


DATED

2025

- (1) CUMBERLAND COUNCIL
- (2) WHITEHAVEN DEVELOPMENTS LIMITED

PLANNING OBLIGATION

by Deed of agreement under Section 106 of the Town and Country Planning Act 1990
relating to Land at Former Marchon Chemical Factory, High Road, Whitehaven 

Clare Liddle
Chief Legal Officer Cumberland Council
Cumbria House
117 Botchergate
Carlisle
CA1 1RD

2025

(1) **CUMBERLAND COUNCIL** of Cumbria House, 117 Botchergate, Carlisle CA1 1RD (the Council) and:

(2) **WHITEHAVEN DEVELOPMENTS LIMITED** (Scot. Co. Regn. No. 400790) of 105 West George Street, Glasgow G2 1PB ("the Owner")

1. The Council is the local planning authority for the purposes of the Town and Country Planning Act 1990 for the area within which the Development Land situated.
2. The Owner is the proprietor of the freehold title to those parts of the Development Land which is registered at the Land Registry under Title Numbers CU 88197 and CU 103528.
3. An agent on behalf of the Owner submitted an Application to the Council for Planning Permission for the Development and the parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed.
4. The Council resolved on 9 December at the Planning Committee to grant the Planning Permission subject to the prior completion of this Deed
5. The Council is minded to grant the Planning Permission subject to the prior completion of this Deed.
6. The Council is satisfied that the planning obligations contained in this Deed are necessary to make the Development acceptable in planning terms, directly related to the Development, fairly and reasonably related in scale and kind to the Development and reasonable in all other respects

DEFINITIONS AND INTERPRETATION

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| "1990 Act" | means the Town and Country Planning Act 1990 (as amended). |
| "Application" | the hybrid application for planning permission for the Development which was submitted to the Council for hybrid application seeking Full Planning Permission for the erection of 139 residential dwellings (C3), new vehicular accesses off high road, public open space and ancillary infrastructure and Outline Planning Permission for residential development |

	units, retail (E(A,B,C,E,F), F2(A) and ancillary infrastructure with all matters reserved other than access under reference number 4/21/2432/0F1
"Commencement"	<p>means the date on which any material operation (as defined in Section 56(4) of the 1990 Act) in respect of the Planning Permission or Reserved Matters Application (as appropriate) is begun save that irrespective of the provisions of Section 56(4) of the 1990 Act none of the following operations shall constitute a material operation for the purposes of constituting Commencement of Development for the purposes of this Deed only</p> <ul style="list-style-type: none"> i. trial holes or other operations to establish the ground conditions; ii. archaeological investigations; iii. any works of demolition or site clearance; iv. any structural planting or landscaping works; v. ecological or natural conservation works; vi. construction of boundary fencing or hoardings vii. construction of access or highway works <p>and the term "Commence" and "Commences " shall be construed accordingly.</p>
"Contributions"	Means the "English Coastal Path Upgrade Contribution", "High Road Active Travel Measures Contribution", "Mirehouse Rd / St Bees Rd Junction Contribution" and the "Travel Plan Monitoring Fee"
"Development"	means the development of the Development Land in accordance with the Planning Permission.
"Development Land"	means the land known as Land lying to the West of High Road, Whitehaven and Marchon Works, Kells, Whitehaven edged in red on Plan 1 attached to this Deed at the Fifth Schedule with the drawing number MWH.CP.311.2 and for the avoidance of doubt includes both the Full Planning Permission Site and Outline Site
"District"	means the administrative district of the Council;
"Disposal"	means the sale or transfer of the freehold or the grant of a lease underlease or tenancy or the assignment of a lease underlease or tenancy and reference to "Dispose" shall be construed accordingly and for the sake of clarity the term "Disposal" and "Dispose" shall not include the creation of mortgages or charges;

"Dwellings"	means the Residential Units that may be built on the Development Land pursuant to the Planning Permission and reference to "Dwelling" shall mean any of the Dwellings;
"Full Planning Application"	For The Erection Of 139 Residential Dwellings (C3), New Vehicular Accesses Off High Road, Public Open Space And Ancillary Infrastructure under planning reference 4/21/2432/0F1
"Full Planning Permission Development"	means the development of the Full Planning Permission Site in accordance with the Full Planning Permission
"Full Planning Permission"	"Full Planning Permission" means planning permission subject to conditions to be granted by the Council pursuant to the Full Planning Application;
"Full Planning Permission Site"	means the land known as XXXX-shown edged in blue for identification on the Plan 2 numbered MWH.MPLP.01 and attached to this Deed at the Sixth Schedule where the Full Planning Permission Development shall take place
"Interest"	means interest at 4% (four per cent) above the base lending rate of National Westminster Bank plc from time to time;
"Material Interest"	means a registered legal interest which is either a freehold estate or a leasehold interest, the lease term of which is equal to seven years or more;
"Occupation"	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; and "Occupy", "Occupier" and "Occupied" shall be construed accordingly
"Outline Application"	means for the development of Residential Development Units, Retail (E(A,B,C,E,F), F2(A) And Ancillary Infrastructure With All Matters Reserved Other Than Access under reference number 4/21/2432/0F1
"Outline Development"	means the development of the Outline Site in accordance with the Outline Planning Permission
"Outline Planning Permission"	means a planning permission to be granted for the Outline Development pursuant to the Outline Application of which the draft form is annexed hereto at the XXX Schedule
"Outline Site"	means the land known as XXXX shown edged in red for identification on the Plan 2 numbered MWH.MPLP.01 and attached to this Deed at the Sixth Schedule where the Outline Development shall take place
"Planning Permission"	means the planning permission granted pursuant to the Application

"Phase 1" (definition not used and included for information purposes only)	means the first phase of works involved in construction of the Full Planning Permission Development comprising the Full Planning Permission
"Phase 2" (definition not used and included for information purposes only)	means the second phase of works involved in construction of the Outline Development comprising the Outline Planning Permission to be determined by either the Reserved Matters Application or any subsequent planning permission granted in respect of the Outline Development
"Plan 1"	means the attached location plan at the Fifth Schedule to identify the Development Land;
"Plan 2"	means the attached plan at the Sixth Schedule showing the phases of the Development to be provided as per the terms of the Planning Permission
"Price Index"	means the All In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation as at the date the Contributions become payable respectively;
"Reserved Matters Application"	means any reserved matters application to be made for the mix of Dwellings, appearance, landscaping, and layout and scale of the Outline Development in accordance with the Outline Planning Permission and reference to "Reserved Matters Applications" shall be construed accordingly;
"the Specialist"	means an independent chartered surveyor qualified to act as an expert having not less than ten years' professional experience in relation to developments in the nature of the Development and the Revised Reserved Matters Development and where possible property in the same locality as the Development Land.
"Working Day"	means any day from Monday to Friday inclusive which is not Christmas Day, a statutory holiday or a day between Christmas Day and New Year's Day.

CONSTRUCTION IN THIS DEED

- 2.1 Where in this Deed reference is made to any clause, paragraph, schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph, schedule or recital in this Deed.
- 2.2 The singular includes the plural and vice versa and words importing the masculine gender only include the feminine and neuter genders and words denoting persons extend to include companies, corporations and firms and all such words shall be construed interchangeable in that manner.

- 2.3 References to any party in this Deed shall include the successors in title and assigns of that party and in the case of the Council shall include any successor local planning authority exercising planning powers under the 1990 Act.
- 2.4 Where a party includes more than one person any obligations of that party shall be joint and several 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, 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 An obligation on a party not to do something includes an obligation not to cause, permit or suffer the doing of that act or thing
- 2.7 Any obligation by any party to do something shall be deemed to include an obligation to procure the doing of that act or thing.
- 2.8 A reference to a clause, paragraph or Schedule is a reference to a clause, paragraph or Schedule contained in this Deed.

LEGAL BASIS

- 3.1 This Deed is made pursuant to Section 106 of the 1990 Act, Section 1 of the Localism Act 2011, Section 111 of the Local Government Act 1972 and all other powers so enabling.
- 3.2 The covenants, obligations and restrictions in this Deed (in so far as they are capable) are planning obligations for the purposes of s.106 of the 1990 Act
- 3.3 No person shall be bound by the terms of this Deed or be liable for the breach of any covenants restrictions or obligations contained in this Deed:-
- 3.3.1 occurring after he or it has parted with his or its interest in the Development Land or the part in respect of which such breach occurs (but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest);
- 3.3.2 if he shall be an owner occupier, tenant or chargee of any of the Open Market Dwellings or a purchaser of an individual Open Market Dwelling;
- 3.3.3 if it is a statutory undertaker or other person who acquires any part of the Development Land or an interest in it for the purposes of the supply of electricity, gas, water, drainage, telecommunication services or public transport services; or

4. CONDITIONALITY

- 4.1 Save for clauses 1-4 (inclusive) and clauses 7 – 15 (inclusive) which shall take from effect from the date of this Deed the remainder of the covenants contained in this Deed are conditional and shall take effect from the grant of the Planning Permission.
- 4.2 If the Planning Permission is quashed or is revoked or otherwise withdrawn, or (without the consent of the Owner) it is modified by any statutory procedure or expires before the Commencement of Development this Deed shall cease to have effect.

5. THE OWNERS' COVENANTS

- 5.1 The Owner covenants with the Council so as to bind its interests in the Development Land to comply with the planning obligations in the Schedules to this Deed.

6. THE COUNCIL'S COVENANTS

- 6.1 The Council covenants with the Owners as set out in the Fourth Schedule of this Deed.

7. LEGAL COSTS

- 7.1 The Owner shall pay to the Council upon the date of this Deed its reasonable and proper legal fees incurred for the preparation of this Deed costs of £2,500.00 for the negotiation of this Deed.

8. NOTICE

- 8.1 Any notice or other communication given or made under this Deed shall be in writing (which for this purpose shall not include email) and shall be delivered personally or sent by first class post to the address of the addressee specified in clause 8.2 this Deed.

- 8.2 Subject to clause 8.3, the contact details for each party are:

8.2.1 For the Owner:

Address:

Name:

Reference:

8.2.2 For the Council:

Address: Planning Services, Thriving Places, Cumberland Council, Civic Centre, Rickergate, Carlisle CA3 8QG

Reference:

- 8.3 A party may give notice of a change to its name, address or relevant address for the purposes of this clause provided that such notification shall only be effective on:

8.3.1 The date specified in the notification as the date on which the change is to take place; or

8.3.2 If no date is specified or the date specified is less than five (5) Working Days after the date on which the notice is received or deemed to be received, the fifth Working Day after the notice of any such change is given.

- 8.4 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:

8.4.1 if delivered by hand, at the time of delivery;

8.4.2 if sent by post, on the second Working Day after posting; or

8.4.3 if sent by recorded delivery, at the time delivery was signed for.

- 8.5 If notice, demand or any other communication is served after 4.00pm 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.
- 8.6 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 connection with those proceedings.

9 MISCELLANEOUS

- 9.1 The Deed is a local land charge and shall be registered as such.
- 9.2 The provisions of the Contracts (Rights of Third Parties) Act 1999 are excluded from the terms of this Deed.
- 9.3 Nothing in this Deed shall prohibit or limit the right to develop any part of the Development Land in accordance with a planning permission granted (whether or not on appeal) after the date of this Deed.
- 9.4 If any provision of this Deed is held to be invalid illegal or unenforceable under any enactment or rule of law that term or provision shall to that extent be deemed not to form part of this Deed and the enforceability of the remainder of this Deed shall remain unaffected.
- 9.5 The provisions of this Deed shall be of no effect until this Deed has been dated.
- 9.6 The Owner agrees with the Council to give the Council written notice of any Disposal of the Development Land (or part of it) occurring before all the obligations under this Deed have been discharged such notice to give details of the transferees full name and registered office (if a company or usual address if not) together with the area of the Development Land or unit of occupation acquired by reference to a plan PROVIDED THAT the requirement in this clause 9.6 to provide written notice shall not apply on the Disposal of an individual Dwelling;
- 9.7 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.
- 9.8 Any sum referred to in this Deed (save for the Travel Plan Monitoring Fee) shall be increased by an amount equivalent to the increase in the Price Index from the date hereof until the date on which such sum is actually paid.

10. FETTER OF DISCRETION

- 10.1 Nothing contained or implied in this Deed shall fetter, prejudice or affect the rights discretions powers duties and obligations of the Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions and responsibilities as a local authority.

11. DETERMINATION OF DISPUTE

- 11.1 Any dispute arising between the parties as to their respective rights duties or obligations or as to the failure of the Council to give or confirm its consent where required under this Deed or as to any other matter or thing arising out of or connected with the subject matter of this Deed or any failure to agree upon any matter may be referred in accordance with clause 11.2 to the determination of a Specialist.
- 11.2 Any reference to a Specialist in accordance with clause 11.1 shall be to a reputable chartered surveyor unconnected to any of the parties hereto and experienced in commercial development matters who shall be agreed between the parties to the dispute or appointed on

the application of any party to the dispute made at any time by the President of the Royal Institution of Chartered Surveyors or his duly appointed deputy and the decision of such Specialist shall be final and binding upon the parties to the dispute and the parties hereby agree to act in accordance with the decision (save for manifest error) and if the parties to the dispute shall agree in writing such reference shall be deemed to be a reference to an expert (and not an arbitrator) but shall otherwise be deemed to be a reference to an arbitrator pursuant to the Arbitration Act 1996 and if any Specialist shall act as an expert pursuant to the terms of this clause 11.2 then each of the parties to the dispute shall be entitled to submit to him representations and cross representations with such supporting evidence as they shall consider necessary and he shall have regard thereto in making his decision which he shall deliver in writing as expediently as possible and the reference to him shall include authority to determine in what manner all the costs of the referral (whether incurred by the parties to the dispute or the Specialist himself) shall be paid.

12. **GOVERNING LAW**

- 12.1 This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

13. **SECTION 73 OF THE 1990 ACT**

- 13.1 If an application is made under section 73 of the 1990 Act in respect of the Planning Permission to carry out the Development without complying with a condition or conditions to which the Planning Permission is subject (a **S73 Application**) then in the event that the Council is minded to approve such S73 Application the following shall apply:
- (a) if the Council considers that the planning obligations contained in this Deed are both sufficient and necessary to make the Development proposed by such S73 Application acceptable in planning terms then references to Planning Permission in this Deed shall be deemed to also be references to that new planning permission and the Parties agree that this Deed shall apply to and remain in full force in respect of both that new planning permission and the Planning Permission without the need for a further Deed to be made pursuant to section 106 of the 1990 Act; or
 - (b) if the Council considers that additional or modified planning obligations are necessary to make the development proposed by such S73 Application acceptable in planning terms then for the avoidance of doubt nothing in this Clause 13.1 shall fetter the Council's ability in the exercise of its proper planning judgment to require the completion of such further Deed made pursuant to section 106 of the 1990 Act as it considers necessary and in such case Clause 13.1 (a) shall be disregarded.

THE FIRST SCHEDULE

The Owner covenants with the Council as follows:

1. TITLE


- 1.1 That no person other than the parties to this Deed has any Material Interest in the Site for the purposes of Section 106 of the 1990 Act.

2. NOTICE AND MONITORING

- 2.1 To give notice in writing to the Council not later than 28 days before the Commencement of Development.
- 2.2 To give notice in writing to the Council not later than 28 days before first Occupation of any part of the Development.
- 2.3 To give notice in writing to the Council upon Occupation of the final Dwelling.
- 2.4 To provide in writing to the Council (as soon as reasonably practicable following a written request made by the Council) such information as the Council reasonably requires to monitor compliance with this Deed.

THE SECOND SCHEDULE

The Contributions

In addition to those definitions contained in clause 1.1 of this Deed, the following definitions apply to this  Schedule:-

“English Coastal Path Upgrade Contribution”	means a contribution of £65,000 (SIXTY FIVE THOUSAND POUNDS) to be applied by the Council towards the improvements to the English Coastal Path in the vicinity of the Development Land.
“High Road Active Travel Measures Contribution”	means a contribution of £80,000 (EIGHTY THOUSAND POUNDS) to be applied by the Council towards the enhancement of the active travel facilities on High Road.
“Mirehouse Rd / St Bees Rd Junction Contribution”	means a contribution of £59,600 (FIFTY NINE THOUSAND SIX HUNDRED POUNDS) to be applied by the Council towards the highway improvement works at the Mirehouse Rd / St Bees Rd Junction within the vicinity of the Development
“Travel Plan Monitoring Fee”	means the sum of £6,600 (six thousand six hundred pounds) in respect of the costs associated with the ongoing review and monitoring of the travel plan, submitted by the Owners in accordance with the Planning Permission.

The Owner covenants to:

1. ENGLISH COASTAL PATH UPGRADE CONTRIBUTION

- 1.1.1 Prior to Occupation of the 50th (FIFTIETH) Dwelling of the Development to pay the English Coastal Path Upgrade Contribution to the Council and;
- 1.1.2 Not cause or permit Occupation of the 50th (FIFTIETH) Dwelling of the Development until the English Coastal Path Upgrade Contribution has been paid to the Council.

2. HIGH ROAD ACTIVE TRAVEL MEASURES CONTRIBUTION

- 1.2.1 Prior Commencement of Phase 2 of the Development to pay the High Road Active Travel Measures Contribution to the Council and;
- 1.2.2 Not to cause or permit Commencement Phase 2 of the Development until the High Road Active Travel Measures Contribution has been paid to the Council.

3. MIREHOUSE RD / ST BEES RD JUNCTION CONTRIBUTION

- 1.3.1 Prior to Occupation of the 100th (ONE HUNDREDTH) Dwelling of the Development to pay the Mirehouse Rd / St Bees Rd Junction Contribution to the Council and;

- 1.3.2 Not cause or permit Occupation of the 100th (ONE HUNDREDTH) Dwelling of the Development until the Mirehouse Rd / St Bees Rd Junction Contribution has been paid to the Council.

4. TRAVEL PLAN MONITORING FEE

- 1.4.1 To pay the Travel Plan Monitoring Fee to the Council prior to the first Occupation of the Dwellings at the Development and;
- 1.4.2 Not to cause or permit Occupation of any of the Dwellings at the Development until the Travel Plan Monitoring Fee had been paid to the Council

THE THIRD SCHEDULE
VIABILITY REAPPRAISAL PROVISIONS

Relevant definitions:

"Affordable Dwellings"	means any Dwelling to be provided for the purpose of Affordable Housing on the Outline Site following the Revised Viability Appraisal
"Affordable Housing"	means housing which is provided to eligible households whose needs are not met by the market and which (a) meets the needs of eligible households including availability at a cost low enough for them to afford, determined with regard to local incomes and local house prices and (b) includes provision for the home to remain at an affordable price for future eligible households or, if these restrictions are lifted, for the subsidy to be recycled for alternative affordable housing provision;
"Additional Affordable Housing Contribution"	means the contribution payable to the Council in accordance with this schedule and to be used by the Council towards the provision of Affordable Housing in the District <u>or towards the Education Contribution in accordance with this schedule</u> which shall be calculated as follows: (Re-appraisal Value – Base Indexed Value) x 50% (fifty) and payable in accordance with this Third Schedule. <u>A worked example can be found annexed to this Deed headed [●]</u>
"Base Value"	means the total value of the Open Market Dwellings as determined in appendix [●] of the Viability Appraisal and amounting to £[●];
"Base Indexed Value"	means the Base Value multiplied by the Build Cost Allowance which for the avoidance of doubt shall only be applied where the Build Cost Allowance is greater than Zero
"Build Cost Allowance, ("BCA")"	<p>Shall be calculated as follows: $BCA = (((A/8B) - 1)/2) + 1$</p> <p>Where A= the BCIS All-in Tender Price Index at the date of the Revised Viability Appraisal; and</p> <p>B= the BCIS All-in Tender Price Index for February 2024;</p>
<u>"Education Contribution"</u>	<u>means the contribution to be calculated in accordance with the Revised Viability Appraisal to be applied by the Council towards the secondary or primary school education in the Council's area of Whitehaven.</u>

“External Public Funding”	means any public funding provided in order to facilitate the delivery for Affordable Housing Dwellings in respect of the Outline Site
“Open Market Dwelling”	means the Dwellings to be constructed on the Outline Site pursuant to the Outline Planning Permission excluding the Affordable Dwellings and reference to "Open Market Dwelling" shall be construed accordingly;
“Re-appraisal Cap”	shall be calculated as follows: £[●] x (the Re-appraisal Value/ the Base Value);
"Re-appraisal Value"	means the total of the net sale proceeds (excluding sales extras) for all of the Open Market Dwellings that have been disposed of at the date of the submission of the Revised Viability Appraisal and the estimated net sale proceeds for the remaining Open Market Dwellings which have not yet been subject of a Disposal;
“Revised Viability Appraisal”	means a document to be submitted to the Council by the Owner on an open book basis setting out the Re-appraisal Value;
“Revised Viability Contribution”	means the Additional Affordable Housing Contribution which shall be limited to and shall not exceed the Re-appraisal Cap;
“Viability Appraisal”	means the financial viability assessment review report dated [●] as prepared by [●];

The Owner Covenants to:

1. For the purpose of updating the Viability Appraisal and to determine whether an Additional Affordable Housing Contribution is due, the Owner shall at the time of submitting the Reserved Matters Application to the Council and prior to the Commencement of Phase 2 submit to the Council a Revised Viability Appraisal.
2. In the event the Owner receives any offer of External Public Funding in respect of the Outline Site, to submit to the Council a Revised Viability Appraisal taking into account the External Public Funding within 28 Working Days of accepting such offer.
3. In the event that the Revised Viability Appraisal demonstrates that an Additional ~~Affordable Housing~~ Contribution is due then the Additional ~~Affordable Housing~~ Contribution shall be:
 - a) limited to and shall not exceed the Re-appraisal Cap and;
 - b) shall be used by such amounts to be determined by the Council for Affordable Housing and/or Education Contributions -
- 3.4. The Owner shall pay the Revised Viability Contribution to the Council within 28 days of receipt of the Council's written acceptance of the Revised Viability Appraisal.

THE FOURTH SCHEDULE

The Council's Covenants

- 1.** To issue the Planning Permission as soon as reasonably possible following completion of this Deed.
- 2.** To use or commit the Contributions as intended per the terms of this Deed.

THE FIFTH SCHEDULE
Plan 1 – DEVELOPMENT LAND

THE SIXTH SCHEDULE

Plan 2 – PHASES OF THE DEVELOPMENT LAND

THE [●] SCHEDULE
The draft Planning Permission

IN WITNESS whereof the parties hereto have executed this document as a deed and it is delivered and takes effect on that date stated at the beginning of it.

**EXECUTED as a DEED by
CUMBERLAND COUNCIL**

**Whose COMMON SEAL was hereunto affixed
in the presence of:**

Executed as a deed by **WHITEHAVEN
DEVELOPMENTS LIMITED** acting by

.....
Director

in the presence of:

.....
Witness (Signature)

Name.....

Address

Occupation.....

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