

## APPENDIX C: LAND AT ELLISON FOLD PHASE 1, DARWEN

### CONDITIONS OF SALE / DRAFT HEADS OF TERMS

### WITHOUT PREJUDICE AND SUBJECT TO CONTRACT

1. **Property:** Land at Ellison Fold Phase 1, Darwen shown edged red on the plan attached as Appendix A comprising a gross site area of 3.19 ha (7.89 acres) or thereabouts.

2. **Site Areas:**

Gross site area and land ownership comprises:

- Site 1 0.84 ha (2.08 acres) or thereabouts - Council land
- Site 2a 0.53 ha (1.31 acres) or thereabouts - Council land
- Site 2b 1.70 ha (4.20 acres) or thereabouts - Landeer Investments land
- Site 2c 0.12 ha (0.30 acres) or thereabouts - Council land

3. **Tenure:** Freehold

4. **Method of Sale:** Freehold disposal with the benefit of vacant possession.

The Ellison Fold Phase 1 site is offered in full and consideration will not be given to sub-division of the parcels.

The successful tenderer will be required to enter into a Conditional Contract with the Vendors (Blackburn with Darwen Borough Council and Landeer Investments Ltd) which will be conditional on obtaining Full Planning Consent and developing the site in accordance with the approved Planning Permission. The Conditional Contract will act as an overarching Agreement based on the principles agreed in the final Heads of Terms.

Once the conditions of the contract have been satisfied completion of the contract can take place and the freehold interest will be transferred to the purchaser.

5. **Purchase Price:** The Purchase Price will be agreed after a process of marketing the site in order to demonstrate best consideration. The Vendors are not bound to accept the highest price for the land, as the decision will also incorporate the ability of the purchaser to fulfil the requirements of the contract conditions and delivery of the agreed scheme.

The Purchase Price will be pro-rata to each landowner as follows:

|                          |   |                        |   |                                |
|--------------------------|---|------------------------|---|--------------------------------|
| Council land             | - | (parcels 1, 2a and 2c) | - | <b>44.6% of Purchase Price</b> |
| Landeer Investments land | - | (parcel 2b)            | - | <b>55.4% of Purchase Price</b> |

6. **Payment Drawdown:** The purchaser will be required to pay a non-refundable deposit based on 10% of the Purchase Price upon exchange of the Conditional Contract. The remaining balance of the Purchase Price is due upon completion of the conditional contract. Completion will occur 7 days after the judicial review period following full planning approval.
7. **Legal Costs:** The successful purchaser shall be responsible for the vendors legal costs, which shall be 2% of the purchase price or a maximum cap at £10,000. In circumstances where an appointed bidder withdraws from a sale for reasons other than a refusal of planning permission, the Council reserves the right to charge reasonable abortive costs in respect of legal and surveying work undertaken prior to the date of withdrawal.

The landowners have appointed a **joint solicitor**, as detailed below:

**Forbes Solicitors**

Rutherford House  
4 Wellington Street St Johns  
Blackburn BB1 8DD

8. **Planning:** The successful purchaser will be required to submit for planning permission, consents and approvals for the development within the agreed time (see **Programme** below) and the site shall be developed in accordance with such plans and specifications as approved by the Vendors and the Local Planning Authority (LPA).
9. **Health & Safety:** In accordance with Regulation 4.8 of the CDM Regulations (2015), the appointed developer are the appointed Client and the Vendors will in accordance with Regulations 4.4, 8.4 & 8.6 assist and provide any information in its possession to assist the Principal Designer and Principal Contractor in performing their duties.
10. **S106 Requirements:** The LPA has confirmed there is no requirement to provide affordable housing or public open space for the Ellison Fold Phase 1 development as this will be provided in sufficient quantities within future phases for the whole Ellison Fold development. The table below provides a breakdown of the S106 contribution for Ellison Fold Phase 1 and the future phases of the development. The below contributions are fixed and will not be subject to any pro-rata based on final number of units.

|                            | Est. Housing Units | Education       | Highways        | POS     | Affordable Housing | Total             |
|----------------------------|--------------------|-----------------|-----------------|---------|--------------------|-------------------|
| Ellison Fold Phase 1       | 75                 | £225,000        | £75,000         | On site | 20% on-site*       | £300,000          |
| Ellison Fold Future Phases | 250                | £525,000        | £675,000        |         |                    | £1,200,000        |
| <b>Totals</b>              | <b>325</b>         | <b>£750,000</b> | <b>£750,000</b> |         |                    | <b>£1,500,000</b> |

\*In accordance with the Council's Local Plan Part 2 Policy 12 for developer contributions, if necessary, the Council will consider a viability appraisal from the developer to determine the level of provision to ensure the development remains viable.

11. **Programme:** From the date of signed heads of terms the Purchaser will be required to exchange conditional contracts within 3 months and to submit a full planning application within 6 months. The conditional contract is subject to a long stop date of 12 months from signed heads of terms, which is extendable by the further 3 month period only if a full planning application has been submitted but a decision has not been made.
12. **Services:** The successful purchaser shall be responsible for confirming the existence, location and suitability of all services to the site and shall be responsible for the relocation of such services where and if required and shall liaise with the Council in order to minimise interference with common services. Services will be located within the service trenches as part of the adopted highway. **No manholes or service runs shall be located within the adopted highway except for service crossings which will be located at junction tables.**
13. **Foul Drainage:** United Utilities has indicated a foul drainage sewer within Ellison Fold Terrace as the most suitable option for serving the proposed development at Ellison Fold Phase 1 as referenced in the Flood Risk Assessment report. The development shall ensure drainage crossing Ellison Fold Way highway is located at highway crossing points. The Council will allow for easements for any foul manholes and drainage runs located within Council land. **No manholes or drainage runs shall be located within the adopted highway except for drainage crossings which will be located at junction tables.**
14. **Surface Water Drainage:** The Lead Local Flood Authority (LLFA) has confirmed that all surface water run-off shall be attenuated on site in accordance with the requirements identified in the Flood Risk Assessment report and discharged as agreed with the LLFA. The Council will allow for easements for any manholes and drainage runs located within Council land. **No manholes or drainage runs shall be located within the adopted highway except for drainage crossings which will be located at junction tables.**
15. **Insurances:** The successful purchaser shall be responsible for obtaining at its own cost all such insurances for the Property it deems appropriate.
16. **Failure to satisfy conditions:** Should the purchaser fail to meet any of the agreed conditions the sale will be aborted without refund of the deposit.
17. **Entry onto Site:** The purchaser must notify the vendor, and receive written approval from the vendor, of any access to the site that is required. This must include a description of the investigative works that are to be performed on the site. Once approval has been granted by the

Vendor the Purchaser will be permitted to access the land in order to undertake site investigations as previously agreed.

18. **Covenants:** The following covenants, declarations and conditions will be contained in the Conveyance:

- a) Plot 2C is a parcel strip of land fronting onto Ellison Fold Way and will be subject to a restriction on the use of this land for anything other than pedestrian footpaths, surface-water attenuation ponds, utility trenches and foul drainage connections.
- b) Not to use the land or buildings erected thereon for any purpose other than the use granted to the purchaser in the planning permission that is obtained.
- c) To comply with all statutory requirements relating to the land.
- d) To comply with all covenants that affect the land and to keep the Vendors indemnified against any breach of such covenants, details by appointment at the offices of the Council's Solicitor.
- e) A declaration that the purchaser shall not be entitled to any right of light or air which would restrict the free use of adjoining or neighbouring lands of the Vendors.

19. **General:**

- a) Japanese Knotweed is present in a localised area on plot 2a. A treatment plan is in place and will be provided to the successful purchaser.
- b) The successful purchaser shall not do or permit to be done anything on the site, which may cause a legal nuisance to adjoining occupiers, owners or the public.
- c) The successful purchaser shall indemnify the joint owners against liability, loss, claims or proceedings arising from the carrying out of the works or occupation of the site.
- d) The successful purchaser shall be responsible for carrying out any supplementary site investigations and enquiries in order to satisfy themselves as to the fitness of the site for the proposed development including any work associated with the previous coal mining use.