

## **FAIRVIEW FARM**

### **PLANNING BACKGROUND**

Outline permission was granted in November 1999 for the residential development of Fairview Farm (land owned by Chorley Council) site various amendments to the scheme has resulted in an overall development of 205 dwellings completed as of April 2012.

Approximately 1.8ha of land at the southern end of the site was allocated for community and recreational uses with a Community Building and associated play area, football pitch and car park. The Council owned the whole site which was sold to Westbury Homes which became Persimmon Homes who developed the main part of the site. An area of 1.19ha was retained by the Council at the site and allocated for affordable housing provision. The Council worked with Places for People who are the Registered Social Landlord to provide the affordable housing on this site.

Principal developers Westbury Homes (NW) Ltd, Persimmon Homes, Places For People Group

### **PLANNING APPLICATIONS**

Application: 98/00660/CO4

Regulation 4 outline application for residential development, associated open space and multi-functional community building,

Applicant: Chorley Borough Council

Date Decision Issued : 15/11/1999

Decision :Permit Outline Planning Permission

Application: 00/00056/FUL

Erection of 26 houses and 2 bungalows,

Applicant: North British Housing Association

Date Decision Issued : 24/01/2001

Decision :Application Withdrawn

Application: 01/00120/REM

Reserved matters application for 176 houses, multi-functional community building and five-a-side

pitch and all associated works,

Applicant: Westbury Homes (NW) Ltd

Date Decision Issued : 03/08/2001

Decision :Approve Reserved Matters

Application: 03/00062/FULMAJ

Substitution of houses on plots 88-122, with 26 dwellings instead of 34 dwellings,

Applicant: Westbury Homes (Holdings) Ltd

Date Decision Issued : 26/09/2003

Decision :Permit Full Planning Permission

Application: 03/00643/FUL

Erection of community centre, equipped play area, playing pitch, access road and carparking,

Applicant: Westbury Homes (Holdings) Ltd

Date Decision Issued : 01/08/2003

Decision :Permit Full Planning Permission

Application: 04/00629/FUL

Revision to Planning Permission 9/98/660/CO4 by modification of condition 4 to change public

open space (Area 6) from equipped play space to a landscaped park,

Applicant: Westbury Homes (Holdings) Ltd

Date Decision Issued : 18/12/2009

Decision :Permit Full Planning Permission

Application: 09/00714/FULMAJ

Erection of 37 affordable dwellings with external amenity space and off street parking at Fairview

Farm, Adlington

Applicant: Places For People Group

Date Decision Issued : 15/01/2010

Decision :Permit Full Planning Permission

### **SECTION 106 AGREEMENTS**

Chorley Borough Council and Westbury Homes (Holdings) Ltd. relating to land adjacent to Fair View Farm, Adlington Dated 12 November 1999

Blue Land to be laid out and landscaped for use as open space play area to satisfaction of CBC, after being laid out and landscaped not to restrict access. Landowner to transfer Blue Land to CBC within 3 months of completion of laying out. To pay CBC £78,000 to be used for maintenance of open space play area to be paid on commencement or construction of 76% of the number of dwellings approved under a reserved matters application.

Owner to build a suitable building for use by the local community in full compliance with applicable planning brief and scheme approved by CBC. Owner to pay £377,335 to CBC for the future maintenance of the building on the commencement of the 101 dwelling provided that more than 12 months have passed since the first transfer of any of the Site out of ownership of CBC.

Supplemental Agreement dated 22 August 2001

2nd Supplemental Agreement dated 7 September 2001

3rd Supplemental Agreement dated 5th December 2001

Supplemental Deed to Section 106 Agreement Chorley Borough Council and Westbury Homes (Holdings) Limited  
Dated 18th December 2009

£377,335 was received from the Developer for the future maintenance of the Community Centre received February 2007.

£78,000 was received from the Developer for future maintenance of the public open space received February 2007.

£60,000 was received from the Developer to be used towards Fairview Community Centre Play Space to be expended on the equipment at the play space at Fairview Community Centre received December 2009.

### **HIGHWAYS**

#### **Data taken from the Council's Land Charges Register**

Highways maintainable at public expense;

Adopted YES - THE AVENUE : CHORLEY ROAD TO DERBY PLACE - A

Adopted YES - FARM AVENUE : A673 CHORLEY ROAD TO END - A  
Adopted YES - HIGHFIELD ROAD NORTH : CHESTER PLACE TO HOUSE 35 - A  
Adopted YES - THE AVENUE : HOUSE 28 TO HOUSE 31 - A  
Adopted YES - CHATSWORTH COURT : JUNCTION AT NUMBER 25 TO END AT  
NUMBER 19 -

A

Adopted YES - HIGHFIELD ROAD NORTH : HOUSE 12 TO REAR 17 - A  
Adopted YES - CHATSWORTH COURT : JUNCTION AT NUMBER 25 TO END AT  
NUMBER 10 -

A

Adopted YES - BRADSHAW LANE: REAR OF HOUSE 26 CROSTON AVENUE TO DERBY  
PLACE - A

Adopted YES - CHORLEY ROAD : BABYLON LANE TO RAWLINSON LANE - A

Adopted YES - ELLER BROOK CLOSE : HEATHFIELD TO END - A

Adopted YES - DERBY PLACE : THE AVENUE TO HOUSE 5 - A

Unadopted NO - FIELD ROSE COURT - X

Unadopted NO - FAIRVIEW DRIVE - X

Unadopted NO - BYRE VIEW - X

Unadopted NO - HAWTHORN COURT - X

Unadopted NO - FAIRVIEW DRIVE - X

Unadopted NO - BRADSHAW LANE - X

Unadopted NO - BROOK STREET - X

Unadopted NO - MEADOW VIEW - X

Unadopted NO - BARN VIEW - X

Unadopted NO - BRADSHAW LANE - X

Unadopted NO - MAYTREE COURT - X

#### **UNITED UTILITIES – AWAITING CONFIRMATION FROM UU**

Prior to October 2010 drainage lines on new development that were to be adopted by UU were usually limited to those lines within the road or main service pipes. Since October 2010 all drainage that is not for the sole use of one property would become subject to adoption (Section 104).

- Drainage scheme is forwarded to UU by developer and by LA Building Control/AI on receipt of application.
- On commencement of drainage works UU inspect major sewer lines(within road or main service lines).
- LA/AI inspect plot drainage (lateral drainage) for themselves under the Building Regs and on behalf of UU.
- LA/AI notify UU when each plots drainage is complete and satisfactory.
- UU pursue formal adoption of sewers.

The above has still yet to be implemented as the MBS (mandatory build standard) for drains has yet to be released from UU. This gives the minimum standards for the construction of drainage subject to adoption. It should have been published back in March 2012 for an April 2012 start. The last date I had been given was October 2012 but still waiting.

The above does not affect the operation of the Advanced Payment Code.

## **ISSUES ARISING**

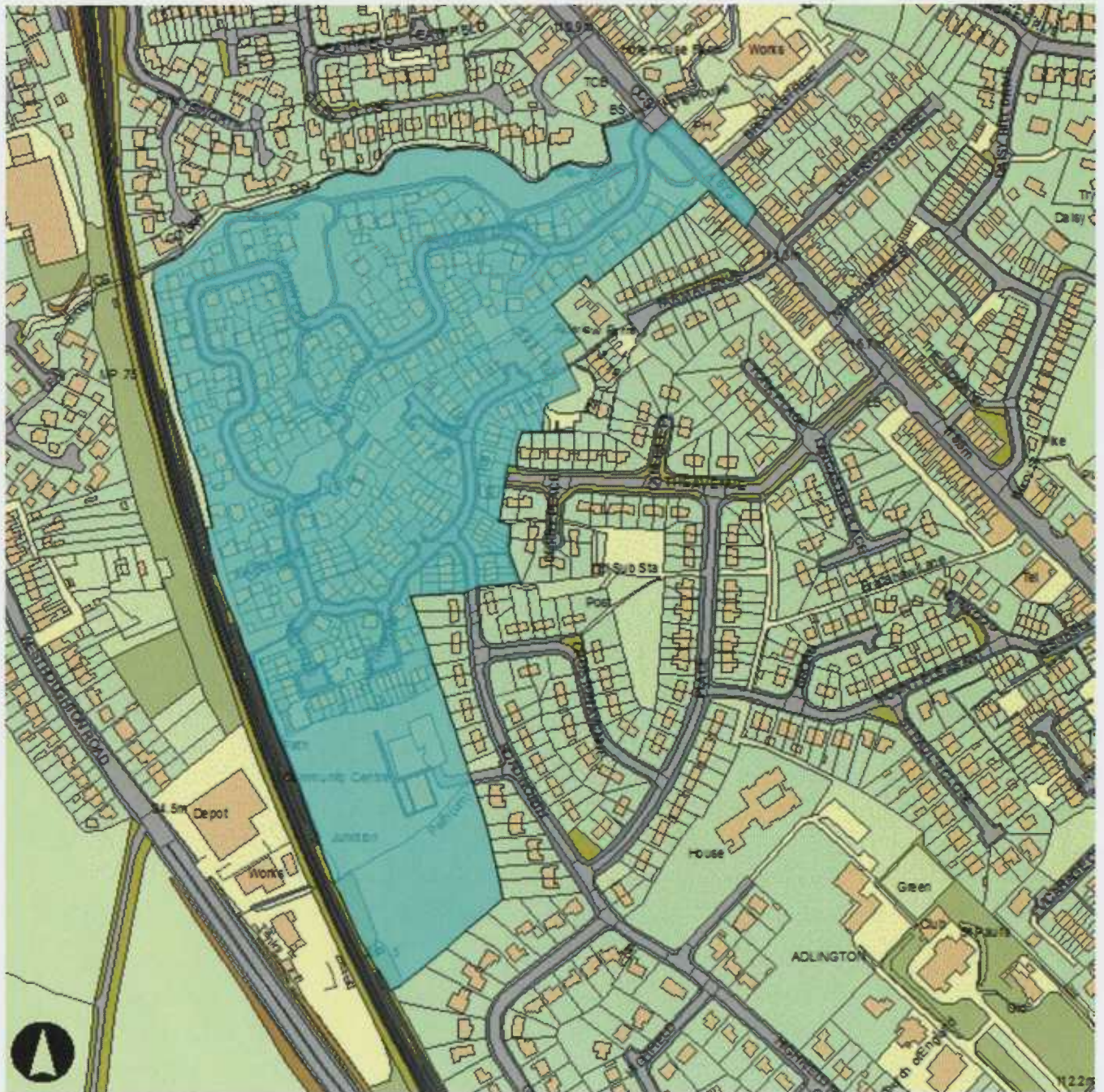
Westbury Homes (NW) Ltd entered into financial difficulties in the early 2000's to have it's property portfolio taken over by Persimmon Homes. This led to lengthy negotiations to ensure the release to the Council of the commuted sums due under the Section 106 Agreement finally resolved in 2009.

## **PUBLIC OPEN SPACE AND LEAISURE FACILITIES ON FAIRVIEW FARM**

**To follow from People and Places Team**



# Fairview Farm



**98/00660/CO4 (1)**  
Planning Applications (1)

REFVAL	SHAPE	MAP_X	MAP_Y	LATITUDE	LONGITUDE	OBJECTID
98/00660/CO4	Polygon	Null	Null	Null	Null	5063

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# Showing Playspace



98/00660/CO4 (1)  
 Planning Applications (1)

REFVAL	SHAPE	MAP_X	MAP_Y	LATITUDE	LONGITUDE	OBJECTID
98/00660/CO4	Polygon	Null	Null	Null	Null	5063

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## OUTLINE PLANNING PERMISSION (FOR DEVELOPMENT OF LAND VESTED IN A PLANNING AUTHORITY WHICH IT DOES NOT ITSELF PROPOSE TO CARRY OUT)

Town and Country Planning Act 1990  
Town and Country Planning General Regulations 1992

### Applicant:

Chorley Borough Council.  
Per Agent

### Agent:

R P Hanscombe ARICS,  
Head Of Commercial Development; Chorley Borough Council; Council Offices, Gillibrand Street, Chorley, PR7 2EL

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Application Number  
9/98/00660/CO4

Date Received  
23 September 1998

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### The Development :

Regulation 4 outline application for residential development, associated open space and multi-functional community building,

### Location :

Land Adjacent Fair View Farm, (including Land Bounded By Chorley Road, Eller Brook, Railway Line And Housing On Grove Crescent, Highfield Road And Farm Avenue, Chorley Road, Adlington, Chorley, Lancashire

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Chorley Borough Council (the Local Planning Authority) gives notice that it has resolved, for the purposes of Regulation 4 of the above regulations, that the development be carried out with **Outline Planning Permission**, subject to the following conditions -

1. Application for approval of the reserved matters must be made to the Council before the expiration of three years from the date of this permission and the proposed Development must be begun either before the expiration of five years from the date of this permission, or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.

*Reason: Required to be imposed by Section 92 of the Town and Country Planning Act 1990.*

2. The Development shall only be carried out in accordance with the approved plans, except as may otherwise be specifically required by any other condition of this permission or unless otherwise first agreed to in writing by the Local Planning Authority.

*Reason: To define the permission and in the interests of the proper development of the site.*

3. All applications for approval of reserved matters shall accord with the guidance contained in the approved Site Development Brief and be accompanied by-

a) An Noise Report - A survey of noise levels associated with the adjacent rail line; recommendations for the siting of houses; and a scheme for protecting the dwellings from noise; and

b) A Drainage Study - A survey and analysis/assessment of the catchment to the foul and surface water drainage system which outfalls through the site to demonstrate the performance of the system and associated watercourses in storm conditions and to prevent flooding, having regard to the constrained pass forward flows; and

- c) An Existing Vegetation Survey - A survey of all existing trees and hedgerows within and adjoining the site, their size, condition, amenity value, and proposals for their inclusion within the development; and
- d) Cycle Measures - Detailed measures for the safe and convenient movement of cycles from Chorley Road to Highfield Road North; and
- e) Landfill Gas Migration Measures - Detailed measures for the installation of a gas venting trench to the north, east and south boundaries of the former landfill site; and
- f) Public Open Space Maintenance Measures - Detailed measures for the long term management and maintenance of all public open space areas; and
- g) A Topographical Survey - A survey of existing ground levels across and adjoining the site.

*Reason: To ensure a satisfactory form of development, in the interests of the amenities and safety of future occupants, to ensure the retention of landscape features, to make provision for cyclists and to avoid flooding.*

4. Before the development hereby permitted is first commenced, full details of the following reserved matters (namely siting, design, external appearance of the buildings, and the landscaping of the site) shall be submitted to and approved in writing by the Local Planning Authority.

*Reason: The permission is in outline only.*

5. Before the development hereby permitted is first commenced full details of existing and proposed ground levels and proposed building slab levels (all relative to ground levels adjoining the site) shall have been submitted to and approved in writing by the Local Planning Authority, notwithstanding any such detail shown on previously submitted plan(s). The development shall only be carried out in conformity with the approved details.

*Reason: To protect the appearance of the locality and in the interests of the amenities of local residents.*

6. Before the development hereby permitted is first commenced, full details of the position, height and appearance of all fences and walls to be erected (notwithstanding any such detail shown on previously submitted plan(s)) shall have been submitted to and approved in writing by the Local Planning Authority. No dwelling shall be occupied until all fences and walls shown in the approved details to bound its plot have been erected in conformity with the approved details. All fences and walls shown in the approved details shall have been erected in conformity with the approved details prior to substantial completion of the development.

*Reason: To ensure a visually satisfactory form of development and to provide reasonable standards of privacy to residents.*

7. Before the development hereby permitted is first commenced, full details of the position, height and appearance of all fences and walls to be erected to the site boundaries (notwithstanding any such detail shown on previously submitted plan(s)) shall have been submitted to and approved in writing by the Local Planning Authority. No building shall be occupied or land used pursuant to this permission before all walls and fences have been erected in accordance with the approved details, unless otherwise agreed in writing with the Local Planning Authority. Fences and walls shall thereafter be retained in accordance with the approved details at all times.

*Reason: To ensure a visually satisfactory form of development and to protect the amenities of occupiers of nearby property.*

8. No development shall take place until details of the proposed surface water drainage arrangements have been submitted to and approved by the Local Planning Authority in writing. No part of the development shall be occupied until the approved surface water drainage arrangements have been fully implemented.

*Reason: To secure proper drainage and to prevent flooding.*

9. Before the development hereby permitted is first commenced full details of the means of foul water drainage/disposal shall have been submitted to and approved in writing by the Local Planning Authority. No dwelling shall be occupied until the works for foul water drainage/disposal have been completed in accordance with the approved details.

*Reason: To ensure proper drainage of the development.*



10. Before the development of the Community Building hereby permitted is first commenced, full details of the measures to be incorporated into the development to prevent the ingress of landfill gas shall be submitted to and approved in writing by the Local Planning Authority. The Community Building shall only be constructed in accordance with the approved scheme of landfill gas ingress prevention measures.

*Reason: To protect occupiers from the ingress of landfill gas.*

11. No dwelling with access from Highfield Road North shall be occupied until traffic calming measures have been completed on Highfield Road and Highfield Road North in accordance with the approved Plan 6, or in accordance with such other scheme of traffic calming measures of these roads approved in writing by the Local Planning Authority, and improvements made to the junction of Railway Road and Highfield Road in accordance with a scheme to be prior agreed in writing with the Local Planning Authority.

*Reason: In the interests of highway safety.*

12. No vehicular access shall be provided between the 'Affordable Housing Parcel', accessed off The Avenue, and the remainder of the development.

*Reason: In the interest of highway safety*

13. All planting, seeding or turfing proposed within the curtilage of a dwelling and comprised in the approved landscaping reserved matters, shall be carried out in the first planting and seeding seasons following occupation of that dwelling. Any trees or plants which within a period of 5 years from occupation of the dwelling die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.

*Reason: In the interest of the appearance of the locality.*

14. Prior to the commencement of the development a scheme for the phased carrying out of all proposed planting, seeding or turfing (other than within the curtilage of a dwelling) shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, all planting, seeding or turfing shall be carried out in accordance with the approved scheme. Any trees or plants which within a period of 5 years from planting die, removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.

*Reason: In the interest of the appearance of the locality.*

15. The existing soil levels around the base of the trees to be retained shall not be altered.

*Reason: To safeguard the trees to be retained.*

16. During the construction period, all trees to be retained shall be protected by a chestnut palisade fence of minimum height 1 metre placed at a distance from the tree trunk equivalent to the crown spread of the trees, or as may otherwise be first agreed in writing with the Local Planning Authority. No construction materials, spoil, rubbish, vehicles or equipment shall be stored or tipped within the area(s) so fenced. All excavations within the area so fenced shall be carried out by hand.

*Reason: To safeguard the trees to be retained.*

17. The development hereby permitted shall not commence until full details of the colour, form and texture of all external facing materials to the proposed building(s) (notwithstanding any details shown on the previously submitted plan(s) and specification) have been submitted to and approved in writing by the Local Planning Authority. The development shall only be carried out using the approved external facing materials.

*Reason: To ensure that the materials used are visually appropriate to the locality.*

18. No dwelling identified in the 'Noise Report' (referred to in condition 3) as requiring protection from noise shall be occupied until measures to protect the dwelling from noise have been completed in full in accordance with the approved scheme.

*Reason: In the interests of the amenities of future occupiers.*

19. No development shall take place until a scheme for the provision of public open space (including a 5-a-side football pitch) and play areas has been submitted to and approved in writing by the Local Planning Authority. The scheme to be submitted to include full details of all play and other equipment to be provided.

*Reason: To ensure adequate provision for public open space and play areas within the development.*

20. Before the development hereby permitted is first commenced, full details of the phasing of provision and equipping of public open space and play areas shall have been submitted to and approved in writing by the Local Planning Authority. The provision and equipping of such areas to be thereafter carried out in strict accordance with the approved details.

*Reason: To ensure adequate provision for public open space and play areas within the development.*

21. Any application for approval of reserved matters shall include details of the access to the site from Chorley Road, in accordance with the principles included in Plan FF3, and provision made for the relocation of bus stopping places on Chorley Road, the replacement of the bus shelter on the west side of Chorley Road, and residents' parking bays on both sides of Chorley Road. No dwelling with access through the development site from Chorley Road shall be occupied until the site access junction with Chorley Road and associated works have been completed in full in accordance with the scheme to be approved.

*Reason: In the interests of highway safety.*

22. Before the development hereby permitted is first commenced a scheme for the provision of bat access holes within specified dwellings shall have been submitted to and approved in writing by the local Planning Authority. Thereafter, no specified dwelling shall be occupied until the bat access holes have been provided in accordance with the approved scheme.

*Reason: In the interests of nature conservation.*

23. No vehicular access shall be provided from between nos. 15 and 17 Highfield Road North to any part of the development other than the Community Building and associated car parking area.

*Reason - In the interests of highway safety.*

24. No dwelling shall be erected within 50 metres of any measures installed to prevent the migration of landfill gas from the former landfill site.

*Reason: In the interests of the safe occupancy of the development.*

25. Before the commencement of the development an approval to all reserved matters for the Community Building shall have been granted by the Local Planning Authority. The Community Building shall have been erected and made available for use, together with the associated car parking area and a minimum of 7 cycle parking stands, prior to the occupation of 100 dwellings.

*Reason - To ensure the availability of adequate community facilities in accordance with Policy P11 of the adopted Chorley Borough Local Plan.*

26. No dwelling or any part of its curtilage shall be erected or provided within 8 metres of the adjoining watercourse, Eller Brook.

*Reason: To ensure adequate provision is made for access to the watercourse.*

**Please note:** Your attention is drawn to the contents of the enclosed letter dated 12.10.98 from British Coal.

**Please note:** Your attention is drawn to the importance of 'Preventing Crime by Design'. Advice on aspects of security is available from the Crime Prevention Officer at Chorley Police Station, Chorley (01257) 269021. The Lancashire Constabulary also operate a 'Secured by Design' initiative. Details of the scheme and how house builders may seek approval under it, may be obtained from the Community Affairs Department, Police HQ, P.O. Box 77, Hutton, Preston, Lancashire, PR4 5FB. (Telephone: 01772 614444).

**Please note:** You are informed that the responsibility for safe development and secure occupancy of the site rests with the developer. The Local Planning Authority has determined the application on the basis of the information submitted, but this does not mean that the site is free from contamination.

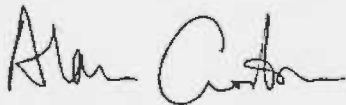
**Please note:** This consent requires the construction, improvement or alteration of an access to the public highway. Under the Highways Act 1980 Section 184, the County Council as Highway Authority must specify the works to be carried out. Only the Highway Authority or a contractor approved by the Highway Authority can carry out these works and therefore, before any access works can start, you must contact the Environment Directorate for further information by telephoning Janet Rigby (01772 264584) or writing to the Director of Environment, P O Box 9, Guild House, Cross Street, Preston, PR1 8RD quoting the planning application number.

**Please note:** You are advised to separately contact the Head of Engineering and Transportation, (Council Offices, Gillibrand Street, Chorley, Lancs. PR7 2EL - tel: 01257 515256) regarding arrangements for entering into an adoption agreement with the Highway Authority under the provisions of Section 38 of the Highways Act.

**Please note:** The site is crossed by a number of public footpaths. The grant of planning permission does not entitle a developer to obstruct or stop up a right of way.

**Please note:** Your attention is drawn to the existence of a separate legal agreement under Section 106 of the Town and Country Planning Act 1990 which relates to the use or development of the land to which this permission relates.

Signed:



Date:

15 November 1999

Alan D Croston BA (Hons) MRTPI MIMgt,  
Head of Planning Services, Council Offices, Gillibrand Street, Chorley, Lancashire, PR7 2EL

**Please read the notes attached to this notice with great care. They will help you to understand this decision, your rights and other things you may have to do.**



ID S106 FAIRVIEW

L & D

THIS DEED is made the 12 November 1999

BY CHORLEY

BOROUGH COUNCIL of the Town Hall, Market Street, Chorley, Lancashire ("the Owner")



Recitals

1. The Owner is the freehold owner of the Site
2. The Owner considers that certain planning obligations should be entered into in respect of the Site
3. The Owner intends that the promises in this agreement should be enforceable by the Local Planning Authority against any subsequent owner of any of the Site

The Operative Part

1. These expressions have the meanings set out against them:

<i>the Act</i>	the Town and Country Planning Act 1990, as amended
<i>the Commencement Date</i>	the date on which the Development is begun as established in accordance with subsections 56 (2) and (3) of the Act but disregarding paragraph (aa) of subsection 56 (3)
<i>the Development</i>	development of the Site in accordance with the Planning Permission
<i>The Local Planning Authority</i>	The Owner acting in its capacity as local planning authority and not as owner of the Site
<i>the Plan</i>	the plan attached to this agreement
<i>the Planning Permission</i>	the planning permission granted as a result of an application for outline

planning permission for residential development, associated open space and multi-functional community building made by the Owner on 23 September 1998 given the reference 9/98/00660/CO4

*the Site*

the land adjacent to Fair View Farm, Adlington, Lancashire shown edged red on the Plan

- 2 References to the Owner in its capacity as owner of the Site include its successors in title
- 3 This deed is made under section 106 of the Act and the covenants in it are intended to be planning obligations
- 4 If any covenant in this agreement is not a planning obligation it is made under the powers in section 111 of the Local Government Act 1972 and any other powers which enable the Owner to enter into it
- 5 The Local Planning Authority is the local planning authority by which the planning obligations in this agreement are enforceable
- 6 The covenants contained in this agreement will come into effect on the Commencement Date unless this deed says otherwise
- 7 No person will be held responsible for any breach of any covenant in this deed if the breach happens after that person has parted with his interest in the part of the Site where the breach occurs
- 8 This deed will no longer have effect if:

- 8.1 the Planning Permission expires or is quashed, revoked or otherwise withdrawn or modified before the Commencement Date, or
- 8.2 after the date of this deed, the Site is lawfully developed in a way which makes it impractical for the Planning Permission to be implemented
- 9 The Schedule will have effect
- 10 The covenants in this deed are not enforceable against any individual who has bought a house or flat which has been built on the Site or against any statutory undertaker in respect of any part of the Site occupied by it for the purpose of its undertaking
- 11 This deed may be registered as a local land charge
- 12 Any dispute or difference in connection with this deed are to be referred to a single arbitrator appointed (in the absence of agreement between the parties to the dispute or difference) by the president for the time being of the Royal Institute of Chartered Surveyors and any such reference will be deemed to be a submission to arbitration within the meaning of the Arbitration Act 1996
- 13 Where this deed provides for any consent or approval to be given, such consent or approval is not to be unreasonably withheld or delayed

## **THE SCHEDULE**

### **Part 1**

#### **Public open space**



- 1 The Landowner will lay out and landscape the Blue Land for use as public open space in accordance with British Standard BS4428 and in full compliance with any scheme approved by the Council by the grant of the Planning Permission or under any condition attached to the Planning Permission
- 2 Not to use the Blue Land except as public open space for the amenity of occupiers of the Site and the public in general
- 3 After the Blue Land has been laid out and landscaped as required by paragraph 1, not to restrict public access to the Blue Land.
- 4 To maintain the Blue Land in accordance with British Standard BS4428 for one year following the completion of the work required under paragraph 1.
- 5
  - 5.1 On completion by the Landowner of the laying out and landscaping of the Blue Land to the satisfaction of the Council the Council covenants that it will adopt and thereafter maintain the Blue Land and will (subject to sub-paragraph 5.2) accept a transfer of that land from the Landowner within three months from completion of such laying out and landscaping at no consideration and covenant in the transfer to use the Blue Land for the purpose of public open space only and for no other purpose whatsoever
  - 5.2 The Council will not be obliged to take a transfer of the Blue Land unless it is satisfied that the transfer makes provision for all the rights (including

easements and covenants on the part of the Owner) which the Council requires in order to maintain the Blue Land as public open space

6 "The Blue Land" means that part of the Site shown edged Blue on a plan to be submitted not later than the date of the first application for approval of reserved matters under the Planning Permission by the Landowner and which has been approved by the Council.

7

7.1 No development consisting of the commencement or construction of a dwelling will take place on the Site, subject to the exception set out in sub-paragraph 7.2, unless £78,000 has been paid to the Council by the Landowner, with the intention that the money is used for the maintenance of land within the Site as public open space

7.2 Sub-paragraph 7.1 will not prevent commencement or construction of any dwelling which is commenced at any time while fewer than  $x$  dwellings have been commenced, where  $x$  is the number of dwellings equivalent to 75% of the number of dwellings approved under a reserved matters application consequent upon the Planning Permission.

8 Once the Landowner has fulfilled his obligations under part 1 of this schedule the Council will maintain the Blue Land in accordance with British Standard BS 4428 for use as public open space

## Part 2

### Affordable Housing

9

- 9.1 No development consisting of the commencement or construction of a dwelling will take place on the Site, subject to the exception set out in sub-paragraph 9.3, unless the condition in paragraph 9.2 has been met.
- 9.2 The condition referred to in paragraph 9.1 is that the land coloured green on the Plan has been provided with the appropriate services and connections in appropriate capacities to make the whole of it immediately available for affordable housing development; and for the purposes of this paragraph those services are electricity, foul and surface water drainage, water, telephone and gas.
- 9.3 Sub-paragraph 9.2 will not prevent commencement or construction of any dwelling which is commenced while 100 or fewer dwellings on the Site have been commenced and within three months of the Commencement Date.

## Part 3

### Community Building

10 Unless this paragraph has been disapplied by paragraph 11:

- 10.1 No development consisting of the commencement or construction of a dwelling will take place on the Site, subject to the exception set out in sub-



paragraph 10.3, unless both of the conditions in paragraph 10. 2 have been met.

10.2 The conditions referred to in paragraph 10.1 are:

10.2.1 The Owner has built a suitable building for use by the local community to the satisfaction of the Local Planning Authority and in full compliance with any applicable planning brief and any scheme approved by the Local Planning Authority by the grant of the Planning Permission or under any condition attached to the Planning Permission; and

10.2.2 The Owner has paid £377,335 to the Local Planning Authority, with the intention that the money is used for the future maintenance of the building referred to in paragraph 10.2.1

10.3 Sub-paragraph 10.1 will not prevent commencement or construction of any dwelling which is commenced at a time when both of the following circumstances exist:

10.3.1 100 or fewer dwellings on the Site have been commenced; and

10.3.2 less than twelve months has passed since the first transfer of any of the Site out of the ownership of Chorley Borough Council following the completion of this deed

11 Paragraph 10 will not apply during any time when all of the following circumstances exist:

- 11.1 The Owner has notified the Council that it is of the opinion that the Council has prevented it from fulfilling its obligations under paragraph 10 by unreasonably failing to provide necessary licences or consents (other than planning permissions), unreasonably failing to enter into building or other agreements, or otherwise unreasonably acting or omitting to act;
- 11.2 The Owner has given the Council written notice of the acts or omissions of the Council which the Owner considers have prevented it from fulfilling its obligations under paragraph 10 and the Council has not rectified them to the satisfaction of the Owner within 28 days of it receiving the notice;
- 11.3 The Owner has referred the matter to arbitration under clause 12 of this agreement;
- 11.4 The arbitrator has ruled that the Council has prevented the Owner from fulfilling its obligations under paragraph 10 by unreasonably failing to provide necessary licences or consents (other than planning permissions), unreasonably failing to enter into building or other agreements, or otherwise unreasonably acting or omitting to act; and
- 11.5 The Council has not acted to rectify the defaults that the arbitrator has ruled to exist.

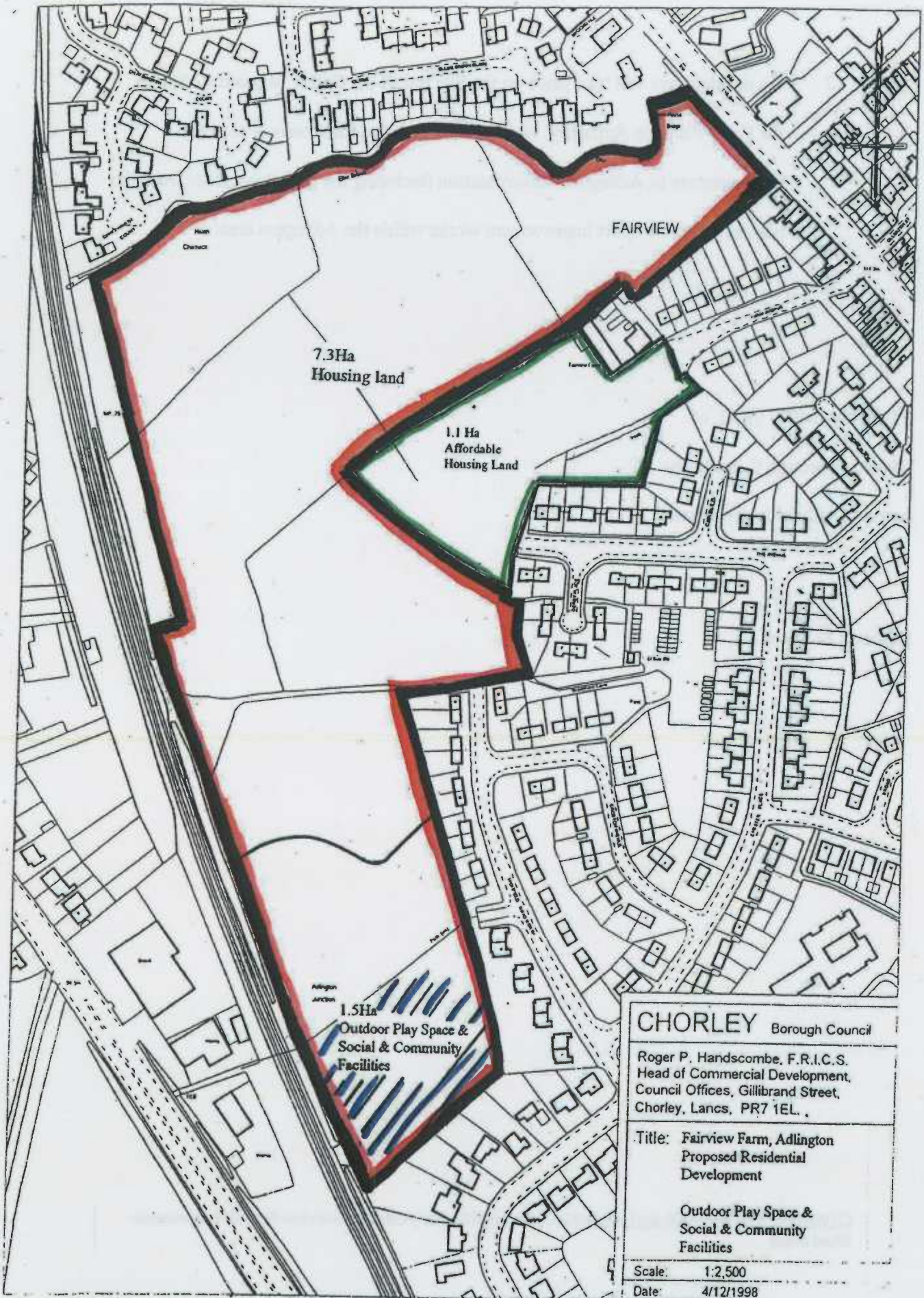
#### Part 4

#### Transport Contribution

- 12 No development will take place on the Site unless the Owner has paid £7,500 to the Local Planning Authority, with the intention that the money is used for improvements to Adlington railway station (including the pedestrian route from the Site) or other transport improvement works within the Adlington area.

THE COMMON SEAL of  
Chorley Borough Council was  
hereunto affixed in the presence of

Borough Solicitor



**CHORLEY** Borough Council

Roger P. Handscombe, F.R.I.C.S.  
 Head of Commercial Development,  
 Council Offices, Gillibrand Street,  
 Chorley, Lancs, PR7 1EL.

Title: Fairview Farm, Adlington  
 Proposed Residential  
 Development

Outdoor Play Space &  
 Social & Community  
 Facilities

Scale: 1:2,500  
 Date: 4/12/1998

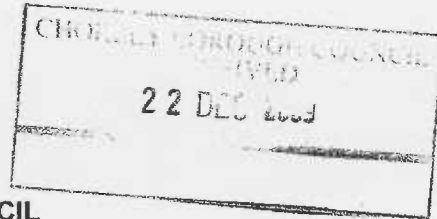


DATED

18 December

2009

BETWEEN



CHORLEY BOROUGH COUNCIL

and

WESTBURY HOMES (HOLDINGS) LIMITED

SUPPLEMENTAL DEED TO SECTION 106 AGREEMENT

Andrew Docherty  
Corporate Director (Governance)  
Chorley Borough Council  
Town Hall  
Chorley  
Lancashire  
PR7 1DP

**THIS SUPPLEMENTAL DEED OF AGREEMENT** is made this 18 day of December 2009 between **CHORLEY BOROUGH COUNCIL** of Town Hall Market Street Chorley Lancashire PR7 1DP (hereinafter called "the Council") of the first part and **WESTBURY HOMES (HOLDINGS) LIMITED** whose registered office is situate at Persimmon House, Fulford, York YO19 4FE (hereinafter called "the Developer") of the second part as is supplemental to the Principal Deed (as hereinafter defined)

**WHEREAS**

- 1) The Council is the Local Planning Authority for the purposes of the Town and Country Planning Act 1990 for the area within the land shown edged red on the plan annexed to the Principal Deed (hereinafter called "the Site") is situate
- 2) By a deed dated 12 November 1999 (hereinafter called "the Principal Deed") and made pursuant to Section 106 of the Town and Country Planning Act 1990 and all other powers so enabling the owners of the Site agreed as therein provided to restrict and regulate the development of the Site and the obligations and other matters contained
- 3) The terms of the Principal Deed assured that development of the Site would be in accordance with the planning permission ("the Planning Permission") granted as a result of an application for outline planning permission for residential development, associated open space and multi-functional community building numbered by the Council 9/98/00660/C04
- 4) The Developer made an application to the Council for a revision to planning permission 9/98/660/C04 for modification of Condition Number 4 to change Area 6 Public Open Space from equipped play space to a landscaped park in the manner set out in the application and in the plans specifications and particulars deposited with the Council and forming part of the application and which has been numbered by the Council 04/00629/FUL (hereinafter called "the 2004 Application")
- 5) The Council is not disposed to grant planning permission pursuant to the 2004 Application otherwise than on the terms and in the manner hereinafter appearing and at the meeting of its Development Control Committee on 27 July 2004 it was resolved that subject to this Agreement for regulating the Development planning permission should be granted only subject to the conditions that are specified in the Second Schedule hereto

## 1. INTERPRETATION

"the Act"	the Town and Country Planning Act 1990
"Commencement of Development"	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 Development" shall be construed accordingly
"Fairview Community Centre Play Space Commuted Sum"	a financial contribution of £60,000.00 (sixty thousand pounds) towards the provision and equipping of play equipment at Fairview Community Centre Play Space
"Play Space Commuted Sum"	a financial contribution of £40,000.00 (forty thousand pounds) towards provision of equipped play space
"Development"	the development of the Site in accordance with the Planning Permission more particularly described in the First Schedule
"Interest"	interest at 3% per cent above the base lending rate of the Barclays Bank plc from time to time
"Plan"	means the plan attached to this Deed
"Planning Permission"	the full planning permission subject to conditions to be granted by the Council pursuant to the 2004 Application as set out in the Second Schedule
"the Westbury Land"	the land against which this Deed may be enforced (being part of the Site) as the same is registered at the Land Registry under title number LA903548 and is shown edged red on the attached plan but

excluding the parcels shown coloured green and the parcels shown edged green

## **2. CONSTRUCTION**

**In this Agreement when the context so requires:**

- 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 includes the plural 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 Title headings to the clauses, schedules and appendices are for convenience only and shall not affect the interpretation of this Deed
- 2.6 Any reference to an Act of Parliament shall include any notification, 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
- 2.7 The Plan is annexed hereto for the purposes of identification only

## **3. LEGAL BASIS**

- 3.1 The Deed is made pursuant to Section 106 of the Act Section 111 of the Local Government Act 1972 and Section 2 of the Local Government Act 2000



3.2 The covenants, restrictions and requirements imposed upon the Developer under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council as local planning authority against the Developer

#### **4. CONDITIONALITY**

This Deed is conditional upon:

(i) the grant of the Planning Permission;

save for the provisions of Clause 8 legal costs clause which shall come into effect immediately upon completion of this Deed

#### **5. COVENANTS**

5.1 The Developer and all other powers so enabling covenants with the Council to observe the restrictions and perform and comply with the obligations specified in the Third Schedule to the intent that they shall bind the Developer and each and every part of the Westbury Land

5.2 The Council covenants with the Developer to perform and comply with the obligations specified in the Fourth Schedule

#### **6. AGREEMENT AND DECLARATIONS**

It is hereby agreed and declared that:

6.1 This Deed shall be registered in the Council's Register of Local Land Charges immediately on completion thereof and the Council will upon the written request of the Developer at any time after the obligations of the Developer under this Deed have been fulfilled issue written confirmation thereof and thereafter cancel all related entries in the Register of Local Land Charges

6.2 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 Westbury Land but without prejudice to liability for any subsisting breach arising prior to parting with such interest

6.3 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or without the

consent of the Developer it is modified by any statutory procedure or expires prior to the Commencement of Development

- 6.4 Nothing in this Deed shall prohibit or limit the right to develop any part of the Westbury Land in accordance with any planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed
- 6.5 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 enforceability shall not affect the validity or enforceability of the remaining provisions of this Deed
- 6.6 Any variation of this Deed agreed between the Developer and the Council in writing shall not vitiate the remainder of this Deed which shall remain in full force and effect subject to the amendment or amendments so agreed
- 6.7 Where any consent or approval is required under the terms of this Deed, such consent or approval shall not be unreasonably withheld or delayed
- 6.8 This Deed shall not be enforceable against individual purchasers or their mortgagees of dwellings constructed pursuant to the Planning Permission nor against those deriving title from them or statutory undertakers in relation to any parts of the Westbury Land acquired by them for electricity sub-stations, gas governor stations or pumping stations
- 6.9 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it
- 6.10 The covenants and obligations on the part of the Developer contained in this Deed shall only be enforceable in respect of land which is either under the control or within the ownership of the Developer
- 6.11 This Agreement shall be binding on successors in title and assigns

## **7. NOTICES**

- 7.1 All notices, demands or other written communications to or upon the parties pursuant to this Agreement shall be deemed to have been properly given or made if despatched by first class recorded delivery, letter to the party to which such notice, request, demand or other written communication is to be given or made under this Agreement and addressed as follows:

7.1.1 in the case of the Council to the Corporate Director of Governance to the Council;

7.1.2 in the case of the Developer to its company secretary at its registered office;

or such other address for service as shall have been previously notified to the other party

7.2 Any such notice, request or demand or other written communication shall be deemed to have been served as follows:

7.2.1 if posted recorded delivery at the expiration of 48 hours after the envelope containing the same was delivered into the custody of the postal authority within the United Kingdom

and in providing such service it shall be sufficient to prove that the envelope containing such notice, request, demand or other written communication was properly addressed and delivered into the custody of the postal authority in a pre-paid first class or recorded delivery envelope (as appropriate)

7.3 No waiver (whether expressed or implied) by the Council or the Developer 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 or the Developer from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default

## **8. PAYMENT DUE AND VAT**

The Developer shall pay to the Council on completion of this Deed the reasonable legal costs of the Council incurred in the negotiation, preparation and execution of this Deed amounting to £500 inclusive of VAT

## **9. INTEREST ON ARREARS**

If any payment due under this Deed is paid late, interest will be payable from the date payment is due to the date of payment

## **10. VAT**

All consideration given in accordance with the terms of the Deed shall be exclusive of any Value Added Tax properly payable

## **11. JURISDICTION**

11.1 The Deed is governed by and interpreted in accordance with the law of England and Wales

11.2 It is hereby acknowledged that nothing in this Deed is intended to prevent the Council from exercising any function duty or discretion that is bound by statute so to do

## **12. DISPUTE RESOLUTION**

Any dispute or difference arising out of this Agreement shall be submitted for the determination of an expert

12.1 The expert shall be appointed by the parties jointly or, in default of agreement within 10 clear working days after either party has given to the other a written request requiring the appointment of an expert, by the President for the time being of the Royal Institution of Chartered Surveyors or such other institution should the parties so agree as the case may be and such reference shall be deemed to be submission to arbitration with the meaning of the Arbitration Act 1996 or any statutory modification or re-enactment thereof for the time being in force

12.2 The President shall, if so required, appoint an independent chartered surveyor as such expert or other person qualified in the discipline that the President deems appropriate for the dispute or difference in question

12.3 The expert so appointed must:

12.3.1 act as an expert and not as an arbitrator;

12.3.2 afford the parties the opportunity within reasonable limits to make representations to him;

12.3.3 inform each party of the representations of the other;

12.3.4 afford each party the opportunity within reasonable time limits to make submission to him on the representations of the other; and



12.3.5 notify the parties of the decision, with reasons, as quickly as practicable

12.4 The fees and expenses of the expert including the cost of his nomination shall be borne equally by the parties who shall bear their own costs as to the submission and determination of the dispute or difference by the expert

12.5 The expert's determination is to be conclusive and binding on the parties except:

12.5.1 where there is a manifest error; and/or

12.5.2 on a matter of law

12.6 Either party may pay the share of the expert's fees and expenses due from other party on behalf of the other party if the other party if such share is not paid within 20 working days of demand by the expert in which case the amount so paid plus all incidental expenses shall become a debt due and immediately payable to the paying party from the other party

### 13. 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.

### 14. PRINCIPAL DEED

14.1 The Council hereby confirms and acknowledges that the Developer has satisfied the obligations contained in Schedule 1 Part 1 (Public open space), Part 2 (Affordable Housing), Part 3 (Community Building) and Part 4 (Transport Contribution) of the Principal Deed and in the Development Agreement made between the parties hereto dated 2 March 2001 (as subsequently amended by supplemented agreements dated 22 August 2001, 7 September 2001, 5 December 2001 and 10 December 2001).

~~14.2 The Council hereby releases the Developer from its outstanding obligations in the Principal Deed in so far as they apply to the laying out and landscaping of the Blue Land (as defined therein) and in the said Development Agreement in so far as they apply to the laying out and maintaining of the Open Space Land (as defined therein) and the Council will accept a transfer thereof within three months of the date of this Deed.~~

14.2 See attached Rider

*Davis and  
Partners* 9  
RB

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

## **Rider to Agreement**

### **Clause 14.2**

The Council will accept a transfer within three months of the date of this Deed of the Blue Land as defined in the Principal Deed and the Open Space Land as defined in the Development Agreement subject to the Blue Land and the Open Space Land being maintained to the satisfaction of the Council. On completion of the Transfer the Council shall release the Developer from its outstanding obligations in the Principal Deed in so far as they apply to the laying out and landscaping of the Blue Land (as defined therein) and in the said Development Agreement in so far as they relate to the laying out and maintaining of the Open Space Land (as defined therein)

**FIRST SCHEDULE**

**The Development**

The modification of Condition No 4 of planning permission 9/98/00660C04 to change Area 6 Public Open Space from equipped play space to a landscaped park pursuant to application No 04/00629/FUL



**SECOND SCHEDULE**

**Draft Planning Permission**

(Copy draft Decision Notice to be inserted here)

## PLANNING PERMISSION

Town and Country Planning Act 1990

**Applicant:**

Westbury Homes (Holdings) Ltd  
Westbury House, Crofts Bank Road, Urmston, Manchester, M41 0JS

**Agent:**

Cass Associates  
Studio 104, The Tea Factory, 82 Wood Street, Liverpool, L1 4DQ

Application Number  
04/01629/FU

Date received  
11 May 2004

**The development:**

Review of Planning Permission 9/91660/CO for modification of use for 4 including public open space  
(Area to be equipped by space to landscape park,

**Location:**

Land Adjacent Fair View Farm, (including Land Bounded By Chorley Road, Eller Brook, Railway, Chorley Road Adlington Chorley Lancashire

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Chorley Borough Council (the Local Planning Authority) gives notice of its decision to grant **Planning Permission** for the development, subject to the following conditions -

1. The Development shall only be carried out in accordance with the approved plans, except as may otherwise be specifically required by any other condition of this permission or unless otherwise first agreed to in writing by the Local Planning Authority.

*Reason: To define the permission and in the interests of the proper development of the site.*

2. Prior to the commencement of the first planting season following the date of the granting of this permission a scheme of landscaping has been submitted to and approved in writing by the Local Planning Authority, notwithstanding any such detail which may have previously been submitted. The scheme shall indicate all existing trees and hedgerows on the land; detail any to be retained, together with measures for their protection in the course of development; indicate the types and numbers of trees and shrubs to be planted, their distribution on site, those areas to be seeded, paved or hard landscaped; and detail any changes of ground level or landform.

*Reason: In the interests of the amenity of the area and in accordance with Policy No.GN5 of the Adopted Chorley Borough Local Plan Review.*

3. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the date of this grant of permission, and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.

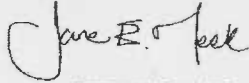
*Reason: In the interest of the appearance of the locality and in accordance with Policy No GN5 of the Adopted Chorley Borough Local Plan Review.*

**Please note:** Your attention is drawn to the existence of a separate legal agreement under Section 106 of the Town and Country Planning Act 1990 which relates to the use or development of the land to which this permission relates.

**Please note:** The grant of planning permission does not entitle a developer to obstruct a right of way and any proposed stopping up or diversion of a right of way should be the subject of an Order under the appropriate Act

This decision has been made having regard to:  
The policies of the Development Plan which comprises the Regional Planning Guidance for the North West (2003) and the adopted Chorley Borough Local Plan Review (2007); and  
All other relevant planning guidance including supplementary planning guidance.

Signed \_\_\_\_\_ on 15 February 2009



Jane E. Peck BSc (Hons) Dip. P. RTI  
Corporate Director (Business), Chorley Borough Council, Civic Offices, Union Street, Chorley, Lancashire, PR7 1AL

**Please read the notes attached to this notice with great care. They will help you to understand this decision, your rights and other things you may have to do**

# Draft Decision

### THIRD SCHEDULE

#### Developer's Covenants with the Council

#### 1. PAYMENT OF COMMUTED SUM

- 1.1 To pay to the Council on completion of this Supplemental Deed of Agreement the Play Space Commuted Sum of £40,000.00 (Forty Thousand Pounds) in respect of off-site public open space as a contribution towards the provision, layout and equipping of an open space and laying out of an equipped play space as detailed below in paragraph 1.2
- 1.2 To pay to the Council on completion of this Supplemental Deed of Agreement the Fairview Community Centre Play Space Commuted Sum of £60,000 (Sixty Thousand Pounds) in respect of off-site public open space to be expended on the equipment of a play space at Fairview Community Centre, Adlington, Chorley, Lancashire.

**FOURTH SCHEDULE**

**Covenant by the Council**

**1. Repayment of Contributions**

- 1.1 The Council hereby covenants with the Developer to use all sums received from the Developer 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 Developer and the Council shall agree
- 1.2 The Council covenants with the Developer that it will pay to the Developer such amount of any payment made by the Developer to the Council under this Deed which has not been expended in accordance with the provisions of this Deed within (five) years of the date of receipt by the Council of such payment together with interest at 3% per cent above the base lending rate of the Barclays Bank plc from time to time for the period from the date of payment to the date of refund
- 1.3 The Council shall provide to the Developer such evidence, as the Developer shall reasonably require in order to confirm the expenditure of the sums paid by the Developer under this Deed

**IN WITNESS** whereof the parties have executed this Agreement as a Deed on the day and year first before written

**EXECUTED** as a **DEED** by Westbury  
Homes (Holding) Limited  
acting by its  
Attorneys [ *S. LANCASTER* ]

And [ *M. LOU* ] in the

Presence of :

*[Signature]*

LIZZIE WILLIAMS – SECRETARY  
PERSIMMON HOMES LANCASHIRE  
PERSIMMON HOUSE  
LANCASTER BUSINESS PARK  
CATON ROAD  
LANCASTER  
LA1 3RQ





THE COMMON SEAL of CHORLEY )  
BOROUGH COUNCIL was hereunto )  
affixed in the presence of: )



21240

*Andrew Dackley*

Corporate Director of Governance