \times \text{area in square metres}^*) + 28\% \text{ markup}) \times 20 \text{ years.}$
***or equivalent unit of measure here:-**

17.1 The Rate is based on the schedule of rates from the Council's Grounds Maintenance Contract current at the date of transfer,

17.2 28% mark up calculated on (rate x area in square metres) being the cost to the Council of the management of the Grounds Maintenance Contract

Part 6: Suds

Definitions

"Foul/Surface Water Drainage and Sewerage"	means the sewers and drains to be constructed or completed within the Application Site pursuant to the Planning Permission or such sewers and drains that may already exist at the time Planning Permission is granted
"SUDS"	means visible surface water drainage measures/features which will be located within the Application Site and which shall include the following to serve the Application Site: (a) swales watercourses and ditches; (b) attenuation ponds and infiltration basins; (c) soakaways; but shall exclude (unless otherwise specified on any application for Reserved Matters) any such measures or features located within the curtilage of any Dwelling constructed on the Application Site
"SUDS Alternative Body"	means any statutory water undertaker that is legally permitted to adopt or otherwise manage and maintain surface water drainage features and measures
"SUDS Commuted Sums"	means a commuted sum for maintenance of the SUDS (for 20 years) determined in accordance with Paragraph 2.1.3 of Part 7 of this Schedule
"SUDS Completion Certificate"	means a certificate issued by the Council which shall be conclusive evidence that the SUDS have been laid out in conformity with this Deed to the reasonable satisfaction of the Council and the issue of a SUDS Completion Certificate shall commence the SUDS Maintenance Period in respect of the whole or part of the SUDS to which the SUDS Completion Certificate relates;

"SUDS Final Certificate"	a certificate to be issued by the District Council which shall be conclusive evidence that the SUDS have been properly maintained during the SUDS Maintenance Period;
"SUDS Land"	means the land on which SUDS are to be located whose size and exact location shall be determined as a result of a Reserved Matters Application and whose exact size shall be approved pursuant to the SUDS Specification
"SUDS Maintenance Period"	<p>means:</p> <ul style="list-style-type: none"> (a) in the event the SUDS are to be transferred to the Council the period shall be 12 months from the date of the SUDS Completion Certificate or such longer period as a statutory water undertaker that is legally permitted to adopt or otherwise manage and maintain surface water drainage features may reasonably require whether or not the SUDS are transferred to that statutory undertaker; or (b) the period shall be 12 months from the date of the SUDS Completion Certificate or such longer period as a statutory water undertaker that is legally permitted to adopt or otherwise manage and maintain surface water drainage features may reasonably require whether or not the SUDS are transferred to that statutory undertaker; or (c) in the event the SUDS are to be transferred to a statutory water undertaker that is legally permitted to adopt or otherwise manage and maintain surface water drainage features and measures the period shall be up to 24 months from the date of the SUDS Completion Certificate or such shorter period as agreed by that statutory undertaker
"SUDS Specification"	<p>means a detailed specification to be prepared by or on behalf of the Owner by a suitably qualified and professionally approved person carrying appropriate professional indemnity insurance and which detailed specification shall include (where applicable):</p> <ul style="list-style-type: none"> (a) Hydraulic calculations; (b) Details of control devices and flow control measures; (c) Geotechnical design criteria; (d) Permeability assessment; (e) Proposed design specification and landscaping and boundary treatments; (f) Life-saving equipment (e.g. lifebelts); (g) Warning and information signage; (h) Proposals to seek to minimise long term maintenance and a long term maintenance scheme ("the Maintenance Scheme"); and <ul style="list-style-type: none"> (i) Proposals to seek to maximise ecological benefit; (j) The exact location and dimensions of the SUDS; (k) A construction programme for the SUDS setting timings for commencement through to completion of the SUDS;

- (l) Both a ROSPA assessment/certificate and CDM designer's risk assessment evidencing that the SUDS can be operated safely;
- (m) Suitable Public Liability Insurance for the above

"SUDS Transfer"

means a transfer by the Owner of the unencumbered freehold interest in the SUDS on terms to be agreed but which shall nevertheless:

- (a) include terms which would not restrict public access;
- (b) include terms which would not directly or indirectly affect the construction servicing or occupation of the part of the Application Site that is retained by the Owner;
- (c) include reservation of rights of access over the SUDS;
- (d) include the grant of any rights reasonably necessary for the proposed end use of any adjoining land;
- (e) include for the benefit of the SUDS the grant of any rights of access over any adjoining land which rights are reasonably required for the management and maintenance of the SUDS for its purpose for public open space, water attenuation and surface water drainage purposes;
- (f) be at consideration of £1;
- (g) include a covenant that the SUDS shall not be used for any purpose other than for public open space, water attenuation and surface water drainage purposes associated with the Development;
- (h) include obligations on the part of the transferee to maintain the SUDS in full accordance with the Maintenance Scheme comprising part of the SUDS Specification; and
 - (i) include obligations on the part of the Owner to bear the reasonable legal and professional costs of the other parties to the transfer;

Provision Of Suds

The Owner and the Council covenant with each other as follows:

1. Prior to Commencement of Development and as part of the Reserved Matters Applications the Owner shall submit to the Council in writing for approval the SUDS Specification
2. Development shall not Commence until the Council has approved the SUDS Specification by way of Reserved Matters Applications.
3. Prior to the Occupation of any Dwelling or use of any buildings (being buildings other than those forming part of a Dwelling) the Owner shall layout install and complete the relevant SUDS:
 - 3.1 to the reasonable satisfaction of the District Council as evidenced by the issuing of a SUDS Completion Certificate; and
 - 3.2 in accordance with the approved SUDS Specification.

4. Following completion of the SUDS:

- 4.1 the Owner shall serve notice on the Council inviting them to inspect the SUDS and to issue a SUDS Completion Certificate confirming that such works have been completed to the Council's reasonable satisfaction provided that in order that the notice served by the Owner shall be validly served it shall be accompanied by:—
- (i) a RoSPA assessment and certificate evidencing that the SUDS in their completed form can be operated safely; and
 - (ii) a confirmation from a SUDS expert that the SUDS in their completed form are either:—
 - (1) built in accordance with the relevant approved SUDS Specification; or
 - (2) where there is a variation from the relevant approved SUDS Specification, identification of any variation and confirmation that the SUDS in their completed form fulfil the SUDS requirements for the development
- 4.2 if the Council inspects the SUDS and identifies any defects requiring remedial works, the Council will notify the Owner of the defects within 15 Working Days of such inspection. The Owner shall complete any necessary remedial works to the reasonable satisfaction of the Council;
- 4.3 upon completion of any remedial works, the Owner shall serve notice on the Council inviting them to inspect the remedial works identified by them pursuant to paragraph 4.2 and to issue a SUDS Completion Certificate confirming that such works have been completed to the Council's reasonable satisfaction

PROVIDED THAT if the Council fails to inspect the SUDS within 30 Working Days of receipt of a notice of invitation from the Owner pursuant to paragraphs 4.1 or 4.3 or fails to issue a SUDS Completion Certificate within 30 Working Days of the inspection where no remedial works have been identified then the SUDS Completion Certificate shall be deemed to have been issued at the end of those specified periods PROVIDED FURTHER THAT the inspection procedure identified in paragraphs 4.1 and

- 4.3 shall be repeated until such time as the Council issue or are deemed to have issued a SUDS Completion Certificate in relation to the SUDS AND PROVIDED FURTHER THAT nothing shall prevent the Owner undertaking the SUDS in phases or in individual component parts and seeking SUDS Completion Certificates for each such phase or part of SUDS.

5. On expiration of the SUDS Maintenance Period the Owner shall:

- 5.1 serve notice on the Council inviting them to inspect the SUDS and issue a SUDS Final Certificate confirming that such works have been maintained to the Council's reasonable satisfaction;
- 5.2 if the Council inspects the SUDS and identifies all necessary remedial works, the council will notify the Owner of the required remedial works within 15 Working Days of such inspection and the Owner will thereafter complete such remedial works to the reasonable satisfaction of the Council;
- 5.3 upon completion of all remedial works, serve notice on the Council inviting them to inspect the remedial works identified by them pursuant to paragraph 5.2 and issue a SUDS Final Certificate confirming at such works have been completed to their reasonable satisfaction

PROVIDED THAT if the Council fails to inspect the SUDS within 30 Working Days of receipt of a notice of invitation from the Owner pursuant to paragraphs 5.1 or 5.3 or fails to issue a SUDS Final Certificate within 30 Working Days of the inspection where no remedial works have been identified then the SUDS 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 5.1 or 5.2 shall be repeated until such time as the Council issue or are deemed to have issued a SUDS Final Certificate in relation to the SUDS PROVIDED FURTHER THAT nothing shall prevent the Owner undertaking the SUDS in phases or in individual component parts and seeking SUDS Final Certificates for each such phase or part of the SUDS.

6. The Owner shall:

6.1 maintain the SUDS in accordance with the approved SUDS Specification until such time as the SUDS are transferred to the Council or at the Council's election a SUDS Alternative Body pursuant to the Maintenance Scheme; and

6.2 from the date the SUDS Completion Certificate is issued or of deemed issue of the SUDS Completion Certificate to allow free unrestricted use and access of the SUDS for the general public at all times of the day and night PROVIDED THAT use and access may be restricted in the following circumstances:

6.2.1 in the event of emergency such that access and use by the general public should be prevented for reasons of health and safety;

6.2.2 where any part of the SUDS shall for health and safety purposes be proposed to be permanently fenced off or where other means are used to permanently prevent use and access by the general public this shall be documented and approved in the SUDS Specification.

7. The Owner shall save as otherwise agreed in writing by the Council (acting reasonably):

7.1 not locate any Utilities or Foul/Surface Water Drainage and Sewerage in on or under the SUDS Land other than those public surface water sewers directly associated with and connected to the SUDS features;

7.2 not locate the SUDS Land within an area of the Application Site that at the time Planning Permission is granted already has Utilities or Foul/Surface Water Drainage and Sewerage located within such area; unless these are to be relocated.

Part 7: Transfer Of The Suds Land

The Owner covenants with the Council as follows:

1. No later than 30 Working Days after the issue of a SUDS Completion Certificate to serve written notice on the Council either:
 - 1.1 offering to the Council the SUDS Land to adopt and offering to transfer to the Council the SUDS Land pursuant to the SUDS Transfer ;
 - 1.2 at the Council's election offering to transfer to a SUDS Alternative Body the SUDS Land pursuant to the SUDS Transfer.
2. In the event that the Council accepts the offer to adopt and take a transfer of any part of the SUDS Land then the Owner shall:
 - 2.1.1 following the issue or deemed issue of the SUDS Final Certificate in relation to the relevant part of the SUDS, execute and deliver to the Council the SUDS Transfer in respect of such part of the SUDS Land;
 - 2.1.2 the transfer will take place either
 - (a) as soon as practicably possible after the issue of the relevant SUDS Final Certificate in relation to the SUDS for the whole of the SUDS Land; or
 - (b) where individual SUDS Final Certificates are issued or deemed to be issued in relation to various parts of the SUDS the transfer of the relevant SUDS on which the said SUDS have received a SUDS Final Certificate will occur as soon as practicably possible after the SUDS Final Certificate has been or is deemed to have been issued in respect of the relevant SUDS

PROVIDED ALWAYS THAT the transfer(s) of the whole of the SUDS Land whether it occurs as a result of one or more transfers shall be completed prior to whichever shall be the first to occur of 75% of the Dwellings being Occupied within the relevant Area or the bringing into use of the last building (being buildings other than those forming part of a Dwelling) constructed as part of the Development and the Owner shall bear the reasonable legal and professional fees of the parties to the transfer(s) and any SDLT costs of the transfer (s).

 - 2.1.3 on completion of such SUDS Transfer to pay to the Council the relevant proportion of the SUDS Commuted Sum (such proportion being calculated by reference to the area of the land being transferred against the total area of the SUDS Land within the Application Site) and the quantum of such commuted sum shall be agreed between the Owner and the Council prior to the date of transfer based on the details set out in the approved SUDS Specification and the Council will covenant in the transfer to thereafter maintain the SUDS in accordance with the Maintenance Scheme.

3. Where the Council elects not to accept the offer of the transfer of the SUDS Land to it the Council shall be entitled to notify the Owner in writing of an SUDS Alternative Body to whom the Council elects that the offer to transfer the SUDS Land should be made by the Owner PROVIDED THAT the Council shall notify the Owner in writing of any proposed election of a SUDS Alternative Body at any time before the date 20 Working Days after the receipt of the notice served pursuant to paragraph 1 of this Part 7 AND PROVIDED FURTHER THAT if the Council shall not have elected an SUDS Alternative Body by the expiry of the said 20 Working Days it shall be deemed that the Council does not wish to elect an SUDS Alternative Body and that the Council will accept the transfer to it of the SUDS Land.
4. Where the Council has elected an SUDS Alternative Body and has notified the Owner before the expiry of the 20 Working Days the Owner shall forthwith write to the SUDS Alternative Body offering to transfer the Open Space Land and/or SUDS Land pursuant to the Open Space Land Transfer to the SUDS Alternative Body.
5. In the event that the SUDS Alternative Body accepts the offer to transfer the SUDS Land to it the Owner shall:
 - 5.1.1 following the issue or deemed issue of the SUDS Final Certificate in relation to the relevant part of the SUDS, execute and deliver to the SUDS Alternative Body the SUDS Transfer in respect of such part of the SUDS Land;
 - 5.1.2 the SUDS Transfer will take place either:
 - (a) as soon as practicably possible after the issue or deemed issue of the relevant SUDS Final Certificate in relation to the SUDS for the whole of the SUDS Land; or
 - (b) where individual SUDS Final Certificates are issued or deemed to have been issued in relation to various parts of the SUDS the transfer of the relevant SUDS Land on which the said SUDS have received a SUDS Final Certificate will occur as soon as practicably possible after the SUDS Final Certificate has been issued or deemed to have been issued in respect of the relevant SUDSPROVIDED ALWAYS THAT the transfer(s) of the whole of the SUDS Land whether it occurs as a result of one or more transfers shall be completed prior to whichever shall be the first to occur of 75% of the Dwellings being Occupied or the bringing into use of the last building (being buildings other than those forming part of a Dwelling) constructed as part of the Development; and the Owner shall bear the reasonable legal and professional fees of the parties to the transfer(s) and any SDLT costs of the transfer(s)
 - 5.1.3 on completion of such SUDS Transfer to pay to the SUDS Alternative Body the relevant proportion of the SUDS Commuted Sum (such proportion being calculated by reference to the area of the land being transferred against the total area of the SUDS Land within the Application Site) and the quantum of such commuted sums shall be agreed between the Owner and the Council prior to the date of transfer based on the details set out in the approved SUDS Specification and the SUDS Alternative

Body will covenant in the transfer to thereafter maintain the SUDS in accordance with the Maintenance Scheme.

6. No more than 75% (seventy five percent) of the Dwellings shall be permitted to be Occupied or the last building (being buildings other than those forming part of a Dwelling) constructed as part of the Development shall be permitted to be brought into use (whichever shall be the first to occur) until such time as:

6.1 the whole of the SUDS Land has been offered to be transferred to either the Council or a SUDS Alternative Body; and

6.2 a SUDS Final Certificate has been issued or deemed to have been issued in relation to all parts of the SUDS.

7. Owner's Obligations to Transfer

7.1 The Owner shall only transfer the SUDS Land to either:

(a) the Council, or

(b) a SUDS Alternative Body nominated by the Council.

FOR THE AVOIDANCE OF DOUBT neither the Council nor the SUDS Alternative Body is obliged in any event to take a transfer of the SUDS Land in the event the SUDS have not been constructed in accordance with the approved SUDS Specification or a SUDS Final Certificate has not been issued but at all times the Council or the SUDS Alternative Body must act reasonably and in good faith and the Council must not unreasonably resist the transfer of the SUDS Land to it.

8. Any dispute under Parts 6 or 7 of this Third Schedule shall be referred to arbitration in accordance with Clause 17 of this Deed.

9. Where neither the Council nor any SUDS Alternative Body nominated by the Council are willing to take a transfer of the SUDS Land the Owner may upon Occupation of 75% (seventy five percent) of the Dwellings transfer the SUDS to a Management Company.

10. The Owner covenants to transfer the SUDS to a Management Company on the basis that one of its primary objectives is to maintain and manage the SUDS to the reasonable satisfaction of the Council

Fourth Schedule

The Owner's Covenants With The County Council

Part 1

Financial Contributions

The Owner Covenants With The County Council As Follows:

Education Contribution

1. To pay 10% of the Education Contribution to the County Council upon Commencement of Development, to pay 50% of the Education Contribution prior to occupation of 30% of the Dwellings and to pay the remaining 40% of the Education Contribution to the County Council prior to the Occupation of 60% of the Dwellings

Libraries Contribution

2. To pay the Libraries Contribution to the County Council prior to Occupation of 50% of the Dwellings

Sustainability Travel Pack

3. Prior to or on the Commencement of Development to pay the Sustainability Travel Pack Contribution to the County Council

Bus Service Contribution

4. To pay the Bus Stop Contribution to the County Council prior to Occupation of 50% of the Dwellings

Cycle Link Contribution

5. To pay the Cycle Link Contribution to the County Council prior to Occupation of the Dwellings.

Highways Contribution

6. To pay the Highways Contribution to the County Council prior to Occupation of the Dwellings.

Rights of Way Contribution

7. To pay the Rights of Way Contribution to the County Council prior to Occupation of the Dwellings

FIFTH SCHEDULE

THE COUNCILS AND COUNTY COUNCILS COVENANTS

PART 1

Council's Covenants

Repayment of contributions

- 1 The Council hereby covenants with the Owner to use all sums received from the Owner under the terms of this Deed for the purposes specified in this Deed for which they are to be paid or for such other purposes for the benefit of the Development as the Owner and the Council shall reasonably agree PROVIDED THAT such purposes comply with Regulation 122 of the Community Infrastructure Levy Regulations 2010.
- 2 The Council covenants with the Owner that it will pay to the Owner such amount of any payment made by the Owner to the Council under this Deed which has not been expended or committed in accordance with the provisions of this Deed within ten years of the date of receipt by the Council of such payment.
- 3 The Council shall provide to the Owner such evidence, as the Owner shall reasonably require in order to confirm the expenditure of the sums paid by the Owner under this Deed PROVIDED THAT such request shall be made in writing to the Council's Head of Development Services where the sum relates to open space provision or the Housing Strategy Manager where the sum relates to affordable housing.

Discharge of obligations

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

Part 2

County Council's Covenants

Repayment of contributions

- 1 The County Council hereby covenants with the Owner to use all sums received from the Owner under the terms of this Deed for the purposes specified in this Deed for which they are to be paid or for such other purposes for the benefit of the Development as the Owner and the County Council shall reasonably agree PROVIDED THAT such purposes comply with Regulation 122 of the Community Infrastructure Levy Regulations 2010.
- 2 The County Council covenants with the Owner that it will pay to the Owner such amount of any payment made by the Owner to the County Council under this Deed which has not been expended or committed in accordance with the provisions of this Deed within ten years of the date of receipt by the County Council of such payment.

3 The County Council shall provide to the Owner such evidence, as the Owner shall reasonably require in order to confirm the expenditure of the sums paid by the Owner under this Deed PROVIDED THAT such request shall be made in writing to the County Council's Infrastructure Delivery Manager.

Discharge of obligations

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

Sixth Schedule

Indexation

1 In this Schedule:

1.1 "Relevant Index" means:

- 1.1.1 In respect of the, the All Items Retail Prices Index published by the Office of National Statistics contained in the Monthly Digest of Statistics (or contained in any official publication substitution therefor) or such other index as may from time to time be published in substitution therefor or if for any reason the index shall be abolished there shall be substituted for the purposes of this Schedule such index of food price costs (including the altered All Items Retail Prices Index) as may from time to time be published by or under the authority of any Ministry or Department of her Majesty's Government and if no such index is published the parties thereto shall endeavour to agree such other index as shall most closely reflect changes in the costs of living; and
- 1.1.2 In the case of the, the All in Tender Price Index of Buildings Cost Information Services ("BCIS") as published by the Royal Institute of Chartered Surveyors ("RICS") or in the event that the RICS shall change the basis of compilation or cease to compile or publish the said Index such other Index as the parties hereto shall agree or in default of agreement such index as shall be determined by the Arbitrator appointed by the President of the RICS of the purposes of this Deed in all cases to ensure as nearly as possible that the sum of money involved shall fluctuate in accordance with the general level of the building industry costs.
- 1.1.3 In the case of the, the Baxter Index which is the Department of Transport Local Government and the Regions Monthly Bulletin of Indices-Civil Engineering Formula 1990 Series to be weighed in the proportions Labour and Supervision 25% Plant and Road Vehicles 25% Aggregate 30% and Coated Macadam and Bitumen Products 20%

1.2 "**Base Index Date**" means the date of the grant of Planning Permission or such other date in respect of a particular sum as may be specified in this Deed with particular reference to Clause 13

hereof in respect of sums not fixed in this Deed but remaining to be agreed or determined at a later date.

1.3 **"Base Index Figure"** means the figure published in respect of the Relevant Index immediately prior to the Base Index Date

1.4 **"Final Index Date"** means the figure published or otherwise agreed or determined in respect of the Relevant Index immediately prior to the respective dates upon which the Contributions are paid.

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

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

Where "A" equals the Contribution

"B" equals the Base Index Figure

"C" equals the Final Index Figure

3 If after the Base Index Date there should be any change in the Base Index Figure by reference to which changes in the Relevant Index are calculated, the figure taken to be shown in the Relevant Index after such change shall be the figure which would have been shown in the Relevant Index if the said Base Index Figure had been retained and the appropriate reconciliation shall be made.

4 If any substitution for the said All Items Retail Prices Index or the BCIS Index or Baxter Index or any index previously substituted therefor shall occur the parties hereto shall endeavour to agree the appropriate reconciliation between the Relevant Index substituted on the one hand and the All Items Retail Prices Index or the BCIS Index or Baxter Index or any index previously substituted therefor on the other hand.

Seventh Schedule

Mortgagee In Possession

1. The covenants contained in this Deed shall not be binding on a mortgagee or chargee or receiver appointed by the mortgagee or chargee (or administrative receiver) which shall have the benefit of a legal mortgage or charge secured against any of the Affordable Housing Units ("the Mortgaged Properties") or any person who shall derive title directly or indirectly from such mortgagee or chargee or receiver (or administrative receiver) appointed by the mortgagee or chargee ("the Mortgagee") (except in the case of a purchaser which is a Registered Provider of Social Housing) PROVIDED THAT the following procedure shall have been followed in all respects:

1.1 The Mortgagee acting pursuant to an event of default shall:

1.1.1 first serve written notice on the Council's Head of Housing Services of its intention to seek possession of the Mortgaged Properties no less than seven days prior to the commencement of such action.

- 1.1.2 at the time it commences such action send copies of any notices or other documents served in relation to such action to the Council's Head of Housing Services.
- 1.1.3 use its reasonable endeavours to the reasonable satisfaction of the Council's Head of Housing Services over a period of 12 weeks from the date on which it serves notice pursuant to paragraph 1.1.1. to dispose of the Mortgaged Properties to a Registered Provider of Social Housing approved in writing by the Council (such approval not to be unreasonably withheld or delayed) on terms which are reasonable in all respects to enable the same to be used for the purposes specified in this Deed and for a consideration determined in accordance with paragraph 7 below.

2 If the Mortgagee is unable within the said period of 12 weeks to dispose of the Mortgaged Properties in accordance with paragraph 1.1.3 and the Council shall have certified in writing that it is satisfied that the Mortgagee has complied with paragraph 1.1.3 (or the Mortgagee has issued a Deemed Certificate) then the Mortgagee shall be entitled to sell or otherwise dispose of the Affordable Housing Units as Open Market Dwellings free from all obligations or restrictions insofar as they relate to the use and occupation of the Affordable Housing

3 The Mortgagee shall provide written progress reports to the Council showing the steps it has taken to comply with Paragraph 1.1.3 above at 4, 8, 10 and 12 weeks from the date on which it served notice pursuant to paragraph 1.1.1. Such reports shall include:-

- 3.1. The names addresses and contact details of the registered providers of social housing which it has approached with a view to disposing of the Mortgaged Properties.
- 3.2 Any valuation of the Mortgaged Properties carried out at that time on the behalf of the Mortgagee.
- 3.3. Details of any part played by the Regulator of Social Housing and the details of the contact at the Regulator of Social Housing
- 3.4 Any written offers made by a registered provider of social housing to purchase the Mortgaged Properties.
- 3.5 The acceptance by the Mortgagee of an offer made in accordance with sub paragraph 3.4 above.
- 3.6 Written consent authorising any registered provider of social housing which the Mortgagee has approached with a view to disposing of the Mortgaged Properties and the Regulator of Social Housing to disclose the details of any confidential negotiations relating to such disposal to the Council.
- 3.7 Any other information relating to the disposal of the Mortgaged Properties that the Mortgagee considers appropriate

- 4 The Council shall within 14 days of the expiry of the 12 week period provided for in paragraph 2 above deliver to the Mortgagee a certificate stating whether or not the Mortgagee has complied with the provisions of paragraph 1.1.3. In the event that the Council certifies that the Mortgagee has not complied with the provisions of paragraph 1.1.3 such certificate will state what steps the Mortgagee must take to secure such compliance. If the Council has not delivered the above certificate to the Mortgagee within the above period of 14 days (or the arbitrator referred to in paragraph 6 below confirms that the Mortgagee has complied with the provisions of paragraph 1.1.3) the Mortgagee shall be entitled to certify that it has complied with paragraph 1.1.3 ("The Deemed Certificate ") and such certificate shall operate as a deemed certificate of satisfaction for the purposes of paragraph 2
- 5 Paragraph 4 above shall not prevent the Council from delivering to the Mortgagee a certificate stating whether or not the Mortgagee has complied with the provisions of paragraph 1.1.3 at any time following 4 weeks from the date that the Mortgagee served the notice pursuant to paragraph 1.1.1.
- 6 In the event that the Council has delivered a certificate in accordance with paragraph 4 above and there is a dispute between the parties in relation to whether the Mortgagee has complied with the provisions of paragraph 1.1.3 then either party may elect to refer such dispute to be determined by arbitration by a person appointed by the President for the time being of the Law Society
- 7 The consideration in accordance with paragraph 1.1.3 above shall be determined subject to any leases or tenancies subsisting the amount of such consideration to be agreed between the Registered Provider of Social Housing and the Mortgagee 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 or in default of agreement on application by either party by the President for the time being of the Royal Institution of Chartered Surveyors (the cost of his appointment and acting to be met by the parties in equal shares) and for the avoidance of doubt such consideration shall not be less than the amount due and outstanding to the Mortgagee under the terms of the mortgage or charge including all principal monies interest and costs and expenses incurred by the Mortgagee in respect of the mortgage or charge
8. Provided that at all times the rights and obligations in this Seventh Schedule shall not require the Mortgagee to act contrary to its duties under the charge or mortgage

Eighth Schedule

The Housing Contribution

1. The Housing Contribution shall be a sum equivalent to the lower of the actual build costs of the Affordable Housing Units as demonstrated by the Owner on an open-book basis or a valuation-based estimate of the build-costs of the Affordable Housing Units to be carried out by the Valuation Office Agency and based upon a number of units calculated in accordance with Paragraph 5.15 of the Affordable Housing SPD and which shall be applied by the Council towards the provision of Affordable Housing within Warwick District and Part 1 of the Fifth Schedule shall apply in respect of the repayment of this contribution.

2. Where there is a dispute regarding the amount of the Housing Contribution then such dispute may be referred to arbitration in accordance with Clause 17 of this Deed.

Ninth Schedule

Transfer Of The Open Space

1. The Owner shall transfer ownership of the Public Open Space (excluding highway related land or engineering / land drainage functions of SUDS/ balancing ponds) to the Council in accordance with the requirements set out below:
2. The Public Open Space is transferred with vacant possession free from any encumbrances on completion.
3. The Owner shall transfer with Full Title Guarantee.
4. The Owner shall ensure that the Council has the right to access the Public Open Space from the public highway to enable the land to be maintained
5. The National Conditions of Sale (20th Edition) shall be deemed to be incorporated so far as they are not inconsistent with the provisions of these conditions.
6. Title should be deduced in accordance with the Land Registration Act 2002. The purchase price is nil consideration.
7. In the transfer of the Open Space Land to the Council the Council will covenant with the transferor for themselves and their successors in title that the same will run with and bind the land into whosoever hands the same may pass:
8. Not to develop the Open Space Land or any part thereof for any purpose whosoever save for the erection of non-commercial buildings ancillary to its recreational purposes to the intent that it shall remain in perpetuity as Public Open Space for the enjoyment of the general public
9. To maintain the Open Space Land in reasonable condition to a reasonable standard and conforming to good horticultural practice.

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

THE COMMON SEAL OF WARWICK DISTRICT COUNCIL)
was affixed in the presence of:)

Authorised Signatory:

THE COMMON SEAL OF WARWICKSHIRE COUNTY COUNCIL)
was affixed in the presence of:)

Authorised Signatory:

EXECUTED AS A DEED by)
)
in the presence of:)

Director:

Director/Secretary:

EXECUTED AS A DEED)
)
In the presence of:-)



Warwick District Council
Riverside House
Milverton Hill
Royal Leamington Spa
CV32 5HZ

