

DATED

9<sup>th</sup> July

2015

PLAN08-251

Reg 2017/15

**THE COUNCIL OF THE BOROUGH OF SOUTH TYNESIDE**

**AND**

**STELLA PROPERTY INVESTMENTS LIMITED**

**AND**

**GEOFFREY THOMPSON**

**AND**

**ANDREA THOMPSON**

**AGREEMENT**

Under section 106 of the Town and Country Planning Act 1990  
Former Church Lane House site, Church Lane, Whitburn, Tyne & Wear

Mike Harding  
Head of Legal Services  
South Tyneside Council  
Town Hall and Civic Offices  
Westoe Road  
South Shields  
Tyne and Wear

Ref: PSM/L/13778

**THIS AGREEMENT** is made on

9<sup>th</sup> July

2015

**BETWEEN:**

- (1) **THE COUNCIL OF THE BOROUGH OF SOUTH TYNESIDE** of Town Hall & Civic Offices, Westoe Road, South Shields, Tyne & Wear, NE33 2RL ("the Council");
- (2) **STELLA PROPERTY INVESTMENTS LIMITED** (Registered Company No. 08819796) of The Quadrus Centre, Woodstock Way, Boldon Business Park, Boldon Colliery, Tyne & Wear, NE35 9PF ("the Developer"); and
- (3) **GEOFFREY THOMPSON** and **ANDREA THOMPSON** of 41 Front Street, Whitburn, Tyne & Wear, SR6 7JD (together "the Landowners")

**BACKGROUND**

- A. For the purposes of the 1990 Act, the Council is the local planning authority for the area within which the Site is located and the person who is entitled to enforce the obligations contained in this Agreement.
- B. The Landowners are the registered freehold proprietors of the Site with title absolute under HM Land Registry title number TY417202.
- C. The Developer has submitted the Planning Application to the Council and the parties have agreed to enter into this Agreement in order to secure the planning obligations contained herein.
- D. On 1 June 2015 the Council's Planning Committee resolved to grant the Planning Permission subject, among other things, to the completion of this Agreement without which the Council would not have been willing to grant the Planning Permission.
- E. The parties have agreed that this Agreement will run with the land and bind successors in title.

## OPERATIVE PROVISIONS

### 1. INTERPRETATION

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

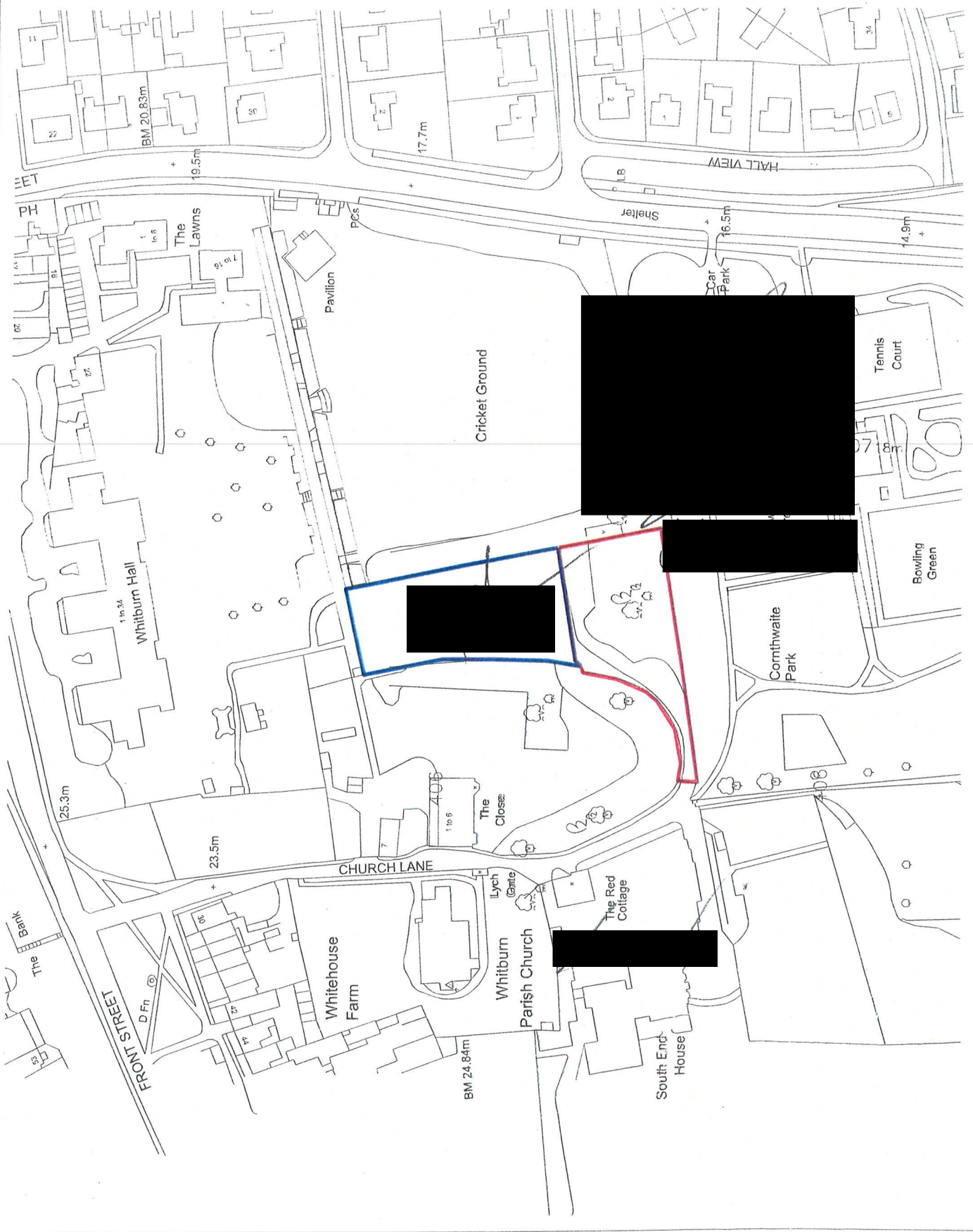
<b>"1990 Act"</b>	the Town and Country Planning Act 1990
<b>"Business Day"</b>	any day, other than a Saturday or Sunday, on which commercial banks in the City of London are open for business generally
<b>"Commencement Date"</b>	the date specified in clause 3.1
<b>"Commencement of Development"</b>	the commencement of the Development by the carrying out on the Site pursuant to the Planning Permission of a material operation as specified in section 56(4) of the 1990 Act and the words "Commence the Development" or "Commenced" shall be construed in the same way
<b>"Development"</b>	the development of the Site as described in the Planning Application for the proposed erection of five contemporary executive town houses with associated parking
<b>"Dwellings"</b>	means the residential dwellings to be constructed on the Site pursuant to the Planning Permission and 'Dwelling' shall be construed

	accordingly
<b>"Highway Improvement Works Contribution"</b>	the sum of £836.44 towards the improvement of the entrance to Cornthwaite Park and the adjacent footpath located on Church Lane, Whitburn
<b>"Index"</b>	means such increase as is necessary to reflect any increase in the Retail Price Index (All Items) (or such replacement index thereof) for the period commencing from the date of this Agreement and ending on the date of payment such increase to be calculated by reference to the index most recently published at the date at which the relevant payment is made to be used towards the relevant provision pursuant to this Agreement
<b>"the Plan"</b>	the plan attached to this agreement and referenced AL (90) 1000 dated February 2015
<b>"Planning Application"</b>	the application for full planning permission for the carrying out of the Development and carrying the reference ST/0108/15/FUL
<b>"Planning Permission"</b>	the planning permission for the Development carrying the reference ST/0108/15/FUL substantially in the form set out in Schedule 1
<b>"Site"</b>	the land known as the site of former

PROJECT NUMBER	SCALES
1250 & A3	
DRAWING NUMBER	DATE
AI 1901 1000	FEB 15
DRAWN BY	CHECKED BY
DM	GRF
REVISIONS	NOTES



DATE AND DESCRIPTION



	Church Lane House, Church Lane, Whitburn, Tyne & Wear, SR6 and as shown edged in red on the Plan
--	--

1.2. In this Agreement:

- 1.2.1. the clauses do not affect its interpretation;
- 1.2.2. unless otherwise indicated, references to clauses and Schedules are to clauses of and Schedules to this Agreement and references in a Schedule to a Part or paragraph are to a Part or paragraph of that Schedule;
- 1.2.3. references to any statute or statutory provision include references to:
  - 1.2.3.1. all Acts of Parliament and all other legislation having legal effect in the United Kingdom as directly or indirectly amended, consolidated, extended, replaced or re-enacted by any subsequent legislation; and
  - 1.2.3.2. any orders, regulations, instruments or other subordinate legislation made under that statute or statutory provision;
- 1.2.4. references to the Site include any part of it;
- 1.2.5. references to any party in this Agreement include the successors in title of that party and references to the Council include any successor local planning authority exercising planning powers under the 1990 Act;
- 1.2.6. "including" means "including, without limitation";
- 1.2.7. any covenant on the Landowners and the Developer not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing;

- 1.2.8. where two or more people form a party to this Agreement, the obligations they undertake may be enforced against them all jointly or against each of them individually;
- 1.2.9. if any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of the Agreement is to be unaffected;
- 1.2.10. words importing the singular meaning where the context so admits include the plural meaning and vice versa;
- 1.2.11. 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.

1.3. The parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

## 2. **EFFECT OF THIS AGREEMENT**

- 2.1. This Agreement is made pursuant to section 106 of the 1990 Act. To the extent that they fall within the terms of section 106 of the 1990 Act, the obligations contained in this Agreement are planning obligations for the purposes of section 106 of the 1990 Act and are enforceable by the Council.
- 2.2. To the extent that any of the obligations contained in this Agreement are not planning obligations within the meaning of the 1990 Act, they are entered into pursuant to the powers contained in section 111 Local Government Act 1972, section 2 Local Government Act 2000 and all other enabling powers.
- 2.3. Nothing in this Agreement restricts or is intended to restrict the proper exercise at any time by the Council of any of its statutory powers, functions or discretions in relation to the Site or otherwise.

- 2.4. The provisions of this Agreement shall not be enforceable against owner-occupier or tenants of any Dwellings nor against those deriving title from them.
- 2.5. This Agreement will be registered as a local land charge by the Council.
- 2.6. Following the performance and satisfaction of all obligations contained in this Agreement, the Council shall effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Agreement.

### 3. **COMMENCEMENT DATE**

- 3.1. The obligations contained in this Agreement will come into effect on the grant of the Planning Permission.
- 3.2. The Landowners and the Developer covenant to notify the Council in writing within 14 days of the Commencement of Development that commencement has taken place.

### 4. **OBLIGATIONS OF THE LANDOWNERS AND THE DEVELOPER**

- 4.1. The Landowners and the Developer agree with the Council to comply with the obligations set out in Schedule 2 in relation to the Development.
- 4.2. No person will be liable for any breach of the terms of this Agreement occurring after the date on which they part with their interest in the Site or the part of the Site in respect of which such breach occurs, but they will remain liable for any breaches of this Agreement occurring before that date. Neither the reservation of any rights or the inclusion of any covenants or restrictions over the Site in any transfer of the Site will constitute an interest for the purposes of this clause 4.2.

### 5. **OBLIGATIONS OF THE COUNCIL**

- 5.1. The Council covenants with the Landowners and the Developer to observe and perform the covenants set out in Schedule 3.



## **6. NOTICES**

- 6.1 Any notice, demand or any other communication served under this Agreement will be effective only if delivered by hand or sent by first class post, pre-paid or recorded delivery.
- 6.2 Any notice, demand or any other communication served is to be sent to the address of the relevant party set out at the beginning of this Agreement or to such other address as one party may notify in writing to the others at any time as its address for service.
- 6.3 Unless the time of actual receipt is proved, a notice, demand or communication sent by the following means is to be treated as having been served:
- 6.3.1 if delivered by hand, at the time of delivery;
  - 6.3.2 if sent by post, on the second working day after posting; or
  - 6.3.3 if sent by recorded delivery, at the time delivery was signed for.
- 6.4 If a notice, demand or any other communication is served after 4.00 pm on a working day, or on a day that is not a working day, it is to be treated as having been served on the next working day.
- 6.5 For the avoidance of doubt, where proceedings have been issued in the Courts of England and Wales, the provisions of the Civil Procedure Rules must be complied with in respect of the service of documents in connections with those proceedings.

## **7 COSTS OF THIS AGREEMENT**

- 7.1 Upon completion of this Agreement the Landowners and the Developer will pay to the Council the sum of £500 being the legal costs in connection with the preparation, negotiation and completion of this Agreement.

8           **DETERMINATION OF DISPUTES**

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

- 8.5.2 each party is to have a further ten working days to make written comments on the other's representations and will copy the written comments to the other party;
- 8.5.3 the Specialist is to be at liberty to call for such written evidence from the parties and to seek such legal or other expert assistance as he or she may reasonably require;
- 8.5.4 the Specialist is not to take oral representations from the parties without giving both parties the opportunity to be present and to give evidence and to cross-examine each other;
- 8.5.5 the Specialist is to have regard to all representations and evidence before him when making his decision, which is to be in writing, and is to give reasons for his decision; and
- 8.5.6 the Specialist is to use all reasonable endeavours to publish his decision within 30 working days of his appointment.

8.6 Responsibility for the costs of referring a dispute to a Specialist under this clause 8, including costs connected with the appointment of the Specialist and the Specialist's own costs, but not the legal and other professional costs of any party in relation to a dispute, will be decided by the Specialist.

8.7 This clause 8 does not apply to disputes in relation to matters of law or the construction or interpretation of this Agreement which will be subject to the jurisdiction of the courts.

## 9 **JURISDICTION**

9.1 This Agreement is to be governed by and interpreted in accordance with the law of England and Wales.

9.2 The courts of England and Wales are to have jurisdiction in relation to any disputes between the parties arising out of or related to this Agreement. This clause operates for the benefit of the Council who

retain the right to sue the Landowners and the Developer and enforce any judgment against the Landowners and the Developer in the courts of any competent jurisdiction.

10        **EXECUTION**

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

**SCHEDULE 1**  
**Planning Permission**



## South Tyneside Council

### DRAFT NOTICE OF GRANT OF PLANNING PERMISSION

Town and Country Planning Act 1990

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

---

**Contact Name and Address:**

Fitz Architects Limited  
FAO Mr Craig Fitzakerly  
The Place  
Athenaeum Street  
Sunniside  
Sunderland  
SR1 1QX

**Application No:** ST/0108/15/FUL

**Date of Issue:**

---

In pursuance of their powers under the above mentioned Acts, South Tyneside Council as Local Planning Authority hereby **GRANT** planning permission for the following:

**PROPOSAL:** Construction of 5no. contemporary executive townhouses with associated vehicle access/egress, car ports, garden waste and refuse stores, boundary treatments and landscaping.

**LOCATION:** Site of Church Lane House, Church Lane, Whitburn, SR6 7JL

In accordance with your application dated 09 February 2015

---

**SUBJECT TO THE FOLLOWING CONDITION(S) AND REASON(S):**

- 1 The development to which this permission relates must be commenced not later than 3 years from the date of this permission.

As required by Section 91 of the Town and Country Planning Act 1990 and to ensure that the development is carried out within a reasonable time.

- 2 Accordance with approved plans

The development shall be carried out in accordance with the approved plan(s) as detailed below

Drawing Number: AL (00) 0010 Rev A Received 20/03/2015  
Drawing Number: AL (00) 0011 Received 20/03/2015  
Drawing Number: AL (00) 0020 Rev A Received 20/03/2015  
Drawing Number: AL (00) 0025 Received 13/05/2015  
Drawing Number: AL (00) 0100 Rev A Received 20/03/2015  
Drawing Number: AL (00) 0110 Rev A Received 20/03/2015  
Drawing Number: AL (00) 0210 Rev A Received 20/03/2015  
Drawing Number: AL (00) 0310 Rev A Received 20/03/2015  
Drawing Number: AL (90) 0200 Rev C Received 13/05/2015  
Drawing Number: AL (27) 0100 Received 09/02/2015

6 Contaminated land

A site investigation and risk assessment must be completed in accordance with a scheme to assess the nature and extent of any contamination on the site. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the Local Planning Authority. The report of the findings must include (i) a survey of the extent, scale and nature of contamination; (ii) an assessment of the potential risks to human health, property (existing or proposed) and (iii) an appraisal of remedial options, and proposal of the preferred option(s). This must be conducted in accordance with DEFRA and the Environment Agency's "Model Procedures for the Management of Land Contamination, CLR 11".

To protect the future occupiers of the development from any potential contaminants that may exist on site in the interests of environmental safety and residential amenity in accordance with policies EA5 and DM1(M) of the South Tyneside Local Development Framework.

- 7 A Detailed Remediation Strategy for the proposed remedial works shall be submitted to, and approved in writing by the Local Planning Authority prior to commencing remedial works. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

To protect the future occupiers of the development from any potential contaminants that may exist on site in the interests of environmental safety and residential amenity in accordance with policies EA5 and DM1(M) of the South Tyneside Local Development Framework.

- 8 Following completion of measures identified in the approved Remediation Strategy, a Verification Report (referred to in PPS23 as a validation report) that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval in writing of the Local Planning Authority prior to the site being occupied.

To protect the future occupiers of the development from any potential contaminants that may exist on site in the interests of environmental safety and residential amenity in accordance with policies EA5 and DM1(M) of the South Tyneside Local Development Framework.

- 9 In the event that contamination is found at any time when carrying out the approved development that was not previously identified, it must be reported in writing immediately to the Local Planning Authority. Sufficient detail should be provided identifying how the unexpected contamination will be dealt with.

To protect the future occupiers of the development from any potential contaminants that may exist on site in the interests of environmental safety and residential amenity in accordance with policies EA5 and DM1(M) of the South Tyneside Local Development Framework.

- 13 Prior to the commencement of works in connection with the repair, rebuilding and repointing of the stone boundary walls around the perimeter of the application site, details of the tree protection barriers and the tree root ground protection measures shall be submitted to and approved in writing by the Local Planning Authority. The agreed details shall then be carried out on site prior to the commencement of works and maintained in position and in good order during the whole period of these works.

To ensure that existing trees within and adjacent to the site, several of which are the subject of a Tree Preservation Order, are adequately protected during the period of construction works in accordance with Policies DM1, DM6 and EA1 of the South Tyneside Local Development Framework.

- 14 No trenching or underground cabling shall be undertaken within the tree Root Protection Areas, as identified on All About Trees Ltd drawing 'AMS TPP- Rev E' received 20/03/2015, without the prior written approval of the Local Planning Authority.

To ensure that existing trees within and adjacent to the site, several of which are the subject of a Tree Preservation Order, are adequately protected during the period of construction works in accordance with Paragraph 7.7.2 of BS5837 and Policies DM1, DM6 and EA1 of South Tyneside Local Development Framework.

15 Archaeology

The hereby approved development shall not commence until 1) A programme of archaeological building recording has been completed of the site including the boundary walling (which includes the remains of a late medieval tithe barn), in accordance with a specification provided by the Local Planning Authority and 2) A report of the results shall be submitted to and approved in writing by the Local Planning Authority.

To provide an archive record of the site in accordance with Policy DM6 of the South Tyneside Local Development Framework.

- 16 The hereby approved development shall not commence until a programme of archaeological fieldwork (to include evaluation and where appropriate mitigation excavation) has been completed. This shall be carried out in accordance with a specification provided by the Local Planning Authority.

The site is located within an area identified as being of potential archaeological interest and the investigation is required to ensure that any archaeological remains on the site can be preserved wherever possible and recorded, in accordance with Policy DM6 of the South Tyneside Local Development Framework.

- 17 The development hereby approved shall not be occupied until the final report of the results of the archaeological fieldwork undertaken in pursuance of Condition 16 above has been submitted to and approved in writing by the Local Planning Authority.

The site is located within an area identified as being of potential archaeological interest and the investigation is required to ensure that any archaeological remains on the site can be preserved wherever possible and recorded, in accordance with Policy DM6 of the South Tyneside Local Development Framework.

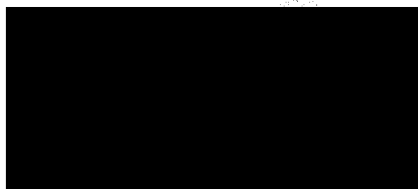


7 NOTE TO APPLICANT

Northern Gas Networks have stated that they may have apparatus in the area that may be at risk during construction and that the promoter of the works will need to contact them directly to discuss their requirements in detail.

8 NOTE TO APPLICANT

During any site works consideration should be given to the procedural guidance of the HSE guidance: Protection of Workers and the General Public during the Development of Contaminated Land. HMSO. 1991, or other appropriate guidance.



George Mansbridge  
Head of Development Services

Your attention is drawn to the attached schedule of notes which form part of this notice

DRAFT

## APPEALS TO THE SECRETARY OF STATE

### 7 Only the applicant possesses the right of appeal.

If you are aggrieved by the decision of the Local Planning Authority to grant permission subject to conditions, then you may appeal to the Secretary of State for Communities and Local Government in accordance of section 78 of the Town and Country Planning Act 1990 within six months of the date of this notice. The Secretary of State has power to allow a longer period for the giving of a notice of appeal but he will not normally be prepared to exercise this power unless there are special circumstances, which excuse the delay in giving notice of appeal. The Secretary of State is not required to entertain an appeal if it appears to him that permission for the proposed development could not have been granted by the Local Planning Authority without the conditions they imposed, having regard to the statutory requirements, to the provisions of the development order, and to any directions given under the order.

Appeals can be made online using the Planning Inspectorates planning appeal service through the Planning Portal at <http://www.planningportal.gov.uk/planning/appeals/online/makeanappeal>. You must use a standard Planning Appeal Form when making your appeal. Please be aware that details of planning appeals are available on the internet and may include a copy of the original planning application form and relevant supporting documents supplied to ourselves, either by you, or your agent, together with the completed appeal form, and information that you submit to the Planning Inspectorate. Please ensure that you only provide information, including personal information belonging to you that you are happy will be made available to others in this way. If you supply personal information belonging to a third party please ensure you have their permission to do so. More information about data protection and privacy matters is available on the planning portal website.

Alternatively if you do not wish to submit your appeal electronically, a form is obtainable from The Planning Inspectorate, Customer Support Unit, Temple Quay House, 2 The Square, Temple Quay, Bristol BS1 6PN. Email: [enquiries@planning-inspectorate.gsi.gov.uk](mailto:enquiries@planning-inspectorate.gsi.gov.uk) or telephone 0303 4440000. Please note that you must state the appeal form that you require.

## PURCHASE NOTICES

- 8 If permission to develop land is granted subject to conditions, whether by South Tyneside Council as local planning authority or by the Secretary of State for Communities and Local Government, the owner may claim that he can neither put the land to a reasonably beneficial use in its existing state nor render the land capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted. In these circumstances the owner may serve a purchase notice on the Council, requiring the Council to purchase his interest in the land in accordance with the provisions of Part VI of the Town and Country Planning Act 1990.

## **SCHEDULE 2**

### **The Landowners' and the Developer's Obligations**

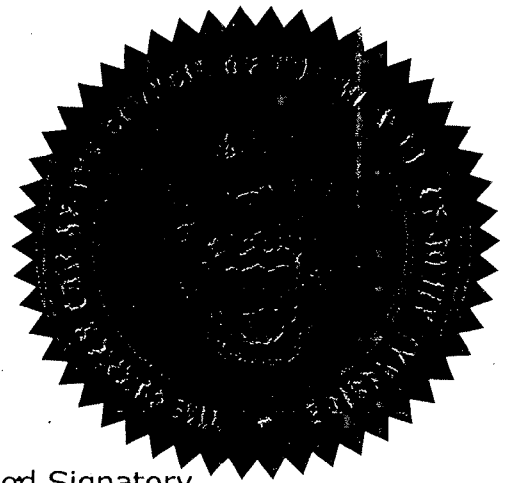
1. Within 7 days of the grant of the Planning Permission the Landowners and the Developer shall pay the Highways Improvement Works Contribution to the Council.
2. Not to Commence Development until such time as the Council confirms that the highway improvement works at Church Lane have been completed to the Council's satisfaction.
3. The amount in paragraph 1 above will be adjusted as necessary to reflect any change in the Index occurring in the period from and including the date of this Agreement to and including the date of actual payment.

### **SCHEDULE 3**

#### **The Council's Obligations**

1. Upon receipt of the Highways Improvement Works Contribution the Council shall undertake the improvement works to the entrance to Cornthwaite Park and adjoining land within fifty (50) Business Days.
2. To expend the Highways Improvement Works Contribution solely for the purposes contained in this Agreement.
3. To provide to the Landowners and the Developer such evidence as they may reasonably request in writing in order to confirm the expenditure of the Highways Improvement Works Contribution.
4. In the event that any part of the Highways Improvement Works Contribution paid to the Council is not expended within fifty (50) Business Days of receipt of payment the Council shall repay the unexpended sum to the Landowners and the Developer provided they make a written request for such a repayment.

**EXECUTED** as a **DEED** )  
by affixing the **COMMON** )  
**SEAL** of **THE COUNCIL** )  
**OF THE BOROUGH OF** )  
**SOUTH TYNESIDE** )  
in the presence of: )



[Redacted]

Mayor / Authorised Signatory

[Redacted]

Head of Legal Services / Authorised Signatory

**SIGNED** as a deed by )  
**STELLA PROPERTY** )  
**INVESTMENTS LIMITED** )  
acting by two Directors )

Director

[Redacted]

Director

**SIGNED** as a **DEED** )  
by **GEOFFREY THOMPSON** )  
in the presence of: )

[Redacted]

Signature:

[Redacted]

Witness Signature:

Name:

[Redacted]

Address:

[Redacted]

Occupation:

BEAMISH DHS & RL  
ACCOUNTANT.

**SIGNED as a DEED** )  
by **ANDREA THOMPSON** )  
in the presence of: )

Signature: [REDACTED]

Witness Signature: [REDACTED]

Name: [REDACTED]

Address: [REDACTED]

Occupation: *DA9 QRL*  
*ACCOUNTANT.*