

DATED

2022

CHORLEY BOROUGH COUNCIL

and

LANCASHIRE COUNTY COUNCIL

and

SECRETARY OF STATE FOR JUSTICE

**A PLANNING OBLIGATION BY AGREEMENT
made pursuant to Section 106 of the Town and Country
Planning Act 1990 (as amended)**

relating to land at HM Prison Wymott Moss Lane Ulnes Walton Leyland PR26 8LW

Legal Services
Chorley Borough Council
Town Hall
Market Street
Chorley
Lancashire
PR7 1DP

THIS PLANNING OBLIGATION BY AGREEMENT is made the _____ day of _____ 2022

BETWEEN

- (1) **CHORLEY BOROUGH COUNCIL** of Town Hall, Market Street, Chorley, Lancashire, PR7 1DP (“the Council”).
- (2) **LANCASHIRE COUNTY COUNCIL** PO Box 78, County Hall, Fishergate, Preston, Lancashire, PR1 8XJ (“the County Council”).
- (3) **THE SECRETARY OF STATE FOR JUSTICE** care of Ministry of Justice, Property Directorate, FAO Phil Cronshaw 10th Floor, Area 10.41, 102 Petty France, London, SW1H 9AJ hereinafter called “the Owner”).

1. Recitals

- 1.1 The Council and the County Councils are local planning authorities for the purposes of the Act for the area within which the Site is located and are the authorities by which the planning obligations herein contained are enforceable.
- 1.2 The Owner is the freehold owner of the Site which is registered at the Land Registry under Title Number LA883207, LA883210, LA883218, LA883219.
- 1.3 The Owner applied to the Council pursuant to the Act for permission to develop the Site under the Application for the Development. The Council issued a decision notice on 22 December 2021 refusing planning permission.
- 1.4 The Owner has lodged the Appeal with the Secretary of State in respect of the Council's refusal of the Application.
- 1.5 The covenants, restrictions and requirements imposed upon the Owner under this Agreement create planning obligations pursuant to Section 106 of the Act and the Owner is the person against whom such obligations are enforceable in respect of the Site.
- 1.6 The Owner has agreed to enter into this Agreement so as to create planning obligations in favour of the Council and the County Council pursuant to Section 106 of the Act and to be bound and to observe and perform the covenants hereinafter contained.

2. Definitions and Interpretation

- 2.1

“the Act”	means the Town & Country Planning Act 1990 (as amended) or any statute amending or modifying repealing or re-enacting the same for the time being in force.
"Enhanced Bus Service Contribution"	Means the sum of £100,000 (one hundred thousand pounds) per year for five years paid to Lancashire County Council towards enhancing the Preston-Croston bus service.
"A581 Corridor Improvement Scheme Contribution"	Means the sum of £485,834 (four hundred and eighty-five thousand eight hundred and thirty four pounds) to be paid to Lancashire County Council towards the corridor improvement scheme along the A581 Rufford to Euxton.
"Appeal"	the appeal against the Council's refusal of the Application by way of a decision notice dated 22 December 2021 as made by the Owner and allocated appeal reference number APP/D2320/W/22/3295556 by the Planning Inspectorate.
“the Application”	means the application numbered 21/01028/OUTMAJ validated by the Council on 24 August 2021 for the development of the Site comprising outline planning permission (with all matters reserved except for means of access, parking and landscaping) for a new prison (up to 74,531.71 sqm GEA) (Class C2A) within a secure perimeter fence following demolition of existing buildings and structures and together with associated engineering works; Outline planning permission for a replacement boiler house (with all matters reserved except for access); and Full planning permission for a replacement bowling green and club house (Class F2(c)) on land adjacent to HMP Garth and HMP Wymott, Leyland.
"BCIS All-in Tender Price Index"	The BCIS All-in Tender Price Index published by the Royal Institute of Chartered Surveyors or any successor body (or such other index replacing the same) for the quarter in which the contribution (or any part of it) is paid
"Biodiversity Net Gain Monitoring"	Means the monitoring of the Biodiversity Net Gain Enhancements for a period of 30 years. Monitoring to take place annually for the first 5 years and thereafter at 5 yearly intervals.
"Biodiversity Net Gain Enhancements"	Means the Biodiversity Net Gain Enhancements shown on the BNG Area Calculation Plan.
‘Biodiversity Phasing Plan’	Plan to be submitted to the Council in accordance with the Planning Conditions setting out the timescales for the implementation of the Biodiversity Net Gain Enhancements.

"BNG Area Calculation Plan"	Plan annexed at the Fourth Schedule
"the Borough"	means the Borough of Chorley
"Bowling Green and Club House"	The proposed replacement bowling green and club house for use by Wymott Bowling Club shown on the plan at the Third Schedule and comprised in the Application.
"Commence"	means the carrying out of a material operation as defined by section 56 (4) of the Act (excluding for the purposes of this Agreement and for no other purpose any Preparatory Operation) in accordance with the Planning Permission and the expressions "Commencement" shall have a corresponding meaning.
"Commencement Date"	means the date of the Commencement of the Development
"Contribution(s)"	means the "A581 Corridor Improvement Scheme Contribution" "Enhanced Bus Service Contribution", "Cycleway Contribution", "Travel Plan Monitoring Contribution"
County Council Index Linked	means increased in accordance with the following formula: Amount payable=the payment specified in this deed x (A/B) where: A= the figure for the BCIS All-in Tender Price Index that applied immediately preceding the date the payment is due B= the figure for the BCIS All – in Tender Price Index that applied when the index was last published prior to the date of this deed.
"Cycleway Contribution"	Means the sum of £50,000 (fifty thousand pounds) to be paid to Lancashire County Council towards resurfacing works to Nixon Lane and improved signage to promote the cycling route between the Site and School Lane.
"Decision Letter"	means the decision letter issued by the Secretary of State confirming whether or not the Appeal is allowed.
"Development"	means the development proposed in the Application and described at the Third Schedule.
"Expert"	Means a person of at least 10 years post qualification experience and local knowledge in the subject matter of the dispute.

“Interest”	means interest at the rate of 2 per cent above the base lending rate of the Bank of England from time to time unless where otherwise expressly stated herein.
“Interest Bearing Account”	means a separately identifiable account within the financial accounting system of the Council or the County Council (as appropriate) to which will be added interest equivalent to that which the Council or the County Council obtains on its interest
“NPPF”	means the National Planning Policy Framework issued by the Department for Communities and Local Government (as was) on 27 March 2012 and revised on 20 July 2021
"Phase 4"	As shown on the Phasing Plan at the Second Schedule
“Plan”	means the Plan annexed hereto in the First Schedule
“Planning Permission”	means the hybrid planning permission (as may be amended or varied from time to time) permitting the Development granted by the Secretary of State pursuant to the Appeal or any reserved matters approval granted pursuant to any Qualifying Application.
“Preparatory Operation”	means: a) An operation or item of work of or ancillary to: (i) Archaeological investigations; or (ii) Demolition; or (iii) Site Clearance; or (iv) Site or soil investigations; or (v) Site remediation works; or (vi) The laying of services; b) Temporary works including the erection of temporary fencing and hoardings
“Qualifying Application”	means any application for reserved matters approval in relation to the Planning Permission and/or any subsequent applications for planning permission made under section 73 of the Act and/or in accordance with article 18 of the Town and Country Planning (Development

	Management Procedure) (England) Order 2010 in respect of the Development
"Secretary of State"	means the Secretary of State for the Ministry of Levelling Up Housing and Communities from time to time charged with determining the Appeal or (as applicable) any inspector appointed by the Secretary of State in accordance with Schedule 6 of the 1990 Act to determine the Appeal.
"Services"	means all the media and apparatus for the supply and removal of water, sewerage, gas and electricity.
"Site"	means the land against which this Agreement may be enforced shown for illustrative purposes only edged red on the Plan.
"Substantially Completed"	means completed save in very minor respects so that the relevant works can be used for purpose and operate in the manner in which they were designed and "Substantial Completion" shall be construed accordingly
"Travel Plan Monitoring Contribution"	means the sum of £18,000 (eighteen thousand pounds) to be paid to Lancashire County Council towards the appraisal of the Workplace Travel Plan submitted to the Council pursuant to the planning permission and provide constructive feedback; Oversee the progression from Interim to Full Workplace Travel Plan in line with agreed timescales; Monitor the development, implementation and review of the Workplace Travel Plan for a period of up to 5 years.
"Working Day"	means any day on which the clearing banks in the City of London are (or would be but for strike, lockout, or other stoppage affecting such banks generally) open during banking hours Monday to Friday (inclusive) excluding national holidays and the period 24 December -1 January inclusive and excluding Saturdays, Sundays and bank holidays.
"Wymott Bowling Club"	means Wymott GC Bowling Club, crown bowls club of Pump House Lane, Opposite Wymott Prison, Leyland, Lancashire, United Kingdom.

2.2 The clause and the paragraph headings in the body of this Agreement and in the Schedules do not form part of this Agreement and shall not be taken into account in its construction or interpretation. Reference made to any clause paragraph or schedule or recital context is a reference to a clause paragraph or schedule or recital in this Agreement.

- 2.3 Save where used in clause 8 the expressions “the Council”, “the County Council” and “the Owner” shall where the context admits include their successors in title and the successors to its statutory functions and those deriving title under each of them. Words importing one gender shall be construed as including any gender.
- 2.4 Words importing the singular shall be construed as importing the plural and vice versa.
- 2.5 The clause and the paragraph headings in the body of this Agreement and in the Schedules do not form part of this Agreement and shall not be taken into account in its construction or interpretation.
- 2.6 Any reference to an Act of Parliament shall include any modification extension or re-enactment of that Act for the time being in force and shall include all instruments orders plans regulations permissions and directions for the time being made issued or given under that Act or deriving validity from it. In the absence of any contrary provision any reference to a statute includes any statutory modification or re-enactment of it and any and every order instrument regulation permission direction or plan made or issued under the statute or deriving validity from it.

3. Legal Effect

- 3.1 This Agreement is made pursuant to Section 106 of the Act and the obligations contained in this Agreement are planning obligations for the purposes of that section insofar as they fall within the terms of sub-section 106(1).
- 3.2 Insofar as any of the covenants contained in this Agreement are not planning obligations within the meaning of the Act they are entered into pursuant to the powers contained in Section 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011 and all other enabling powers with the intention that the obligations contained herein are planning obligations for the purposes of the provisions in respect of the Site which may be enforced by the Council and the County Council against the Owner.
- 3.3 The parties agree that the terms of this deed satisfy the requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010 relating to planning obligations.

4. Commencement

- 4.1 This Agreement is conditional upon the grant of the Planning Permission and shall not take effect until the Commencement of Development authorised by the Planning Permission.
- 4.2 Save for the provisions of clause 8.9 (Land Charges registration) and 10 (Legal Costs) 8.3 (Notices) 12 (Notices of Change in Ownership) which shall come into effect immediately upon completion of this Agreement.
- 4.3 In the event that the Secretary of State grants the Planning Permission pursuant to the Appeal but expressly states in his Decision Letter that any Planning Obligation (or part thereof) contained in this deed:
- 4.3.1 is not a material planning consideration; or

- 4.3.2 otherwise fails to comply with Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended);

then such Planning Obligation (or part thereof) will be deemed to be null and void and to be severed from the remainder of this deed which shall remain in full force and effect.

5. The Covenants of the Owner

The Owner hereby covenants in respect of itself and so as to bind its interests in the Site with the Council to perform the obligations on its part specified in the Sixth Schedule and with the County Council to perform the obligations on its part specified in the Seventh Schedule.

6. The Covenants of the Council

The Council hereby covenants with the Owner to perform the obligations on its part specified in the Eighth Schedule.

7. The Covenants of the County Council

The County Council hereby covenants with the Owner to perform the obligations on its part specified in the Ninth Schedule.

8. Agreements and Declarations

It is hereby agreed and declared as follows:

- 8.1 References to any party to this Agreement shall include successors in title and assigns to that party and to any deriving title through or under that party and in the case of the Council and Owner the successors to their respective statutory functions; save as provided in respect of the successors in title to the Site or any successor to the relevant statutory functions of the Council or the County Council this Agreement shall not be enforceable by any third party pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 8.2 This Agreement is governed by and interpreted in accordance with the Law of England and the parties submit to the exclusive jurisdiction of the Courts of England.
- 8.3 Any notice or other written communication to be served by one party upon any other pursuant to the terms of this Agreement shall be deemed to have been validly served if delivered by hand or sent by pre-paid first class or recorded delivery post to the party to be served at its address herein specified or such other address as may from time to time be notified for this purpose by notice served under this Agreement and any such notice or other written communication to be given by the Council Owner and/or the County Council shall be deemed valid and effectual if on its face value it is signed on behalf of the Council and/or the County Council by an officer or duly authorised signatory thereof.
- 8.4 Where any certificate, consent, permission, nomination or other approval is to be given by any party or any person on behalf of any party hereto under this Agreement the decision of the same shall

not be unreasonably withheld or delayed and if refused written reasons for the refusal shall be provided.

8.5 No person shall be liable for breach of a covenant contained in this Agreement after it shall have parted with all interest in the Site or that part of the Site in respect of which such breach occurred but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest.

8.6 This Agreement shall not be enforceable against:

8.6.1 any statutory undertaker or other person who acquires any part of the Site or an interest in it for the purposes of the supply of electricity, gas, water, drainage, telecommunication services or public transport services;

8.6.2 the relevant highway authority to whom any part of the Site is disposed of for the purposes of adoption of any roads and/or footpaths and or/cycle ways to be constructed on the Site

PROVIDED ALWAYS THAT nothing in this Agreement restricts or is intended to restrict the exercise at any time by the Council or the County Council of any of their statutory functions or discretions in relation to any part of the Site or otherwise.

8.7 If the Planning Permission shall expire before the Commencement Date or shall at any time be quashed, revoked, otherwise withdrawn or it is, without the consent of the Owner, modified by any statutory procedure the provisions of this Agreement shall forthwith determine and cease to have effect (insofar only as they have not already been complied with) and any Local Land Charge registered pursuant to clause 8.9 shall be cancelled as soon as reasonably practicable.

8.8 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Agreement.

8.9 This Agreement shall upon completion be registered by the Council as a Local Land Charge.

8.10 If any sum due under this Agreement shall remain unpaid after the same has become due (without prejudice to any other right of the parties to this Agreement) Interest shall be paid thereon by the defaulting party to the other party from the date the sum becomes due to the date of actual receipt of the payment by the receiving party at the rate of 2% above the base lending rate of the Bank of England from time to time.

8.11 Obligations entered into by any party which comprises of more than one person shall be deemed to be joint and several.

8.12 No waiver (whether express or implied) by the Council of any breach or default in performing or observing any of the covenants terms or conditions of this Agreement shall constitute a waiver and

no such waiver shall prevent the Council from enforcing any of the said terms or conditions or from acting upon any subsequent breach or default.

8.13 If any provision in this Agreement shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions shall not in any way be deemed thereby to be affected or impaired.

8.14 Nothing in this Agreement shall be construed as granting planning permission or any other approval consent or permission required from the Council in exercise of any other statutory function.

9. Disputes

9.1 Unless and to the extent not specified otherwise in this Agreement any dispute (save for any disputes as to matters of law) shall be referred at any appropriate time by any party hereto to a person having appropriate professional qualifications and experience in such matters ("the Expert") appointed jointly by the parties or in default of agreement within 10 Working Days after either party has given to the other a written request requiring the appointment of the expert by the President for the time being of the Royal Institution of Chartered Surveyors or the President of such other professional body as shall be relevant for the nature of the dispute in question (as appropriate) (or on his behalf) on the application of either party.

9.2 The Expert shall have at least 10 years post qualification experience in the area of the dispute in question.

9.3 The Expert shall act as an expert and not as an arbitrator and the decision of the Expert shall be final and binding upon the parties (except where there is a manifest error and/or on a matter of law) and the following provisions shall apply to the Expert.

9.4 The charges and expenses of the Expert shall be borne between the parties in such proportions as the Expert may direct.

9.5 The Expert shall give each of the parties an opportunity to make representations to him before making his decision which he shall make available to the other parties on request.

9.6 The Expert shall be entitled to obtain opinions from others if he so wishes.

9.7 The Expert shall make his decision on valuation matters within the range of any representations made by the parties.

9.8 The Expert shall comply with any time limits or other directions agreed by the parties on or before his appointment.

9.9 If the Expert is unable or unwilling to accept his appointment or to carry out his functions then either party may apply for a replacement to be appointed in his place and this procedure may be repeated as often as necessary.

9.10 The decision of the Expert must be given in writing setting out the reasons behind such decision.

9.11 If the parties fail to agree as to the nature of the difference or question then a decision as to the nature of such difference or question shall be referred to a solicitor of at least ten (10) years post qualification experience in the same manner and the same terms as set out in clauses 9.1 to 9.10 inclusive who shall determine which type of professional should be appointed in relation to such matter.

10. Legal Fees

10.1 The Owner agrees to pay to the Council on the date hereof the sum of £510.00 pounds as a contribution towards the reasonable costs incurred by the Council in the negotiation preparation and execution of this Agreement.

10.2 The Owner agrees to pay to the County Council on the date hereof the sum of £500.00 pounds as a contribution towards the reasonable cost incurred by the County Council in the negotiation preparation execution and monitoring of compliance with this Agreement.

11. Indexation

11.1 All financial contributions payable to the County Council shall be County Council Index Linked.

11.2 Where reference is made to an index and that index ceases to exist or is replaced or rebased then it shall include reference to any index which replaces it or any rebased index (applied in a fair and reasonable manner to the periods before and after rebasing under this deed) or in the event the index is not replaced, to an alternative reasonably comparable basis or index as the Council and/or the County Council (as applicable to the index) shall advise the Owner in writing.

12. Notice of Change in Ownership

12.1 The Owner agrees with the Council and the County Council until all obligations under this Agreement have been discharged to give the Council notice of any change legal ownership in the Site (save if change by way of statutory transfer) within 15 Working Days of the occurrence of such change or creation and such notice shall give details of the transferee's full name and registered office (if a company) or usual address together with the area of the Site or relevant unit of occupation by reference to a plan.

THE FIRST SCHEDULE

THE SITE

The registered freehold land at land at HM Prison Wymott Moss Lane Ulnes Walton Leyland PR26 8LW under Title Numbers LA883207, LA883210, LA883218, LA883219. and for the purposes of identification only shown edged red on the attached Plan

THE SECOND SCHEDULE

PHASING PLAN

THE THIRD SCHEDULE

BOWLING GREEN AND CLUB HOUSE PLAN

THE FOURTH SCHEDULE

BNG AREA CALCULATION PLAN

THE FIFTH SCHEDULE

DESCRIPTION OF THE DEVELOPMENT

Full application for Outline planning permission (with all matters reserved except for means of access, parking and landscaping) for a new prison (up to 74,531.71 sqm GEA) (Class C2A) within a secure perimeter fence following demolition of existing buildings and structures and together with associated engineering works; Outline planning permission for a replacement boiler house (with all matters reserved except for access); and Full planning permission for a replacement bowling green and club house (Class F2(c)) on land adjacent to HMP Garth and HMP Wymott, Leyland.

Application No: 21/01028/OUTMAJ

THE SIXTH SCHEDULE

The Owner covenants with the Council as follows:

1. Biodiversity Net Gain

- 1.1 To implement and maintain for a period of thirty years the Biodiversity Net Gain Enhancements as identified on the BNG Area Calculation Plan (ref. 608623-0000-PEV-GHX0011-XX-DR-L-0701 Rev P05) and in accordance with the Biodiversity Phasing Plan.
- 1.2 To commence Biodiversity Net Gain Monitoring on completion of the first phase of landscaping improvement works to the southern parcel of the application site surrounding the bowling green.

2. Bowling Green and Club House

- 2.1 To deliver and maintain the replacement Bowling Green and Club House and make available for use by Wymott Bowling Club or any successor or alternative bowling club prior to the existing bowling green and club house being made unavailable for use pursuant to the implementation of the Planning Permission.

THE SEVENTH SCHEDULE

The Owner covenants with the County Council as follows:

3. Enhanced Bus Service Contribution

- 3.1 The Owner will pay the County Council within 30 days of the Commencement Date the Enhanced Bus Service Contribution, and annually with a total of 5 annual Enhanced Bus Service Contribution payments to be made.

4. Cycleway Contribution

- 4.1 The Owner will pay the County Council prior to Commencement of Phase 4 the Cycleway Contribution.

5. A581 Corridor Improvement Scheme Contribution

- 5.1 The Owner will pay the County Council prior to Commencement of Phase 4 the A581 Corridor Improvement Scheme Contribution.

6. Payment of the Travel Plan Monitoring Contribution

- 6.1 The Owner will pay the Council prior to the Commencement of Development pay the Travel Plan Monitoring Contribution to enable the Lancashire County Council Travel Planning Team to provide a range of services as outlined below:

- Appraise the Travel Plan(s) submitted to the Planning Authority and provide constructive feedback.
- Oversee the progression from interim to full travel plan in line with agreed timescales.
- Monitor the development, implementation and review of the Travel Plan for a period of up to 5 years.
- Support the development and implementation of the Travel Plan.
- Develop and provide online, staff mode of travel surveys and collation of returns for baseline and subsequent monitoring purposes.
- Attend meeting(s) with the Developer/occupier/co-coordinator as necessary.

- Provide access to leaflets, publicity, maps and information – provision of bespoke literature and large quantities may be subject to additional charges.
- Oversee a basic site audit.
- Provide localised maps and plans, GIS mapping of staff postcodes or other origin and destination data, accessibility plot of public transport, walking and cycling routes/thresholds to site.
- Advise and offer appropriate support with implementation of suitability of specific elements or measures.
- Assist with the development of sustainable travel directions for web pages and other appropriate content.
- Help stage promotional events and activities including Walk to Work Week, Bike Week, car free days or measured mile walks etc.

THE EIGHTH SCHEDULE

The Council's Covenants

1. Contributions

- 1.1 To use all Contributions received from the Owner under the terms of this Agreement for the purposes specified in this Agreement for which they are to be paid and for no other purpose.
- 1.2 When requested in writing the Council covenants with the Owner that it will refund all such sums to the person who paid such sums received by the Council under this Agreement which has not been expended in accordance with the provisions in this Agreement (and money shall be deemed to have been expended if the Council has properly entered into a contract for the expenditure of the money for the purpose for which it is paid which is reasonably likely to result in the fulfilment of that purpose) within five years of the date of receipt by the Council of such sum.
- 1.3 When requested in writing the Council shall provide written confirmation of the discharge of obligations contained in this Agreement when reasonably satisfied that such obligations have been performed.
- 1.4 Following the performance and satisfaction of all the obligations contained in this Agreement, the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Agreement.

THE NINETH SCHEDULE

The County Council's Covenants

1. To use all Contributions received from the Owner under the terms of this Agreement for the purposes specified in this Agreement for which they are to be paid and for no other purpose.
2. The County Council covenants with the Owner that it will refund all such sums to the person who paid such sums received by the Council under this Agreement which has not been expended or committed for expenditure in accordance with the provisions in this Agreement within ten years of the date of receipt by the Council of such sum together with interest at the base lending rate of the Bank of England for the period from the date of payment to the date of actual refund.
3. When requested in writing the County Council shall provide written confirmation of the discharge of obligations contained in this Agreement when reasonably satisfied that such obligations have been performed.
4. Following the performance and satisfaction of all the obligations set out in this Agreement, the County Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges by the Council in respect of this Agreement.

IN WITNESS whereof the Council, the County Council and the Owner have executed this Agreement as a Deed the date and year first before written.

THE COMMON SEAL OF)

CHORLEY BOROUGH COUNCIL)

by affixing its common seal in the)

presence of:)

Authorised Signatory

THE COMMON SEAL OF)

LANCASHIRE COUNTY COUNCIL)

by affixing its common seal in the)

presence of:)

Authorised Signatory

THE CORPORATE SEAL OF)

THE SECRETARY OF STATE FOR JUSTICE)

hereunto affixed is authenticated by:)

Authorised Signatory