

Single Point-Of-Contact

Similar observations were made by the Planning Advisory Service in 2015 when it published a case study report containing a number of lessons and tips for local authorities. In particular, it advised identifying a single point of contact in the local authority for older people's housing in the local area, and regularly reviewing information on housing needs and aspirations for older people.⁴⁹ Thereby implying that there are deficiencies or missing links with regards to these matters. Nonetheless, it is fair to say that planning authorities show a greater awareness of ageing populations and the need for specialist housing, albeit there is a general emphasis on 'Extra Care' and large-scale 'village' developments. In this respect there has been some progression away from the accusations of 'ghettoes for older people' John McCarthy described in his biography.⁵⁰ However, research acknowledges that developers still do a lot of 'educational work' to explain their products, so as to differentiate them from care homes.⁵¹

*"Educating the planners was an all-important task. This was not helped by journalists who described our schemes as "ghettos for old people". The Daily Mail ran with copy that implied too many old people living together wasn't right. We tried to point out that birds of a feather do flock together. When you are in your twenties you socialise and mix with those of a similar age and the same is true of the older generation."*⁵²

John McCarthy MBE, 2011



John McCarthy MBE

⁴⁹Case study *Planning for Older People's Housing: The Shock of the New*, (London: Planning Advisory Service, 2015)

⁵⁰Charlie Berridge, *Building a Billion: The Story of John McCarthy*, (Peterfield: Harriman House Ltd, 2011) p.106

⁵¹Friederike Zielger, 'Developing Age-Friendly Housing: DWELL Findings', presented at *Fit for Ageing: Applying Design to the Production of Age-Friendly Places*, Sheffield, 6 October 2016

⁵²Charlie Berridge, *Building a Billion: The Story of John McCarthy*, (Peterfield: Harriman House Ltd, 2011) p.106

Planning Education

In preparing this report, a desktop study of the curricula of three leading UK Planning degree courses was undertaken, with a view to locating sector-specific content (housing for older people). No modules were found that specifically targeted housing and therefore specialist housing (sheltered, retirement, and so on). While issues concerning age or older people are located within 'social' modules that deal with 'diversity' or 'change'⁵³. In one instance, where there are links to a relevant research institute, 'ageing' is explicitly listed on an outline syllabus.⁵⁴ Curricula are necessarily broad so as to reflect the breadth of the profession and the variety of contexts in which planners operate. With respect to the local authority planner, he or she is expected to apply policy to a range of building types and situations, as and when they present themselves. In common with other professions that demand reflective practitioners, much is learnt on the job.



Everyday Practice

On the whole planning officers are not expecting to encounter specialist housing every day. In some settings applications for retirement housing will be very infrequent – perhaps one or two in a year. Adopting the position of a local authority planner, we might imagine the scenario of receiving an application for a scheme of retirement housing within our borough, city or district for the first time. Naturally we would turn to our colleagues who may have prior experience, albeit limited if more than a few years back. Failing that we would turn to an outside source for up-to-date information. For example, accessing Housing LIN in September 2016 and using the search term 'retirement housing' generated 102 'content' and 620 'document' results – a good deal of reference material. With this in mind, providers are advised to regularly publish explanations of their products, including case study material, to help inform planning professionals and the advice they offer.

To assist the process CRL advocate the use of a model age restricted planning condition which states:

Each of the apartments hereby permitted shall be occupied only by:

- *Persons aged 60 or over; or*
- *A spouse/or partner (who is themselves over 55 years old) living as part of a single household with such a person or persons; or*
- *Persons who were living in one of the apartments as part of a single household with a person or persons aged 60 or over who has since died; or*
- *Any other individual expressly agreed in writing by the Local Planning Authority.*

⁵³CP0120: *Social, Diversity & Planning*, School of Geography and Planning, Cardiff University, 2016; ENV3044: *Cities and Social Change*, The Bartlett School of Planning, UCL, 2016; PLAN10041: *Cities and Society*, School of Environment, Education and Development, The University of Manchester, 2016.

⁵⁴TCP1025: *Social Worlds*, School of Architecture, Planning & Landscape, Newcastle University, 2016

Planning Advice

Two areas where developers – as professional customers – regularly offer valuable insight into UK planning are (i) the variable quality of service and (ii) the reliability of paid-for advice. In 2015 representatives of the Planning Advisory Service (PAS) reported on customer feedback, stating that in aggregate there were clear messages to planners, paraphrased as: “Talk to us, generally. It’s just manners... Talk to us especially when there are issues”. PAS research asserts that “Councils (generally) fail on customer care... We fail because we don’t communicate and follow a target culture”.⁵⁵

CRL can report on a number of positive experiences with local authority planning departments, including instances where there have been genuinely collaborative interactions, leading to mutually beneficial and good quality development. CRL can also evidence instances of unsympathetic officers, general misunderstanding and poor communication. One particular frustration is seemingly ‘shifting goalposts’ or situations where officers are ‘swayed’ by local stakeholders and councillors under political pressure.⁵⁶ Clearly developers face great uncertainty and risk in their work, and therefore place a high value on pre-application advice; advice they are prepared to pay for and depend upon. But, as previously stated, perhaps the biggest threat to development is protracted negotiations around development contributions, such as affordable housing, which sometimes extend beyond the statutory consultation period.

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⁵⁵Martin Hutchings & Toby Hamilton, ‘Improving Planning Services’, presented at PAS Spring Conference 2015, Birmingham, 9-10 March 2015

⁵⁶Spencer McCarthy [Churchill Retirement Living], pers.comm. [meeting], 21 November 2016

“ Furthermore, it is accepted practice that developers can provide financial appraisals that demonstrate the level of affordable housing contribution that they can afford to provide.

Affordable Housing

Current Planning Practice Guidance enables contributions for affordable housing and tariff style planning obligations from non-rural residential developments greater than 10-units or more than 1000 square metres gross floor space ('Planning Obligations', Paragraph: 031, Reference ID: 23b-031-20160519). However, there are exceptions. For instance, starter homes exception sites, as set out in the Starter Homes written ministerial statement of 2 March 2015. Similarly, special provision is made for residential (care) institutions such that schemes falling within planning Use Class C2 are not expected to make a contribution. CRL and other developers providing retirement housing have been lobbying and negotiating for alternative consideration at national and local authority levels respectively. They have argued that retirement living schemes meet a need – not being met by local authorities – and make a positive social contribution to local communities by inclusion of facilities not found within mainstream housing.

Developers argue that it is inappropriate to provide affordable housing as part of private retirement living developments. The service charges associated with retirement housing make it 'unaffordable' for those on lower incomes, and there is potential for conflict when retirees (particularly those not cash-rich and dependent on pensions) are expected to cross-subsidise those with equivalent access to communal spaces and services. As a result contributions are made to off-site affordable housing where it can be shown to be financially viable. Furthermore, it is accepted practice that developers can provide financial appraisals that demonstrate the level of affordable housing contribution that they can afford to provide.

"...there are regulatory burdens which impact even more heavily on housing for older people than they do on mainstream housing, in areas where its provision would otherwise be viable. Historically, affordable housing has been the principal burden and, if demanded by local authorities at their standard rate for mainstream housing, this can affect viability in those markets."⁵⁷

Retirement Housing Group, 2013



⁵⁷John Montgomery, *Community Infrastructure Levy and Sheltered Housing/Extra Care Developments*, (Retirement Housing Group, 2013)

Central Government Policy

In February 2017 the Government's Housing White Paper indicated that a new statutory duty will be introduced through the Neighbourhood Planning Bill on the Secretary of State to produce guidance for local planning authorities on how their local development documents should meet the housing needs of older and disabled people.

Also in February 2017, the Communities and Local Government (CLG) Committee launched an inquiry into whether the housing on offer in England for older people is sufficiently available and suitable for their needs. The Inquiry will consider a range of points, including whether a national strategy for the support of housing provision specifically for older people is needed.

Practice Notes

- There are twelve significant areas of common ground between developers of retirement housing and local authority planners.
- The research found that local authority planners were hard-to-reach and apparently at a distance from expertise on retirement living.
- Developers continue to need to explain their products and are advised to use research platforms to do so.
- Assessing contributions toward off-site affordable housing through financial viability appraisals is accepted practice.
- Use model age restricted planning conditions and S106 template to speed up the process and save resources.



7 THE BENEFITS OF RETIREMENT HOUSING



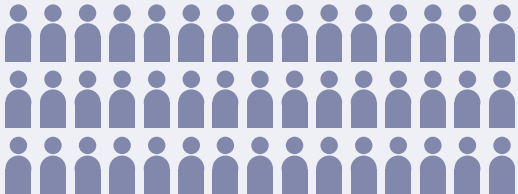
	Economic (growth)	
<p>Individual</p> 	<p>A smaller home – reduced energy and maintenance costs.</p> <p>A whole home – no redundancy as all areas of the living environment are accessible/safe.</p> <p>A ‘home for life’ – many residents say the move to private retirement living accommodation is the last they will ever make.</p> <p>‘Ageing in place’ – premature occupation of residential care home facilities is avoided.</p>	
<p>Local Community</p> 	<p>Local spenders – residents tend to use local shops and services e.g. hair dresser, taxis, etc. Some also have part time ‘bridge jobs’.</p> <p>Property market (local) – movement generated by releasing under-occupied properties for occupation by families.</p>	
<p>Wider Society</p> 	<p>Welfare savings – relieving pressures on publicly funded care homes, health and care services.</p> <p>Job creation – construction workers, lodge managers, cleaners, service providers, etc.</p> <p>Property market (national) – knock-on effects in terms of the whole housing chain.</p>	

Table 2: The Benefits of Retirement Housing

Environmental (balance)	Social (equality)
<p>Central location – reduced reliance on cars due to good access to town and public transport networks. Many residents give up car ownership/driving.</p> <p>Reduced travel – residents often move to be closer to family members.</p> <p>Energy efficiency – smaller, more efficient homes to heat (only one external wall, modern construction and economy of scale benefits e.g. heating system) and easier to manage.</p>	<p>Age friendly environment – communal living akin to university halls of residents.</p> <p>On-site support – wide range of organised on-site facilities and services, alleviating social isolation and associated depression.</p> <p>Own front door – residents retain identity / independence for as long as possible.</p> <p>Happy relations – greater mutuality where residents become less dependent on their children or carers.</p>
<p>Enhanced townscape – developments often return vacant or ‘problem’ sites to use (e.g. former petrol stations/ light industrial sites).</p> <p>Visual amenity – addition of maintained landscaping to town centre e.g. trees and garden frontages.</p>	<p>Neighbourhood watch – developments bring many more ‘eyes on the street’. Some residents take part in civic engagement.</p> <p>Active third agers – a number of recent retirees contribute to the voluntary sector e.g. charity shops, local community projects.</p>
<p>Efficient land use – density achieved through collective down-sizing and shared facilities.</p> <p>Reduced energy consumption – specialist housing reduces energy loads for heating.</p> <p>Reduced embodied energy – more efficient use of raw/building materials.</p>	<p>More choice – realising the Government objective of expanding choice for older people.</p> <p>Family life – many retirees offer ‘grandparental childcare’, which has potential benefits for three generations.</p>

“ In 2011, Age UK reported that nearly 4.9 million people aged 65 and over in England took part in volunteering or civic engagement.

Wide Reaching Benefits

There are many potential benefits of retirement living accommodation for older people, which are widely acknowledged across a range of academic research and industry publications.⁵⁸ A key reference document is ‘The Top of the Ladder’ report by Demos.⁵⁹ It offers a convincing argument for economic benefits in relation to the UK property market, stating that if those wanting to buy a retirement property were able to do so, this would release £307 billion worth of housing. Literature tends to locate so-called wider benefits of retirement living accommodation within classic categories now recognised as the ‘three pillars’ of sustainable development – economic, environmental, and social.⁶⁰ This report adopts these categories, nuancing them with the descriptors ‘growth’, ‘balance’ and ‘equality’, as presented in Table 2. In order to qualify developer claims, that retirement living accommodation makes contributions beyond the needs of its immediate end-user client, the benefits have been tabulated and cast according to a stakeholder hierarchy: the individual, the local community, and wider society.

“...we estimate that the future value of older people’s spending power will have grown to £127 billion by 2030 (including multiplier effects), representing growth of around 68% over 2010 levels.”⁶¹

Good Neighbours

In 2011, Age UK reported that nearly 4.9 million people aged 65 and over in England took part in volunteering or civic engagement.⁶¹ There are many reasons to believe that retirement living schemes offer more than an introverted TV room community; many residents are independent, active members of the townsfolk. In short, older people make good neighbours.



⁵⁸Promoting the Planning Benefits of Schemes and Addressing Concerns, (London: Housing LIN, 2014)

⁵⁹Claudia Wood (DEMOS), The Top of the Ladder, (London: DEMOS, 2013)

⁶⁰2005 World Summit, United Nations, New York, 14-16 September 2005

⁶¹Royal Voluntary Service, Gold Age Pensioners: Valuing the Socio-Economic Contribution of Older People in the UK, (WRVS: Cardiff, 2011) p.16

⁶²Age UK, Older People as Volunteers Evidence Review (London: Age UK, 2011)



Practice Notes

- Retirement housing offers wide-reaching benefits that meet the three pillars of sustainable development – economic, environmental, and social.
- Benefits of retirement housing operate at individual, communal and societal levels.
- Retirement housing regenerates the built environment and supports investment.
- Retirees make important economic contributions through local spending.
- Retirees are active citizens and help to sustain community cohesion.
- Older people make good neighbours.

ANNEX



PhD Project

The research presented in this report is part of a larger PhD by Creative Practice being undertaken by Architect Sam Clark through Newcastle University, supported by supervisors Professor Rose Gilroy and Professor Adam Sharr. The PhD project was launched in 2014 with the aim of exploring what the homes of older people could look like in the future. At the core of this work is a deep inquiry into what older people consider when making choices about their housing and how housing providers can take this information to develop more appealing options. Sam Clark recognises that in the last decade there has been a considerable expansion in the range of choices available and, while there is a growing demand and requirement for specialist housing, it remains true that many older people do not move until they reach crisis point. It is important therefore to gain insight into not just what retirement housing of the future might look like, but also how good design can encourage people to plan earlier in order to make more proactive decisions about their housing.

Methodology

The PhD is fully funded by CRL and thus demonstrates its commitment to reviewing and evolving the type of retirement living housing it will provide in the future. The scope of the PhD study relates to England – referencing CRL's principal area of operation – and focuses on towns and cities to reflect continued migration of older people from rural to urban and suburban areas. Research methodologies include statistical analysis; desktop review of academic and industry literature; case study analysis, including historic precedent; participant observation, involving short-term residencies within retirement lodges; focus groups and in-depth interviews; design review, proposition and testing. The project was structured into the following work packages:

- Older Person Context
- Specialist Housing / Precedent Review
- Fieldwork / Product Review
- Planning Perspectives

This report draws mainly from Planning Perspectives, which involved investigation into the planning context for older person housing, with a particular emphasis on private retirement-living products by CRL and others. A mixed-method approach was adopted with data captured through semi-structured interviews and correspondence with planning professionals; analysis of project-specific documents, including decision notices and planning appeal documents; and a desktop review of planning policy at both national and local levels.

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APPENDIX - TEMPLATE SECTION 106 AGREEMENT

DATED _____ 20 ____

(1) CHURCHILL RETIREMENT LIVING LIMITED

(2) [OWNER]

(3) [MORTGAGEE]

(4) [COUNCIL]

AGREEMENT

Under section 106 of the Town and Country Planning Act 1990
relating to [ADDRESS]

PLANNING APPLICATION REF []

PLANNING APPEAL REFERENCE []

Shoosmiths LLP
Russell House
1550 Parkway
Solent Business Park Whiteley
Fareham
Hampshire
PO15 7AG
Tel: 03700 866800
Fax: 03700 866801
Ref. [FEE EARNER INITIALS]/[MATTER NUMBER]

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THIS AGREEMENT is made on _____ 20 ____

BETWEEN:

1. **CHURCHILL RETIREMENT LIVING LIMITED** (Company Regn No. 06260373), of Millstream House, Parkside, Ringwood, Hampshire, BH24 3SG (the “**Applicant**”);
2. [] of [ADDRESS] (the “**Owner**”); and
3. [[] (Company Regn No. []) of [ADDRESS] (the “**Mortgagee**”)]
4. [] **COUNCIL** of [ADDRESS] (the “**Council**”)

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.
- (B) The Owner is the freehold owner of the Site registered at HM Land Registry under Title Number [TITLE NUMBER] free from encumbrances that would prevent the Applicant from entering into this Agreement subject to an option to purchase dated [DATE] in favour of the Applicant.
- (C) Pursuant to the Planning Application the Applicant applied to the Council for full planning permission for the Development.
- (D) [By notice of refusal dated [DATE] the Council refused to grant the Planning Permission for the reasons set out in the notice / the Planning Application was not determined within the statutory 13 weeks. The Applicant has made the Planning Appeal and enters into this Agreement to the intent that any objections of the Council or the Secretary of State to the grant of planning permission are overcome.]
- (E) The Council has resolved to grant Planning Permission subject to the prior completion of this Agreement to ensure certain planning obligations are secured, subject to the conditions set out in this Agreement, in respect of the Site.

The parties agree as follows:

1 DEFINITIONS

In this Agreement, unless the context otherwise requires, the following definitions apply:

“1990 Act”	the Town and Country Planning Act 1990;
“Affordable Housing Contribution”	the sum of £[] ([] pounds) to be paid by the Owner towards the provision of Off-Site Affordable Housing;
“Commencement Date”	the date on which the Development commences 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 other than (for the purposes of this Agreement and no other); (a) site investigations or surveys; (b) archaeological works; (c) site decontamination; (d) the demolition of any existing buildings or structures (e) excavation works; (f) the clearance or re-grading of the Site (g) the erection of hoardings and fences; (h) works connected with infilling; (i) works for the provision or diversion of drainage or mains services to prepare the Site for development; or (j) the construction of access and service roads; and “ Commence ” and “ Commenced ” shall be construed accordingly;

“Committed”	subject to a contract or other legally binding obligation;
“Contributions”	the Affordable Housing Contribution and the [] Contribution and “Contribution” shall be construed accordingly;
“Development”	redevelopment to form [DESCRIPTION OF DEVELOPMENT] as detailed in the Planning Application;
“Dwelling”	a unit of residential accommodation comprised within the Development and “Dwellings” shall be construed accordingly;
“Expert”	a person having appropriate qualifications and local knowledge and experience in the matters in dispute as agreed by the Relevant Parties or failing agreement such person as is nominated by the President for the time being of the Royal Institution of Chartered Surveyors on the application of the Relevant Parties;
“Interest”	interest at 2 per cent above the base lending rate published by HSBC Bank Plc from time to time or if such rate shall not be published at any time such other comparable rate of interest as the Council may then in writing specify having regard to interest rates current at such time;
“Inspector”	the inspector appointed by the Secretary of State to determine the Planning Appeal;
“Occupation”	occupation of the Development for the purposes permitted by the Planning Permission but not occupation for the purposes of construction, fitting out or decoration for marketing or display purposes or in connection with security operations and “Occupy” and “Occupied” shall be construed accordingly;
“Off-Site Affordable Housing”	social rented, affordable rented and intermediate housing, provided to eligible households whose needs are not met by the market and as defined in the National Planning Policy Framework March 2012 or any such successor national planning policy;
“Plan”	the plan attached to this Agreement;
“Planning Appeal”	the planning appeal submitted by the Applicant under Section 78 of the 1990 Act in respect of the [Council’s refusal of the Planning Application which has been given reference [APPEAL REFERENCE]]
“Planning Application”	the application for full planning permission for the carrying out of the Development made by the Applicant on [DATE] validated on [DATE] given the reference [APPLICATION REFERENCE] by the Council;
“Planning Permission”	the full planning permission that will be granted by the Council for the Development in pursuance of the Planning Application following the completion of this Agreement or any variation to that permission granted pursuant to Section 73 of the 1990 Act;
“Relevant Parties”	the parties to this Agreement;
“Revised Affordable Housing Contribution”	means a financial contribution towards the provision of Affordable Housing as set out in the Revised Viability Appraisal calculated on substantially the same basis as set out in the Viability Appraisal;
“Revised Viability Appraisal”	means a viability appraisal to be carried out at the expense of the Applicant by an independent Valuer to be agreed and appointed jointly by the Applicant and the Council and submitted to the Council using substantially the same methodology, parameters and general assumptions as agreed for the Viability Appraisal;

“Secretary of State”	the Secretary of State for Communities and Local Government (or such successor Secretary of State or minister of state who shall assume the same decision making powers from time to time)
“Shell and Core Finish”	the stage when the buildings comprising the Development have been constructed to include all structural works with all external walls and roofs completed and ready to be fitted out internally for use in accordance with the Planning Permission;
“Site”	the land at [ADDRESS] shown edged in red on the Plan against which this Agreement may be enforced;
“Viability Appraisal”	means the appraisal with appendices provided by the District Valuer Services (DVS) on behalf of the Council dated [];
“Valuer”	means a Member or Fellow of the Royal Institution of Chartered Surveyors acting in an independent capacity;
“[] Contribution”	the sum of £[] ([] pounds) to be paid by the Owner towards [];

2 INTERPRETATION

- 2.1 The clause headings in this Agreement are for reference only and do not affect its construction or interpretation.
- 2.2 References to clauses and Schedules are to the clauses and Schedules of this Agreement, unless stated otherwise.
- 2.3 A reference to a paragraph is to the paragraph of the Schedule in which the reference is made, unless stated otherwise.
- 2.4 Words importing one gender include any other genders and words importing the singular include the plural and vice versa.
- 2.5 A reference to a person includes a reference to a firm, company, authority, board, department or other body and vice versa.
- 2.6 Unless this Agreement states otherwise, any reference to any legislation (whether specifically named or not) includes any modification, extension, amendment or re-enactment of that legislation for the time being in force and all instruments, orders, notices, regulations, directions, byelaws, permissions and plans for the time being made, issued or given under that legislation or deriving validity from it.
- 2.7 References to the Site include any part of it.
- 2.8 References to any party in this Agreement include the successors in title of that party and in the case of the Council include any successor local planning authority exercising planning powers under the 1990 Act.
- 2.9 References to “including” means “including, without limitation”.
- 2.10 Any covenant by the Applicant and/or the Owner not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing.
- 2.11 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.
- 2.12 If any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of this Agreement shall be unaffected.

3 LEGAL EFFECT

- 3.1 This Agreement constitutes a Deed is made pursuant to section 106 of the 1990 Act and section 2 of the Localism Act 2011 and all other enabling powers and enactments that are relevant.
- 3.2 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 with the intent that they bind the Site and are enforceable by the Council.
- 3.3 The Council is the local planning authority having the power to enforce the planning obligations contained in this Agreement against the Owner [and/or the Mortgagee subject to clause 6.1 below] but without prejudice to all and any other means of enforcing them at law or in equity or by statute and a planning obligation not to do any act or thing includes an obligation not to cause or permit or suffer that act or thing to be done by any other person.
- 3.4 No person constituting the Owner will be liable for breach of a covenant restriction or obligation contained in this Agreement after he has parted with all the interest in the Site 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
- 3.5 This Agreement will be registered as a local land charge by the Council.
- 3.6 Nothing in this Agreement:
- 3.6.1 prohibits or limits the right to develop any part of the Site in accordance with a planning permission, other than one relating to the Development as specified in the Planning Application, granted after the date of this Agreement, whether or not pursuant to an appeal;
- 3.6.2 shall be construed as restricting the exercise by the Council of any powers exercisable by it under the 1990 Act or under any other Act in the exercise of their functions as a local authority.
- 3.7 The obligations in this Agreement will not be enforceable against:
- 3.7.1 the buyers of an individual Dwelling; or
- 3.7.2 a statutory undertaker which acquires any part of the Site or any interest in it for the purposes of its statutory undertaking of functions.
- 3.8 [This Agreement shall cease to have effect if in determining the Planning Appeal, the Secretary of State or the Inspector expressly states in his decision letter that this Undertaking does not comply with regulation 122 of the Community Infrastructure Regulations 2010.]
- 3.9 [If in determining the Planning Appeal, the Secretary of State or the Inspector expressly states in his decision letter that any individual obligation within this Agreement does not comply with regulation 122 of the Community Infrastructure Regulations 2010 that/those obligations(s) will cease to have effect.]

4 COMMENCEMENT

- 4.1 This Agreement will take effect on the Commencement Date save for clause 14 which shall take effect immediately upon completion of this Agreement.

5 OBLIGATIONS OF THE PARTIES

- 5.1 The Owner covenants to comply with the obligations expressed to be on their part set out in Schedule 1 in relation to the Development.
- 5.2 The Council covenants to comply with the obligations expressed to be on its part set out in Schedule 2.
- 5.3 Within 28 (twenty eight) days of a request from the Owner the Council will certify whether or not an obligation under this Agreement has been satisfied and if not the steps that are required to be taken in order to secure its satisfaction provided that where such obligation is an ongoing obligation this clause shall not apply.
- 5.4 The Council agrees that upon the Owner's obligations under this Agreement being satisfied and upon receipt of a written request by the Owner the Council will remove all relevant entries relating to this Agreement from the Local Land Charges Register.

6 MORTGAGEE'S CONSENT

- 6.1 The Mortgagee acknowledges and declares that this Agreement has been entered into by the Owner with its consent and that the Site shall be bound by the obligations contained in this Agreement and that the security of the mortgage over the Site shall take effect subject to this Agreement PROVIDED THAT the Mortgagee shall otherwise have no liability under this Agreement unless it takes possession of the Site in which case it too will be bound by the obligations as if it were a person deriving title from the Owner.

7 TERMINATION OF THIS AGREEMENT

- 7.1 This Agreement will come to an end if:
- 7.1.1 the Planning Permission is quashed or revoked before the Commencement Date; or
 - 7.1.2 the Planning Permission expires before the Commencement Date without having been implemented;
 - 7.1.3 [the Planning Appeal is dismissed; or
 - 7.1.4 in determining the Planning Appeal the Secretary of State or the Inspector states in his decision letter that this Agreement is not a material planning consideration or that no weight can be attached to the deed in determining the Planning Appeal.]

8 NOTICES

- 8.1 Any notice, consent, demand or any other communication served under this Agreement will be effective only if in writing and delivered by hand or sent by first class post, pre-paid or recorded delivery.
- 8.2 Any notice, consent, demand or any other communication served shall 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.

9 DETERMINATION OF DISPUTES

- 9.1 Any dispute relating to or arising out of the terms of this Agreement shall be referred to the Expert for determination of that dispute provided that the provisions of this clause shall be without prejudice to the right of any party to seek the resolution of any matter relating to this Agreement by the courts and/or in accordance with Section 106(6) of the 1990 Act
- 9.2 The Expert shall be appointed jointly by the Relevant Parties who are in dispute
- 9.3 The decision of the Expert shall be final and binding upon the Relevant Parties who are in dispute and subject to the following provisions:
- 9.3.1 the charges and expenses of the Expert shall be borne equally between the Relevant Parties who are in dispute unless the Expert shall otherwise direct;
 - 9.3.2 the Expert shall give the Relevant Parties who are in dispute an opportunity to make representations and counter representations to him before making his decision;
 - 9.3.3 the Expert shall make his decision within the range of any representations made by the Relevant Parties who are in dispute themselves;
 - 9.3.4 where there is a dispute as to the amount of any contribution the Owner shall pay its estimate of such contribution to the Council at the time specified in this Agreement and shall pay any difference between that figure and the amount determined by the Expert within 20 working days of the Expert's decision together with Interest thereon calculated (in accordance with this Agreement) from the date the payment was required until the date it is made.

10 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 10.1 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 provided that the exclusion of the said Act shall not prevent all or any future successors in title to any of the parties to this Agreement from being able to benefit from or to enforce any of the provisions of this Agreement.

11 JURISDICTION

- 11.1 This Agreement shall be governed by the laws of England and Wales and the Courts of England shall have sole jurisdiction in respect of the construction of this Agreement and as to the respective rights and liabilities of the parties.

12 INTEREST

- 12.1 If any sum due under this Agreement is paid late Interest will be payable from the date the payment is due to the date of payment.

13 FEES

- 13.1 The Applicant covenants with the Council to pay to the Council prior to the date hereof the Council's reasonable legal fees for the preparation, negotiation and completion of this Agreement.

IN WITNESS of which this document has been duly executed as a deed and delivered on the date stated at the beginning of this document.

SCHEDULE 1

Owner's Obligations

1 CONTRIBUTIONS

- 1.1 The Owner agrees with the Council to pay the Contributions to the Council on or before Occupation of 50% of the Dwellings.
- 1.2 The Owner agrees with the Council not to Occupy more than 50% of the Dwellings prior to paying the Contributions to the Council.

PROVIDED THAT

- 1.3 In the event that development has not reached Shell and Core Finish within [28 months] from the date of the Planning Permission the Owner shall provide the Council with a Revised Viability Appraisal.
- 1.4 The Owner shall agree and obtain written approval from the Council for the Revised Affordable Housing Contribution and for the avoidance of doubt if the Revised Viability Appraisal cannot be agreed then either the Owner or the Council may at any time refer the matter to an Expert in accordance with Clause [9] of this Agreement
- 1.5 No Dwelling shall be occupied until the Owner has paid to the Council any Affordable Housing Contribution or Revised Affordable Housing Contribution as appropriate.
- 1.6 In the event that the Development has reached Shell and Core Finish within [28 months] from the date of issue of the Planning Permission then paragraphs 1.3 to 1.5 of this Schedule shall not apply and shall have no further effect

SCHEDULE 2

Council's Obligations

- 1.1 The Council agrees to use the Contributions towards the purposes set out in this Agreement and for no other purposes within 5 years of receipt of each Contribution.
- 1.2 The Council agrees to repay to the party that pays the Contributions any part of the Contributions that have not been spent or Committed in accordance with this Agreement within 50 days of the end of the 5 year period referred to in paragraph 1.1 of this Schedule 2.

Signed as a deed by)	
CHURCHILL RETIREMENT LIVING LIMITED)	
acting by:)	Director
)	
)	Director/Secretary

Signed as a deed by)	
[THE OWNER])	
acting by:)	Authorised Signatory
)	
)	Authorised Signatory

SIGNED as a DEED by)
 [Attorney])
 As Attorney of)
 [MORTGAGEE])
 in the presence of:-)

(Full name of witness)

(Signature of witness)

Address

.....

.....

Occupation

Sealed as a DEED by affixing the COMMON SEAL of)	
[] COUNCIL)	
in the presence of:)	Authorised Signatory

Written by Sam Clark, Phd candidate, Newcastle University.
In association with Churchill Retirement Living, Planning Issues Ltd and the Housing LIN.



For more information please visit:
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