

18725/CE

Dated

17th March

2017

POWYS COUNTY COUNCIL

-and-

DWYNWEN DAVIES, IAN NEWTON DAVIES & GARETH NEWTON DAVIES

SECTION 106
TOWN AND COUNTRY PLANNING ACT 1990

Residential Development on Land adjacent to Tynllan Farm, Castle Caereinion

P2016 0893

Certified a true copy of
the Original

[Signature]
..... 21st April 2017
Solicitor for

Powys County Council
Neuadd Maldwyn
Welshpool

Solicitor to the Council
Powys County Council
Severn Road
Welshpool
Powys
SY21 7AS

THIS AGREEMENT is made the *Seventeenth* day of *March* 2017
BETWEEN POWYS COUNTY COUNCIL of County Hall Llandrindod Wells Powys
LD1 5LG ("the Council") **DWYNWEN DAVIES, IAN NEWTON DAVIES & GARETH
NEWTON DAVIES** all of Tynllan, Castle Caereinion, Welshpool SY21 9AP ("the
Owners")

WHEREAS

1. The Owners are the freehold owners of land adjacent to Tynllan Farm, Castle Caereinion, aforesaid and registered at Land Registry under title number CYM436266 and approximately shown edged red on the attached plan ("the Land")
2. The Owners have by the Planning Application applied for planning permission to carry out the Development.
3. The Council has resolved to grant planning permission ("the Planning Permission") for the Development in accordance with the Planning Application and subject to the making of this Agreement without which the planning permission would not be granted.

NOW THIS DEED WITNESSES as follows:

1. This Agreement constitutes a planning obligation under Section 106 of the Act
2. The obligations contained within this agreement are enforceable by the Council as local planning authority for the area in which the land is situated.
3. In this Agreement the following expressions shall have the following meanings:

"the Act" means the Town and Country Planning Act 1990 as amended.

"Affordable Housing"	<p>means</p> <ul style="list-style-type: none"> i) housing for sale where the sale price does not exceed the Maximum Price or ii) housing for rent where the rent level does not exceed 80% of the prevailing Powys average open market rent level or the full Indicative Rent (Local Housing Allowance) or such other rent level as the Council shall reasonably specify in the event that the Welsh Government fails or ceases to publish the Indicative Rent.
"Affordable Housing Unit"	<p>means the single unit of Affordable Housing to be constructed on the Land pursuant to the Planning Permission</p>
"Approved Mortgagee"	<p>means a member of BACS Limited or CHAPS Clearing Company Ltd or a building society incorporated under the Building Societies Act 1986 or a mortgagee approved in writing by the Council of Mortgage Lenders or such other mortgagee as may be approved in writing by the Council</p>
"the Cascade Provisions"	<p>means the provisions set out in the First Schedule</p>
"Development"	<p>means the development authorised by the Planning Permission.</p>
"Indicative Rent"	<p>means the indicative rent, also known as Local Housing Allowance published by the Welsh Government for the determination of housing benefit</p>

"Local Community"

means the Community of Castle Caereinion and the community or town council areas immediately adjoining the Local Community.

"Maximum Price"

means whichever of the following produces the highest sum:

1. the sum calculated as the average amount affordable to those on local incomes in Powys, namely, £113,073.00
OR
2. the open market value determined by the District Valuer or a RICS chartered surveyor ("Open Market Value") and reduced by the percentage discount set annually by the Council using the calculation set out in the Third Schedule as at the date of this agreement or as at the date that the sale of the Affordable Housing Unit is agreed
OR
3. 69% of the Open Market Value

"Plan"

means the plan attached hereto

"the Planning Application"

means the planning application for residential development and creation of a vehicular access on the land registered by the Authority on 23/08/2016 under reference number P2016/0893

"the Planning Permission"

means the planning permission granted pursuant to the Planning Application

"Qualifying Persons"

means a person in need of Affordable Housing and who immediately prior to taking occupation of the Affordable Housing Unit falls within one or more of the following categories

i) has resided in the Local Community continuously for at least three consecutive years

ii) was born or brought up in the Local Community; or

iii) is an existing resident of the Local Community requiring separate accommodation or

iv) is principally employed in the Local Community in continuous full time employment amounting to not less than 20 hours per week and was so employed for a continuous period of three years; or

v) has an offer of full time employment as defined in sub paragraph iv) above within the Local Community but cannot take up the offer because of a lack of affordable accommodation; or

vi) wishes to move into the Local Community to look after an elderly or infirm relative or to be looked after by a relative already resident in the Local Community

AND he, his spouse, co-habitee or civil partner have not recently owned a dwelling (whether or not subject to a mortgage or legal charge) in fee simple or for a leasehold interest unless the

proposed occupier has an eligibility certificate provided by the Council confirming that the person has an exceptional need for the Affordable Housing Unit

"Registered Social Landlord" means a social housing landlord registered within the meaning of Section 1 of the Housing Act 1996

4. It is agreed and declared as follows:

4.1 The expressions "the Council" and "the Owners" shall include their successors in title and assigns and where there are two or more persons included in the expression "the Owners" covenants expressed to be made by them shall be deemed to be made by such persons jointly and severally

4.2 Words of a masculine gender shall include the feminine and the singular shall include the plural whenever the context so permits

4.3 The obligations in this Agreement shall take effect only upon the date specified by the Owners in a written notice served upon the Council as the date upon which the Development is to be commenced or if no such notice is served the actual date on which the Development was begun within the meaning of section 56 of the Town and Country Planning Act 1990

4.4 No party shall be liable for any breach of the obligations contained in this Agreement after parting with their interest in the Land but that party shall be liable for any breach which subsisted prior to parting with that interest unless the party is an Approved Mortgagee in possession in which case it shall be exempt from any liability unless that liability arose whilst it was in possession of the land.

4.5 If the Planning Permission expires or is revoked before commencement of the Development this Agreement shall cease to have effect

- 4.6 The Agreement is a local land charge and shall be registered as such
5. The Owners covenant with the Council as set out in the Second Schedule
6. In the event of any dispute between the parties as to the construction of this Agreement the matter may be referred by any party to a solicitor or barrister agreed upon by the parties to the dispute and that solicitor's or barrister's decision about the proper construction of the Agreement shall be binding upon the parties. In default of agreement about the identity of the solicitor or barrister, the President of the Law Society shall be asked to identify a solicitor to whom the parties shall then refer, and whose decision about the proper construction of this Agreement shall be binding upon the parties.
7. Upon completion of this Agreement the Owners shall pay the Council's legal costs in connection with the preparation and completion of this Agreement.
8. Where in this agreement a calculation is required to be made but this is not possible because in the reasonable opinion of Powys County Council any data or index on which the said calculation is based either no longer exists or is not reasonably economically obtainable then the Council shall at its sole discretion nominate a reasonable alternative data source or index or similar for the purpose of making the required calculation.
9. The Owners will upon request by the Council provide evidence (including copies of appropriate documents) that he has complied with his obligations under this Agreement.

IN WITNESS whereof the parties have duly executed this Agreement as a Deed the day and year first written

First Schedule
"the Cascade Provisions"

All occupiers of the Affordable Housing Unit are to be selected in accordance with the following priorities and in the following order

1. Firstly, a Qualifying Person
2. Secondly, a person who would be a "Qualifying Person if the definition of "Qualifying Person were amended so that "Montgomeryshire" was substituted for "Local Community"
3. Thirdly, a person who would be a "Qualifying Person if the definition of "Qualifying Person were amended so that "the County of Powys" was substituted for "Local Community"
4. Fourthly a person who would be a "Qualifying Person if the definition of "Qualifying Person were amended so that "a local authority area immediately adjoining Powys" was substituted for "Local Community"

Second Schedule
The Owners' Covenants

1. To submit to the Council for its approval details of the siting (including the extent of the proposed gardens or amenity land) designed materials and phasing of the Affordable Housing Unit
2. Not to commence the Development until such time as the details required by paragraph 1 of this Schedule have been approved in writing by the Council (such approval not to be unreasonably withheld or delayed)
3. To construct the Affordable Housing Unit strictly in accordance with the details approved pursuant to paragraphs 1 and 2 of this Schedule

4. Save as provided below not to use or cause or permit the Affordable Housing Unit to be used other than for the purpose of providing Affordable Housing to persons who at the time they initially occupy the Affordable Housing Unit are Qualifying Persons or satisfy the Cascade Criteria

5. Before any transfer or letting of the Affordable Housing Unit
 - i) to use his best endeavors to transfer or let the Affordable Housing Unit to a Qualifying Person or Registered Social Landlord
 - ii) if no Qualifying Person or Registered Social Landlord can be identified pursuant to paragraph 5i) of this Schedule within a period of 4 months then the Owners shall use his best endeavors to transfer or let the Affordable Housing Unit to a person within paragraph 2 of the Cascade Provisions
 - iii) if no person can be identified pursuant to Paragraph 5ii) of this Schedule within a further period of 4 months then the Owners shall use his best endeavors to transfer or let the Affordable Housing Unit to a person within paragraph 3 of the Cascade Provisions
 - iv) if no person can be identified pursuant to Paragraph 5iii) of this Schedule within a further period of 4 months then the Owners shall use his best endeavors to transfer or let the Affordable Housing Unit to a person within paragraph 4 of the Cascade Criteria

Provided that in the case of an approved mortgagee in possession of the Affordable Housing Unit exercising its statutory power of sale

- v) the periods specified in Paragraphs 5ii) and 5iii) of this Schedule shall be reduced from 4 months to 6 weeks and the mortgagee in possession shall not be required to use its best endeavors to transfer or let the Affordable Housing Unit to a person within paragraph 4 of the Cascade Criteria
- vi) in the event that no person can be identified pursuant to Paragraph 5iii) within a further period of 6 weeks then notwithstanding the provisions of paragraph 1-4 of this Schedule the Approved Mortgagee shall offer the Affordable Housing Unit in writing to the Council at the Maximum Price.

- vii) If the Council does not agree to purchase the Affordable Housing Unit at the Maximum Price within 2 weeks of the offer referred to in Paragraph 5vi) then the Approved Mortgagee may dispose of the Affordable Housing Unit on the open market and shall notify the Council in writing within 14 days of such disposal
Provided (for the avoidance of doubt) the provisions in this Agreement will apply to all subsequent occupiers including in the case of a purchaser from an Approved Mortgagee in Possession save where the Affordable Housing Unit is disposed of on the Open Market pursuant to paragraph 5vii).

Provided also that where the Council is satisfied in writing that there are exceptional circumstances then the periods specified in Paragraphs 5ii) and 5iii) of this Schedule shall be reduced from 4 months to 6 weeks.

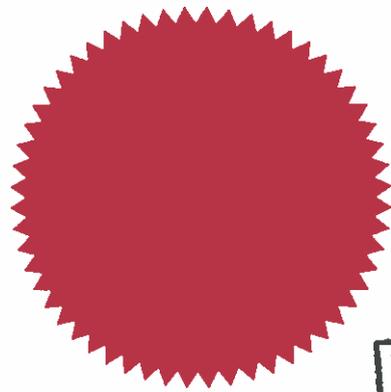
6. Not to cause or permit the transfer of the Affordable Housing Unit to any person for a price greater than the Maximum Price
7. Not to cause or permit the Affordable Housing Unit to be let for a rent exceeding 80% of the prevailing Powys average open market rent level or the full Indicative Rent (Local Housing Allowance) or such other rent level as the Council shall reasonably specify in the event that the Welsh Government fails or ceases to publish the Indicative Rent.
8. Not to cause or permit the Affordable Housing Unit to be occupied by a person other than one who is occupying that dwelling as his sole residence together with his dependents
9. Not without the written approval of the Council to cause or permit the Affordable Housing Unit to be constructed extended or altered so that the gross floor space (including any attached garage but excluding the thickness of external walls) exceeds 130 square metres

10. Not to cause or permit the Affordable Housing Unit to be transferred without ensuring that the following clause is inserted in the transfer document

"The Transferor and the Transferee hereby apply to the Chief Land Registrar to enter into the register of the title to the Land a restriction that no disposition of the Land (other than a charge) by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a certificate signed by the Proper Officer of Powys County Council, County Hall, Llandrindod Wells, Powys LD1 5LG that the provisions of clause 5 of the Agreement dated *17th* day of *March* 2017 and made between Powys County Council (1) Dwynwen Davies, Ian Newton Davies & Gareth Newton Davies (2) have been complied with

POWYS COUNTY COUNCIL
was affixed
in the presence of:-

)
)
)



NO. IN SEAL
REGISTER
10765

R. Duweney

The Solicitor to the Council

SIGNED AS A DEED by the said
DWYNWEN DAVIES
in the presence of:-

)
)
)

Dwynwen Davies

Signature:

T.G.

Name (printed): *TUDOR GLYN WATKINS*
Address: *RHOSLAS, CARNO, POWYS, SY17 5JY*
Occupation: *(CHARTERED) SURVEYOR*

SIGNED AS A DEED by the said
IAN NEWTON DAVIES
in the presence of:-

)
)
)

J. N. Davies

Signature:

T.G.

Name (printed): *TUDOR GLYN WATKINS*
Address: *RHOSLAS, CARNO, POWYS, SY17 5JY*
Occupation: *CHARTERED SURVEYOR*

SIGNED AS A DEED by the said

)

GARETH NEWTON DAVIES
in the presence of:-

)
)

G.M. Davies

Signature:

T.G. Watkins

Name (printed): TUDOR GLYN WATKINS

Address: RHOSLAI, CARNO, POWYS, SY17 5JY.

Occupation: CHARTERED SURVEYOR.