

DATED 22nd August 2023

THE COUNCIL OF THE CITY OF MANCHESTER

– and –

HARGEST LIMITED

- and -

CROSBY HOMES LIMITED

AGREEMENT

pursuant to section 106 of the Town and
Country Planning Act 1990 (as amended)

relating to land and buildings on the south east side of Ellesmere Street, Manchester and land
and buildings on the north west side of Chester Road, Manchester

City Solicitor
P O Box 532
Town Hall
Albert Square
Manchester M60 2LA
EVD3001/3882

THIS AGREEMENT is made the 22 day of August 2023
BETWEEN:

- (1) **THE COUNCIL OF THE CITY OF MANCHESTER** of Town Hall, Albert Square, Manchester, M60 2LA (the “**Council**”),
- (2) **HARGEST LIMITED** (incorporated in Isle of Man whose registered office is at Woodlands, Alexander Drive, Douglas, Isle Of Man, IM2 3QU (the “**First Owner**”),
- (3) **CROSBY HOMES LIMITED** (incorporated in England and Wales with company number 08026103) whose registered office is at 76 Manchester Road, Denton, Manchester, M34 3PS (the “**Second Owner**”)

BACKGROUND

- A The Council is the local planning authority for the purposes of the Act in relation to the Site and is the authority by whom the obligations hereby created are enforceable. The Council is also the freehold owner of part of the Site registered at the Land Registry with Title Absolute under Title Number GM880709 together with but subject to all matters contained or referred to in the title registers thereunder. It is agreed by the parties that the Owners’ covenants hereinafter contained shall not bind the Council. The Development will be carried out on the Site. The Site is situated within the Administrative Boundaries of Manchester and this planning obligation is enforceable by the Council.
- B The First Owner is the freehold owner of part of the Site registered at the Land Registry with Title Absolute under Title Number GM269471 together with but subject to all matters contained or referred to in the Title Registers thereunder. The First Owner is also the leasehold owner of parts of the Site registered at the Land Registry with Title Absolute under Title Numbers GM451963 and GM451964 together with but subject to all matters contained or referred to in the Title Registers thereunder.
- C The Second Owner is the equitable owner of the leasehold title to parts of the Site registered at the Land Registry with Title Absolute under Title Numbers GM84210 and GM559611 pending acquiring the legal estate in those titles on completion of the registration of their transfer to the Second Owner at the Land Registry.
- D The Application was submitted to the Council for planning permission to carry out the Development in the manner set out in the plans, specifications and particulars forming part of the Application.
- E The Council as local planning authority is satisfied that the Development is such as may be approved by the Council under the Act and is minded to grant planning permission for the Development in accordance with the Application but having considered the Local Plan and the Regulations is desirous of the Owners entering into this Agreement without which planning permission would not be granted.

- F The Owners have agreed to enter into this Agreement in support of the Application so as to create planning obligations in favour of the Council pursuant to section 106 of the Act and to be bound by and observe and perform the covenants hereinafter contained
- G The Council has determined that the Development in order to comply with the Core Strategy should provide a payment of £6,173,412 (six million one hundred and seventy three thousand four hundred and twelve pounds) (the Maximum Contribution) towards the provision of Affordable Housing within the Administrative Boundaries of Manchester. However the Owners have stated that there are viability issues affecting the development of the Site and has submitted to the Council documentation in support of this contention. The Council has accepted that at the date of this Agreement without a reduction in the Maximum Contribution the implementation of the Development is not viable. The Council has agreed to accept the Initial Contribution in lieu of the Maximum Contribution on the basis of the information contained in the documentation relating to viability submitted by the Owners to the Council. The Owners have agreed to pay the Initial Contribution and to enter into the planning obligations contained herein requiring them to submit the Viability Appraisal and pay any Viability Payment found to be due in accordance with the provisions contained in this Agreement.
- H The Council has further determined that the Development in order to comply with the Core Strategy should provide a Tree Planting Contribution towards the provision of tree planting in Hulme Ward,
- I The planning purpose of this Agreement is to improve the amenity of land in the locality of the Site with benefit for the occupiers of the Development and to mitigate the adverse impacts of the Development in accordance with the development plan for the area and other material considerations. The Council is satisfied that the obligations in this Agreement are,
- (a) necessary to make the Development acceptable in planning terms (including where appropriate, obligations necessary to mitigate the adverse impacts of the Development in accordance with the development plan for the area and other material considerations),
 - (b) directly related to the Development, and
 - (c) fairly and reasonably related in scale and kind to the Development
- J The Owners have agreed to enter into this Agreement in support of the Application so as to create planning obligations in favour of the Council pursuant to section 106 of the Act and to be bound by and observe and perform the covenants hereinafter contained

AGREED TERMS

DEFINITIONS AND INTERPRETATION

1.1 The definitions and rules of interpretation set out in this Clause apply to this Agreement “Act” the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 and the Planning and Compulsory Purchase Act 2004 and the Planning Act 2008,

“Administrative Boundaries of Manchester” all the wards that together comprise the city of Manchester,

“Affordable Housing” affordable housing as defined in the National Planning Policy Framework (NPPF) July 2021 (as may be updated or replaced with an equivalent policy from time to time) that will be available to persons who cannot afford to rent or buy housing generally available on the open market,

“Agreement” shall mean this agreement,

“Anticipated Date of Completion of Construction” means the date upon which the Owners anticipate that the Completion of Construction of the relevant percentage of Dwellings referred to in this Agreement shall take place,

“Application” the application to which the Council gave the reference 129127/FO/2021 for planning permission for the demolition of the existing building on the site and the erection of a residential-led mixed use development within a part 11, part 13 storey building to accommodate 237 residential units (80 no 1-bed apartments, 134 no 2-bed apartments and 23 no 2-bed townhouses - Use Class C3), 338 sq m of commercial floorspace (Use Class E), car parking (11 spaces) and cycle parking (237 spaces) at ground floor level, new public realm and landscaping, access and servicing arrangements and associated works,

“Calculation Date” shall be upon the Completion of Construction of 75% (seventy five per cent) of the Dwellings,

“Chartered Surveyor” a professional expert who is a chartered member of the Royal Institution of Chartered Surveyors with a minimum of ten (10) years post-qualification experience,

“Commencement of Development” the date upon which the Development shall begin by the carrying out of a material operation in accordance with the provisions of section 56(4) of the Act PROVIDED THAT any works of or associated with site clearance, remediation works, environmental or archaeological investigations, site and soil surveys, erections of contractors work compound, erection of site office, erection of fencing to site boundaries, marking of site boundaries and laying out of access roads and services shall for the purposes of the agreement be deemed not to be material operations and **“Commence”**, **“Commencement”** and **“Commenced”** shall be construed accordingly,

“Commercial Floorspace” means the 338 sq m of commercial floorspace (Use Class E) forming part of the Application

“Completion of Construction” the date upon which a valid certificate of completion shall have been issued in respect of the relevant number of Dwellings for the purposes of the Building Act 1984 and the Building Regulations 2010 or any amendment or replacement of the same and **“Completed”** and **“Completion”** shall be construed accordingly,

"Core Strategy" means the Manchester Core Strategy (adopted 11th July 2012) which is the key document in the Council's Local Development Framework and details the Council's vision for the development of Manchester during the period 2012 to 2027;

"Development" the development undertaken on the Site pursuant to the Planning Permission as specified in the Application;

"Dwelling" a unit of accommodation to be constructed on the Site as part of the Development pursuant to the Planning Permission and **"Dwellings"** shall be construed accordingly;

"Expert" a professional expert in town planning, who is a Chartered Member of the Royal Town Planning Institute with a minimum of ten (10) years post-qualification experience;

"Forward Funding Arrangement" a commitment to provide funding to assist the development of the project going forward with the sole aim of facilitating either a single sale of the whole or part of the Development, but not necessarily a commitment to purchase the Development or the retention of the whole or part of the Development by the Developer on Completion of Construction as a Private Rental Sector (PRS) Investment. For the avoidance of doubt funding not provided for the purposes outlined in the previous sentence of this definition but provided for example for the purpose of covering the construction costs of any dwelling that is to be sold on the open market to an individual purchaser will not be classed as a Forward Funding Arrangement;

"Forward Sale" the committed sale and purchase of the whole or part of the completed Development on agreed terms at a future date as evidenced by binding legal documents which are unconditional as to the sale of the whole or part of the completed Development and the requirement to undertake the construction of the Development and which detail (without limitation) payments made on completion of the sale of the whole or part of the completed Development and during the construction and on completion of the Development;

"GDC" means gross development cost as defined in Appendix F of the RICS guidance note 1st edition entitled "Financial viability in planning" and assigned reference GN 94/2012 or any replacement, update or amendment of the same. In addition the Council will accept the calculation of GDC the actual costs incurred in the Development up to the time of preparation of the Viability Appraisal and such details shall be included in the Viability Appraisal provided always that any such actual costs are allowed for in the said Appendix F of the RICS guidance note;

"GDV" means gross development value as defined in Appendix F of the RICS guidance note 1st edition entitled "Financial viability in planning" and assigned reference GN 94/2012 or any replacement, update or amendment of the same together with the value of any grant funding/public subsidy received in respect of the Development. In addition the Council will accept in the calculation of GDV the actual sale prices achieved at the development up to the time of preparation of the Viability Appraisal and detailed therein;

“Gross Margin” the GDV after deducting the GDC as more particularly detailed in the Viability Appraisal,

“Index Linked” adjusted on an annual basis or pro rata per diem from the date of this Agreement to the relevant date of payment in accordance with the Retail Price Index and “Index Linking” shall be construed accordingly,

“Initial Contribution” the sum of £250,000 (two hundred and fifty thousand pounds) Index Linked towards the provision of Affordable Housing within the Administrative Boundaries of Manchester to be paid in accordance with the provisions of contained in Schedule 3,

“Interest” interest at 4% (four per cent) above the base lending rate of the Bank of England from time to time,

“Local Plan” includes the Core Strategy adopted by Manchester City Council on 11 July 2012, the extant Unitary Development Plan policies and all other relevant strategic planning documents adopted by Manchester City Council,

“Management Fee” shall mean 15% (fifteen per cent) of the planning application fee which equates to £7,646 25 (seven thousand six hundred and forty six pounds twenty five pence) to be used for the purpose of monitoring and reporting on the delivery of this Agreement and the Planning Obligations contained herein,

“Maximum Contribution” the sum of £6,173,412 (six million one hundred and seventy three thousand four hundred and twelve pounds) Index Linked towards the provision of Affordable Housing within the Administrative Boundaries of Manchester,

“NPPF” the National Planning Policy Framework issued in July 2021 being the framework setting out the Government’s planning policies for England and how these are expected to be applied as may be amended or any replacement of the same,

“Occupation” means occupation of any part of the Development for the purposes permitted by the Planning Permission but does not include use by personnel whilst engaged in construction, fitting out or decoration of the Dwellings or occupation for marketing or display or occupation in relation to security operations and **“Occupy”** and **“Occupied”** shall be construed accordingly,

“Owners” the First Owner and the Second Owner,

“Plan” the plan attached to the Agreement,

“Planning Obligations” shall mean the obligations of the Owners specified in the Schedules,

“Planning Permission” the planning permission granted pursuant to the Application substantially in the form as appended at Schedule 2 and as may be amended by any non-material amendment,

“Pre Sale” means a Forward Sale or Forward Funding Arrangement or Private Rental Sector Forward Funding Arrangement of the whole or part of the completed Development prior to the Calculation Date,

“Private Rental Sector Forward Funding Arrangement” means a Forward Funding Arrangement in which the Owners will retain the whole or part of the Development on Completion of Construction as a Private Rental Sector Investment,

“Private Rental Sector Investment” means a Development that will deliver new-build homes for the private rental market, to be retained by the Owners on Completion as an investment,

“Profit Level” means in the case of a Pre Sale when the Gross Margin is equivalent to 15% (fifteen per cent) of the GDV and in all other cases is when the Gross Margin is equivalent to 20% (twenty per cent) of the GDV,

“Regulations” the Community Infrastructure Levy Regulations 2010 as amended,

“Retail Price Index” twelve (12) month percentage change in the All Items Retail Price Index published by the Office for National Statistics Centre and in the Monthly Digest of Statistics (or contained in any official publication substituted therefor) or such other index as may from time to time be published in substitution therefor,

“RICS” the Royal Institution of Chartered Surveyors,

“Site” the property described in Schedule 1 and shown for the purposes of identification only edged red on the Plan,

“Stakeholder” shall mean the City Treasurer of the Council and her authorised officers,

“Stakeholder Account” shall mean the account held by the Council's City Treasurer and her authorised officers at Barclays Bank plc in which monies paid under the Planning Obligations are held,

“Tree Planting Contribution” the sum of £56 000 (fifty six thousand pounds) Index Linked towards the provision of tree planting in Hulme Ward,

“Viability Appraisal” a written appraisal in the form set out in Schedule 5 to assess the Gross Margin required to be provided on the Calculation Date in accordance with the provisions of Schedule 3 of this Agreement Further guidance on the format to follow can be found in the first edition of the Guidance Note published in August 2012 by the Royal Institution of Chartered Surveyors titled “Financial Viability in Planning” or any amendment, update or replacement of the same,

“Viability Assessment Fee” the sum of up to £12,000 (twelve thousand pounds) plus VAT to cover the cost of the Council's review of the Viability Appraisal in order to determine whether and the extent to which the Development can support a requirement to provide the Viability Payment,

“Viability Payment” a payment required to be made by the Owners to the Council if the Viability Appraisal shows that the Profit Level as assessed will be achieved and will be 50% (fifty per cent) of the amount by which the Gross Margin exceeds the Profit Level (with the Owners retaining the other 50%) PROVIDED THAT the Viability Payment when added to the Initial Contribution shall be required to be no more than the amount that is needed in order to equal the Maximum Contribution The Viability Payment will be payable within the timescale set out in the provisions contained in Schedule 3,

“Working Day” means any day except Saturday Sunday or a bank holiday and reference to “Working Days” shall be construed accordingly

1 2 The Clause headings do not affect this interpretation

1 3 Unless otherwise indicated, references to Clauses and Schedules are to Clauses of and Schedules to this Agreement and references in a Schedule to a Part or Paragraph are to a Part or Paragraph of that Schedule

1 4 References to any statute or statutory provision include reference to

1 4 1 all Acts of Parliament and all other legislation having legal effect in the United Kingdom as directly or indirectly amended, consolidated, extended, replaced or re-enacted by any subsequent legislation, and

1 4 2 any orders, regulations, instruments or other subordinate legislation made under that statute or statutory provision

1 5 Except for the provisions of Clause 9 references to the Site include any part of it

1 6 References to any party in this Agreement include the successors in title of that party In addition, references to the Council include any successor local planning authority exercising planning powers under the Act and any successor local highway authority exercising powers under the Highways Act 1980

1 7 **“Including”** means **“including, without limitation”**

1 8 Any covenant by the Owner or the Council not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing

1 9 If any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of this Agreement is to be unaffected

1 10 Words importing the singular meaning where the context so admits include the plural meaning and vice versa

1 11 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner

2 PLANNING OBLIGATION

This Agreement is made pursuant to section 106 of the Act, section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and all other enabling legislation and is a planning obligation for the purposes of section 106 of the Act, with the intent that covenants hereinafter contained shall be enforceable by the Council acting under the powers contained in section 106 or such other enabling powers against the Owners

3 CONDITION PRECEDENT

3 1 This Agreement is conditional upon the grant of the Planning Permission and Commencement of Development save for the provisions of Clauses 7, 9, 11, 15, 17, 18 and 19 which shall have immediate effect

4 CONDITION SUBSEQUENT

If the Planning Permission for the Development has not been implemented by the carrying out of a material operation in accordance with the provisions of sections 56, 91 and 93 of the Act or is revoked or modified in whole or in part (other than in approval of an application by or on behalf of either of the Owners) or quashed or declared unlawful as a result of legal proceedings then this Agreement shall absolutely determine and become null and void but without prejudice to the rights of either party against the other in respect of any antecedent breach

5 THE OWNERS' COVENANTS

5 1 The Owners on behalf of themselves and any person deriving title to any part of the Site from the Owners hereafter hereby covenant with the Council so as to bind the Site to fully observe and perform the obligations on their part contained in this Agreement including those obligations set out in Schedule 3 and hereby agree that the Site shall be permanently subject to the obligations, restrictions and provisions specified herein, such obligations being planning obligations for the purpose of section 106 of the Act

6 THE COUNCIL'S COVENANTS

The Council hereby covenants with the Owners to observe and perform the obligations on its part in this Agreement including those obligations set out in the Schedule 4

7 DISPUTE RESOLUTION

7 1 In the event of any dispute arising in connection with any of the terms of this Agreement other than a dispute involving the construction or interpretation of the terms of this Agreement or the enforcement of any decision pursuant to this Clause, the same shall unless the Council and the Owners otherwise agree be referred to an Expert or in relation to the Viability Appraisal to a Chartered Surveyor to be appointed by agreement between the Council and the Owners

7 2 If the Council and the Owners are unable to agree on the appointment of an Expert or Chartered Surveyor within thirty (30) days of one party serving notice on the other calling for the appointment of an Expert or Chartered Surveyor, then an Expert or Chartered Surveyor shall be appointed on the application of either party to the President for the time being of the Royal Town Planning Institute or the Royal Institution of Chartered Surveyors as applicable

7 3 Any reference of a dispute to an Expert or Chartered Surveyor shall if the parties are agreed in writing be deemed to be a reference to an expert or chartered surveyor (and not to an arbitrator) whose decision shall be final and binding (save for manifest error) but shall otherwise be deemed to be a

reference to an arbitrator pursuant to the Arbitration Act 1996 and any statutory amendment variation substitution or re-enactment thereof

7.4 Any party to this Agreement shall be entitled to submit to the Expert or Chartered Surveyor representations and cross-representations with such supporting evidence as they shall respectively consider necessary and the Expert or Chartered Surveyor shall have regard thereto in making his decision which shall be delivered in writing. The reference of any dispute shall include authority to determine in what manner all the costs of the referral shall be paid.

8 WAIVER

No waiver (whether expressed 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 continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant terms or conditions or from acting upon any subsequent breach or default.

9 CHANGE IN OWNERSHIP & LIABILITY

9.1 The Owners agree with the Council to give the Council immediate written notice of any change in ownership of any of their interest in the Site occurring before all the obligations under this Agreement have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with (unless the purchase relates to the entirety of the Site) the area of the Site or unit of occupation purchased by reference to a plan.

9.2 No person shall be liable for any breach, non performance and non observance of the covenants, obligations and restrictions contained in this Agreement after it shall have parted with its entire interest in the Site or part of the Site to which the breach relates but without prejudice to liability for any subsisting breach arising prior to parting with such interest nor shall this hinder or preclude the Council's rights as the Local Planning Authority to require that the breach, non performance or non observance be remedied after that person has parted with its interest in the Site.

9.3 No person or party shall be liable for any breach, non performance and non observance of the covenants, obligations and restrictions contained in the Agreement if

9.3.1 he or it shall be an owner occupier or tenant of an individual Dwelling or a mortgagee and/or chargee and/or respective successors in title and/or receiver appointed by the mortgagee and/or chargee of a Dwelling, or

9.4.1 he or it shall be an owner occupier or tenant of the Commercial Floorspace or a mortgagee and/or chargee and/or respective successors in title and/or receiver appointed by the mortgagee and/or chargee of the Commercial Floorspace

9.4 A mortgagee or proprietor of a financial charge shall have no liability under this Agreement not incur any liability for any breach of the obligations contained in this Agreement unless and until it becomes a mortgagee in possession of the Site or appoints a receiver or administrative receiver under a security in which case it too will be bound by the obligations as if it were a person deriving title from the Owners.

10 COUNCIL'S CONSENT OR APPROVAL

Where in this Agreement the consent, agreement or approval of the Council is required to be given by the Council, the Council confirms that such consent, agreement or approval shall not be unreasonably withheld or delayed provided that this shall not fetter the proper discretion of the Council

11 LOCAL LAND CHARGE AND LAND REGISTRY ENTRY

11 1 This Agreement is a Local Land Charge and shall be registered as such by the Council

11 2 For the purpose of noting this Agreement on the titles of the Owners the Owners will on the date hereof provide the Council with completed Form AN1 (or any replacement of this form) together with either a cheque made payable to the Land Registry to cover the requisite fee or alternatively with the Owners' solicitor's completed Land Registry account key number details inserted in the form The Council will arrange for the AN1 (or any replacement of this form) to be registered at the Land Registry and the Owners will supply the Council with a copy of the amended registers as soon as reasonably practicable following their receipt by the Owners from the Land Registry

11 3 In the event that any requisitions are raised by the Land Registry in connection with the application for registration the Owners will ensure that such requisitions are dealt with promptly

11 4 The Council will upon receipt of a written request of the Owners or their successors in title, at any time after the obligations set out herein have been fulfilled in their entirety, issue written confirmation thereon and thereafter cancel all related entries in the register of local land charges

11 5 The costs of cancellation pursuant to clause 11 4 above shall be met by the Owners if requested by the Council

12 NON-PROHIBITION ON DEVELOPMENT

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

13 THE CONTRACTS ACT

Save as provided in respect of the successors in title to the Site or any successor to the relevant statutory functions of the Council this Agreement shall not be enforceable by any third party pursuant to the Contracts (Rights of Third Parties) Act 1999 and no third party shall acquire any benefit rights or claims whatsoever pursuant thereto

14 COMMUNICATION

14 1 Any notice or document to be served on or sent pursuant to this Agreement shall either be delivered personally or sent by recorded delivery service

14 1 1 to the Council and addressed to the City Solicitor at the Council's address first above written,

14 1 2 to the Owners as set out in the address first written above

15 FEES

15 1 The Owners shall pay forthwith to the Council its legal fees reasonably and properly incurred in preparation of this agreement,

15 2 Receipt by the Council of the payment of such sum shall not create any lawyer-client type contractual relationship between the Council and the Owners nor absolve the Owners from any liability or obligation imposed upon them by the terms of this Agreement or by statute or at common law,

15 3 The Owners shall on the date hereof pay to the Council the Management Fee,

15 4 When submitting the Viability Appraisal the Owners shall pay to the Council the related Viability Assessment Fee within 10 Working Days of their receipt from the Council of an invoice detailing the amount

16 INTEREST

If any payment due under this Agreement is paid late Interest will be payable from the date payment is due to the date that payment is received

17 WARRANTY AS TO TITLE

The Owners hereby warrant to the Council that the title details recited in this Deed are complete and accurate in every respect and no other person has an interest in the Site who has not been disclosed to the Council prior to the date hereof

18 JURISDICTION

This Agreement is governed by and interpreted in accordance with the law of England

19 COMPLETION

The provisions of this Agreement (other than this clause which shall be of immediate effect) shall be of no effect until this Agreement has been dated

EXECUTED as a deed by the parties on the day and year first hereinbefore appearing

SCHEDULE 1

The Site

Land known as land and buildings on the south east side of Ellesmere Street, Manchester and land and buildings on the north west side of Chester Road, Manchester and shown for the purposes of identification only edged red on the Plan

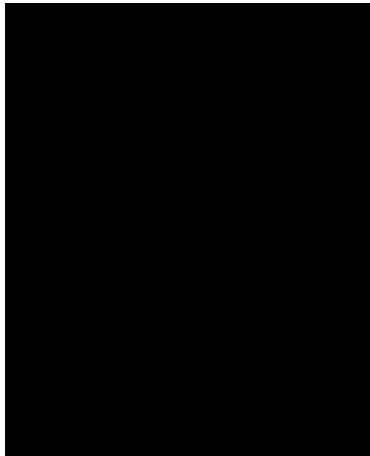
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Figured dimensions only to be taken from this drawing. DO NOT SCALE. All contractors must visit the site and be responsible for checking all setting out dimensions and notifying the architect of any discrepancies prior to any manufacture or construction work.

NOTES:



- Same Ownership / Control
- Proposed Site Boundary



P03	Issued for Planning	27.11.20	DM	MD
P02	Issued for Planning	20.11.20	MD	MB
P01	First Issue	06.11.20	DM	MD
Rev	Description	Date	Dr by	App by

Project Stage

PLANNING

Client:
DE TRAFFORD

Project:
PHOENIX WORKS

Drawing Title:
Site Location Plan

Drawn	Checked	Paper Size	Scale	Date
DM	MD	A2	1 : 1250@A2	11/05/20

Drawing No.	Revision
20098-CWA-B1-ZZ-DR-A-7000	P03

Drawing BIM Name:
20098-CW-B1-ZZ-M3-A-BUIL-S1.RVT

CDE Area:	Suitability Code:	BIM Revision:
		P01.01

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SCHEDULE 2

Draft Planning Permission

Town & Country Planning Act 1990 (as amended)

Planning Permission

Applicant

Mr Gary Jackson
De Trafford
Brooke Court
Lower Meadow Road
Wilmslow
SK9 3ND

Agent (if used)

Tom Flanagan
Paul Butler Associates
31 Blackfriars Road
Salford
M3 7AQ

Part 1 – Particulars of the application/development

Proposal Demolition of the existing building on the site and the erection of a residential-led mixed use development within a part 11, part 13 storey building to accommodate 237 residential units (80 no. 1-bed apartments, 134 no. 2-bed apartments and 23 no. 2-bed townhouses - Use Class C3), 338 sq m of commercial floorspace (Use Class E), car parking (11 spaces) and cycle parking (237 spaces) at ground floor level, new public realm and landscaping, access and servicing arrangements and associated works

Location Phoenix House, 17 Ellesmere Street, Manchester, M15 4JY

Date of application 18 January 2021

Application number 129127/FO/2021

Part 2 – Particulars of decision

Manchester City Council gives notice that the development referred to in Part 1 has been **Approved** in accordance with the application and plans submitted subject to the condition(s) listed below (if any)

Article 35 Declaration

Officers have worked with the applicant in a positive and pro-active manner to seek solutions to problems arising in relation to dealing with the planning application. This has included discussions about the form and design of the development, heritage issues, access and CO2 reductions.

Condition(s) attached to this decision

- 1) 1) The development must be begun not later than the expiration of three years beginning with the date of this permission
Reason - Required to be imposed pursuant to Section 91 of the Town and Country Planning Act 1990.
- 2) The development hereby approved shall be carried out in accordance with the following drawings and documents

10436_001-C-10436_001-1-TOPOGRAPHICAL SURVEY C
 20098-CWA-B1-XX-DR-A-7000 - Site Location Plan P05
 20098-CWA-B1-ZZ-DR-A-2000 - Ground Floor GA Plan P05
 20098-CWA-B1-ZZ-DR-A-2001 - First Floor GA Plan P04
 20098-CWA-B1-ZZ-DR-A-2002 - Second Floor GA Plan P04
 20098-CWA-B1-ZZ-DR-A-2003 - Third Floor GA Plan P04
 20098-CWA-B1-ZZ-DR-A-2004 - Fourth, Sixth, Eighth GA Plan P04
 20098-CWA-B1-ZZ-DR-A-2005 - Fifth, Seventh GA Plan P04
 20098-CWA-B1-ZZ-DR-A-2009 - Ninth Floor GA Plan P04
 20098-CWA-B1-ZZ-DR-A-2010 - Tenth Floor GA Plan P04
 20098-CWA-B1-ZZ-DR-A-2011 - Eleventh Floor GA Plan P04
 20098-CWA-B1-ZZ-DR-A-2012 - Twelfth Floor GA Plan P04
 20098-CWA-B1-ZZ-DR-A-2013 - Roof Plan GA Plan P04
 20098-CWA-B1-ZZ-DR-A-2030 - GA Elevations - Southeast P07
 20098-CWA-B1-ZZ-DR-A-2031 - GA Elevations - Southwest P06
 20098-CWA-B1-ZZ-DR-A-2032 - GA Elevations - Northwest P05
 20098-CWA-B1-ZZ-DR-A-2033 - GA Elevations - Northeast P06
 20098-CWA-B1-ZZ-DR-A-2037 - GA Sections - Section A P04
 20098-CWA-B1-ZZ-DR-A-2038 - GA Sections - Section B P04
 20098-CWA-B1-ZZ-DR-A-2039 - GA Sections - Section C P04
 20098-CWA-B1-ZZ-DR-A-2040 - GA Sections - Section D P04
 20098-CWA-B1-ZZ-DR-A-2041 - GA Sections - Section E & F P05
 20098-CWA-B1-ZZ-DR-A-2050 - 1 Bed Apartment Layout P02
 20098-CWA-B1-ZZ-DR-A-2052 - 2 Bed Left Hand Apartment Layout P02
 20098-CWA-B1-ZZ-DR-A-2054 - 2 Bed Right Hand Apartment P02
 20098-CWA-B1-ZZ-DR-A-2056 - 2 Bed Townhouse A P03
 20098-CWA-B1-ZZ-DR-A-2057 - 2 Bed Penthouse P03
 20098-CWA-B1-ZZ-DR-A-2058 - Bay Study - Townhouse P03
 20098-CWA-B1-ZZ-DR-A-2059 - Bay Study - Commercial Units P03
 20098-CWA-B1-ZZ-DR-A-2060 - Bay Study - Typical WFH Bay P03
 20098-CWA-B1-ZZ-DR-A-2061 - Bay Study - Internal Courtyard 08-09 P03
 20098-CWA-B1-ZZ-DR-A-2062 - Bay Study - Side Elevation P03
 20098-CWA-B1-ZZ-DR-A-2063 - Bay Study - Penthouses P03
 20098-CWA-XX-XX-DR-A-7100 - Existing Floor Plan P02
 20098-CWA-XX-XX-DR-A-7101 - Existing Elevations P03
 20098-CWA-XX-XX-DR-A-7102 - Existing Building Demolition Layout P02
 20098-CWA-XX-XX-DR-A-7103 - Existing Elevation Demolition Area P03
 4411 01 Rev C Landscape Layout Ground Floor and Podium
 4411.02B Combined Roof Terraces Layout
 Phoenix Works Landscape Strategy
 Design and Access Statement ref 20098-8002-03
 Arboricultural Survey DEP November 2020 Rev B
 Extended Phase 1 Habitat Survey and Daytime Bat Survey 2020 Rachel Hacking Ecology
 Planning and Heritage Statement Paul Butler Associates 30 November 2020
 Statement of Community Involvement Paul Butler Associates 24 November 2020
 Tall Buildings Statement Paul Butler Associates 27 November 2020
 Transport Statement ref 2904-01-TS01 Axis
 Travel Plan ref 2904-01-FTP01 Axis
 Noise Impact Assessment ref AC109563-1R1 Ensaf Consultants
 Air Quality Assessment ref 3953r2 Redmore Environmental
 Pedestrian Level Wind Microclimate Assessment ref RWDI #2100815 - REV A RWDI
 Daylight and Sunlight Report prepared by GIA
 Phase 1 Preliminary Risk Assessment Report WSP November 2020

Flood Risk and Drainage Strategy Report ref 5977-WSP-FRA1 WSP
Environmental Standards Statement and BREEAM Pre Assessment (prepared by Watt
Energy Consulting and Engineers) September 2020
Crime Impact Statement Version B 25 November 2020 URN 2020/0624/CIS/01 Greater
Manchester Police
Waste Management Strategy ref 2904-01-WMS01 prepared by Axis
Archaeological Desk Based Assessment ARS Ltd Report 2020/147 Archaeological
Research Services
TV Reception Survey dated 20 October 2020, Astbury

3) Should the development be carried out in a phased manner, details of the phasing of development shall be submitted to and approved in writing by the City Council as local planning authority before development commences.

Reason - For the avoidance of doubt as the development could be carried out in a phased manner, pursuant to Policy DM1 of the Core Strategy

4) a) Notwithstanding demolition, before the development hereby approved commences, a report (the Preliminary Risk Assessment) to identify and evaluate all potential sources and impacts of any ground contamination, groundwater contamination and/or ground gas relevant to the site shall be submitted to and approved in writing by the City Council as local planning authority. The Preliminary Risk Assessment shall conform to City Council's current guidance document (Planning Guidance in Relation to Ground Contamination)

In the event of the Preliminary Risk Assessment identifying risks which in the written opinion of the Local Planning Authority require further investigation, the development shall not commence until a scheme for the investigation of the site and the identification of remediation measures (the Site Investigation Proposal) has been submitted to and approved in writing by the City Council as local planning authority.

The measures for investigating the site identified in the Site Investigation Proposal shall be carried out, before the development commences and a report prepared outlining what measures, if any, are required to remediate the land (the Site Investigation Report and/or Remediation Strategy) which shall be submitted to and approved in writing by the City Council as local planning authority.

b) When the development commences, the development shall be carried out in accordance with the previously agreed Remediation Strategy and a Completion/Verification Report shall be submitted to and approved in writing by the City Council as local planning authority.

In the event that ground contamination, groundwater contamination and/or ground gas, not previously identified, are found to be present on the site at any time before the development is occupied, then development shall cease and/or the development shall not be occupied until, a report outlining what measures, if any, are required to remediate the land (the Revised Remediation Strategy) is submitted to and approved in writing by the City Council as local planning authority and the development shall be carried out in accordance with the Revised Remediation Strategy, which shall take precedence over any Remediation Strategy or earlier Revised Remediation Strategy

Reason - To ensure that the presence of or the potential for any contaminated land and/or groundwater is detected and appropriate remedial action is taken in the interests of public safety, pursuant to policies DM1 and EN18 of the Core Strategy.

5) No development shall take place unless and until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological works. The works are to be secured through and undertaken in accordance with a Written Scheme of Investigation (WSI) prepared by the appointed archaeological

contractor and submitted to Greater Manchester Archaeological Advisory Service for agreement. The WSI shall cover the following

- a. A phased programme and methodology of investigation and recording that includes
 - targeted archaeological evaluation through trial trenching,
 - dependent on the evaluation trial trenching above, targeted open area excavation and recording (subject to a separate WSI),
- b. A programme for post investigation assessment to include
 - production of a final report on the investigation results
- c. Deposition of the final report with the Greater Manchester Historic Environment Record,
- d. Dissemination of the results of the archaeological investigations commensurate with their significance,
- e. Provision for archive deposition of the report and records of the site investigation,
- f. Nomination of a competent person or persons/organisation to undertake the works set out within the approved WSI

Reason - To investigate the archaeological interest of the site and record and preserve any remains of archaeological interest, pursuant to saved policy DC20 1 of the Unitary Development Plan for the City of Manchester and guidance in Section 16, Paragraph 199 of the National Planning Policy Framework

6) Prior to the commencement of development, details of a local labour agreement that shall demonstrate commitment to recruit local labour for both the construction and operations elements of the development shall be submitted to and approved in writing by the City Council, as Local Planning Authority. The approved document shall be implemented as part of the construction and occupation phases of the development.

Reason - To safeguard local employment opportunities, pursuant to policies EC1 of the Core Strategy for Manchester.

7) Prior to the commencement of development, a Construction Management Plan shall be submitted to and approved in writing by the City Council as local planning authority. This will contain a Noise & Vibration section (in addition to a dust emission section) that shall base the assessment on British Standard 5228, with reference to other relevant standards. It shall also contain a community consultation strategy which includes how and when local businesses and residents will be consulted on matters such as out of hours works. Any proposal for out of hours works (as below) will be submitted to and approved in writing by the City Council as local planning authority, the details of which shall be submitted at least 4 weeks in advance of such works commencing.

Reason - To safeguard the amenities of nearby residents and highway safety, pursuant to policies SP1, EN9, EN19 and DM1 of the Manchester Core Strategy (July 2012).

8) Before development commences, a full condition survey of the carriageways/footways on construction vehicle routes surrounding the site shall be undertaken and submitted to the City Council as Local Planning Authority. When all construction/fit-out works are complete, the same carriageways/footways shall be resurveyed, and the results submitted to the City Council as Local Planning Authority for assessment. Should any damage have occurred to the carriageways/footways, they shall be repaired and reinstated in accordance with a scheme that shall first be submitted to and approved in writing by the City Council as Local Planning Authority. The necessary costs for this repair and/or reinstatement shall be met by the applicant.

Reason - To ensure an acceptable development, pursuant to policy DM1 of the Core Strategy

9) Notwithstanding demolition, before the development hereby approved commences, full details of electric vehicle charging (EVC) infrastructure (including appropriate cable

provision and provision for charging points) shall be submitted to and approved in writing by the City Council as local planning authority. The approved EVC infrastructure shall be put in place before use of the car park commences and shall be retained thereafter.

Reason - In the interests of improving local air quality and providing sustainable development, pursuant to the NPPF and policy DM1 of the Core Strategy.

10) Notwithstanding demolition, prior to the commencement of development a programme for the issue of samples and specifications of all materials to be used on all external elevations of the development, including details of full sized sample panels, shall be submitted to and approved in writing by the City Council, as local planning authority. Samples and specifications of all materials to be used on all external elevations of the development, which shall include jointing and fixing details, details of the drips to be used to prevent staining and a strategy for quality control management, shall then be submitted to and approved in writing by the City Council as local planning authority in accordance with the programme as agreed above. The development shall be carried out in accordance with the approved details.

Reason - To ensure that the appearance of the development is acceptable to the City Council as local planning authority in the interests of the visual amenity of the area within which the site is located, as specified in policies SP1 and DM1 of the Core Strategy.

11) 1. Notwithstanding demolition, prior to the commencement of development, a programme for the submission of final details of the public and private realm works for the development shall be submitted and approved in writing by the City Council as Local Planning Authority.

The programme shall include submission and implementation timeframes for the following details

- (a) Details of the proposed hard landscape materials,
- (b) Details of the materials, including natural stone or other high quality materials to be used for the reinstatement of the pavements and for the areas between the pavement and the line of the proposed building,
- (c) Details of the proposed tree species within the public realm including proposed size, species and planting specification including tree pits and design,
- (d) Details of measures to create potential opportunities to enhance and create new biodiversity within the development to include bat boxes and bricks, bird boxes and appropriate planting,
- (e) Details of the proposed street furniture including seating, bins and lighting,
- (f) Details of any external steps and handrails,
- (g) A strategy providing details of replacement tree planting, including details of overall numbers, size, species and planting specification, constraints to further planting and details of on-going maintenance,

2. The above details shall then be submitted to and approved in writing by the City Council as local planning authority and fully implemented in accordance with the approved timeframes.

If within a period of 5 years from the date of the planting of any tree or shrub, that tree or shrub or any tree or shrub planted in replacement for it, is removed, uprooted or destroyed or dies, or becomes, in the opinion of the local planning authority, seriously damaged or defective, another tree or shrub of the same species and size as that originally planted shall be planted at the same place,

Reason - To ensure that a satisfactory landscaping scheme for the development is carried out that respects the character and visual amenities of the area, in accordance with policies R1.1, I3 1, T3 1, S1 1, E2.5, E3.7 and RC4 of the Unitary Development

Plan for the City of Manchester and policies SP1, DM1, EN1, EN9 EN14 and EN15 of the emerging Core Strategy

12) Notwithstanding demolition, no development shall take place until surface water drainage works, designed in accordance with Non-Statutory Technical Standards for Sustainable Drainage Systems (March 2015) or any subsequent replacement national standards, have been submitted to and approved in writing by the Local Planning Authority.

In order to avoid/discharge the above drainage condition the following additional information has to be provided

- o Consideration of alternative green SuDS solution (that is either utilising infiltration or attenuation) if practicable, an assessment of other SuDS features is required, such as blue/green roofs, permeable pavings and tree pits

- o Evidence that the drainage system has been designed (unless an area is designated to hold and/or convey water as part of the design) so that flooding does not occur during the critical 1 in 100 year rainfall event with allowance for 40% climate change in any part of a building

- o Assessment of overland flow routes for extreme events that is diverted away from buildings (including basements) Overland flow routes need to be designed to convey the flood water in a safe manner in the event of a blockage or exceedance of the proposed drainage system capacity including inlet structures. A layout with overland flow routes needs to be presented with appreciation of these overland flow routes with regards to the properties on site and adjacent properties off site. The overland flow routes drawing should include both internal and external elevations so an assessment of the flow routes can be clearly identified

- o Hydraulic calculation of the proposed drainage system.

- o Construction details of flow controls and SuDS elements.

Reason To promote sustainable development, secure proper drainage and to manage the risk of flooding and pollution This condition is imposed in light of national policies within the NPPF and NPPG and local policies EN08 and EN14

13) No development hereby permitted shall be occupied until details of the implementation, maintenance and management of the sustainable drainage scheme have been submitted to and approved by the local planning authority The scheme shall be implemented and thereafter managed and maintained in accordance with the approved details. Those details shall include

- a. Verification report providing photographic evidence of construction as per design drawings,

- b. As built construction drawings if different from design construction drawings,

- c. Management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the operation of the sustainable drainage scheme throughout its lifetime.

Reason - To manage flooding and pollution and to ensure that a managing body is in place for the sustainable drainage system and there is funding and maintenance mechanism for the lifetime of the development pursuant to national policies within the NPPF and NPPG and local policies EN08 and EN14

14) Foul and surface water shall be drained on separate systems

Reason - To secure proper drainage and to manage the risk of flooding and pollution, pursuant to Section 10 of the National Planning Policy Framework and Policy EN14 of the Core Strategy.

15) Notwithstanding demolition, before the development commences, studies containing the following with regard to television reception in the area containing the site shall be submitted to and approved in writing by the City Council as local planning authority.

a) Measure the existing television signal reception within the potential impact areas identified in the Pre-Construction Signal Reception Impact Survey by Astbury Signal Surveys dated 20 October 2020 before development commences. The work shall be undertaken either by an aerial installer registered with the Confederation of Aerial Industries or by a body approved by the Office of Communications, and shall include an assessment of the survey results obtained

b) Assess the impact of the development on television signal reception within the potential impact area identified in (a) above within one month of the practical completion of the development or before the development is first occupied, whichever is the sooner, and at any other time during the construction of the development if requested in writing by the City Council as local planning authority in response to identified television signal reception problems within the potential impact area. The study shall identify such measures necessary to maintain at least the preexisting level and quality of signal reception identified in the survey carried out in (a) above. The measures identified must be carried out either before the building is first occupied or within one month of the study being submitted to the City Council as local planning authority, whichever is the earlier.

Reason - To provide an indication of the area of television signal reception likely to be affected by the development to provide a basis on which to assess the extent to which the development during construction and once built, will affect television reception and to ensure that the development at least maintains the existing level and quality of television signal reception, pursuant to Policy DM1 of the Core Strategy for the City of Manchester and Section 5 of the National Planning Policy Framework.

16) a. The residential accommodation shall be acoustically insulated against noise from Chester Road, and Ellesmere Street, and any other actual or potential sources of noise, in accordance with the Noise Impact Assessment Ensafe Reference AC109563-1R1 dated 25 November 2020 by Ensafe to achieve the following noise criteria within apartments

Bedrooms (night time 23 00 to 07 00) - 30 dB L Aeq (individual noise events shall not exceed 45 dB L AmaxF by more than 15 times),

Living rooms (daytime 07 00 to 23 00) - 35 dB L Aeq

Gardens and terraces (daytime) - 55 dB L Aeq.

b. The approved noise insulation scheme shall be completed and a post-completion verification report (including validation that the work undertaken throughout the development conforms to the recommendations and requirements of the above approved acoustic report by Ensafe and including the results of post-completion testing to confirm that the internal noise criterion have been met) shall be submitted to and approved in writing by the City Council as local planning authority before any of the dwelling units are first occupied. Any instances of non-conformity with the above approved acoustic report by Ensafe shall be detailed within the post-completion report along with any measures required to ensure compliance with internal noise criteria. Those measures shall be implemented in full before any of the dwelling units are first occupied.

Reason - To secure a reduction in noise from the main roads and surrounding road networks and any other potential sources of noise, in order to protect future residents from noise nuisance, pursuant to policies SP1, H1 and DM1 of the Core Strategy

17) Before any of the commercial uses hereby approved commence, the premises shall be acoustically insulated and treated to limit the break out of noise in accordance with a noise study of the premises and a scheme of acoustic treatment that has been submitted to and approved in writing by the City Council as local planning authority. Where entertainment noise is proposed the LAeq (entertainment noise) shall be controlled to 10dB below the LA90 (without entertainment noise) in each octave band at the facade of the nearest noise sensitive location, and internal noise levels at structurally adjoined residential properties in the 63Hz and 125Hz octave frequency bands shall be controlled so as not to exceed (in habitable rooms) 47dB and 41dB, respectively

Upon completion of the development a verification report to validate that the work undertaken throughout the development conforms to the recommendations and requirements in the approved acoustic consultant's report shall be submitted to and approved in writing by the City Council as local planning authority. The verification report shall also undertake post completion testing to confirm that acceptable criteria has been met. Any instances of non-conformity with the recommendations in the report shall be detailed along with any measures required to ensure compliance with the agreed noise criteria and timescales for the implementation of those measures.

Reason - To safeguard the amenities of the occupiers of the building and occupiers of nearby properties, pursuant to policies SP1 and DM1 of the Core Strategy.

18) a) Externally mounted ancillary plant, equipment and servicing shall be selected and/or acoustically treated in accordance with a scheme designed so as to achieve a rating level of 5dB (LAeq) below the typical background (LA90) level at the nearest noise sensitive location. Prior to commencement of the use hereby approved the scheme shall be submitted to and approved in writing by the City Council as local planning authority in order to secure a reduction in the level of noise emanating from the site.

b) Prior to occupation of the development a verification report shall be submitted to and approved in writing by the City Council as local planning authority to validate that the work undertaken throughout the development conforms to the recommendations and requirements in the approved acoustic report. The report shall also undertake post completion testing to confirm that the noise criteria have been met. Any instances of non-conformity with the recommendations in the report shall be detailed along with any measures required to ensure compliance with the agreed noise criteria.

Reason - To safeguard the amenities of the occupiers of nearby residential accommodation, pursuant to policies SP1 and DM1 of the Core Strategy.

19) No part of the site outside the building shall be used other than in accordance with a schedule of days and hours of operation submitted to and approved in writing by the City Council as local planning authority. No amplified sound or any music shall be produced or played in any part of the site outside the building

Reason - To safeguard the amenities of the occupiers of nearby properties, pursuant to policies SP1 and DM1 of the Core Strategy.

20) Fumes, vapours and odours shall be extracted and discharged from the Class E premises in accordance with a scheme to be submitted to and approved in writing by the City Council as local planning authority before the use commences. Any works approved shall be implemented in full before the use commences

Reason - In the interests of residential amenity, pursuant to policy DM1 of the Core Strategy.

21) The air quality mitigation measures set out in the Air Quality Assessment reference. 3953r2 dated 25 November 2020 by Redmore Environmental shall be implemented in

full before first occupation of the development and shall remain in situ whilst the development is in operation.

Reason - To secure a reduction in air pollution from traffic or other sources and to protect existing and future residents from air pollution, pursuant to Core Strategy Policies EN16 and DM1

22) a) Before the use hereby approved commences external lighting shall be designed and installed in accordance with a scheme approved in writing by the City Council as local planning authority so as to control glare and overspill onto nearby residential properties.

b) Prior to occupation of the development a verification report will be required to validate that the work undertaken throughout the development conforms to the recommendations and requirements in the approved light consultant's report. The report shall also undertake post completion testing to confirm that acceptable criteria have been met. Any instances of non-conformity with the recommendations in the report shall be detailed along with any measures required to ensure compliance with the criteria

Reason - To safeguard the amenities of the occupiers of nearby properties.

23) The commercial uses hereby approved shall not be occupied unless and until the opening hours of such uses have been agreed in writing by the City Council as local planning authority Those uses shall thereafter not open outside the approved hours

Reason - In order that the local planning authority can achieve the objectives both of protecting the amenity of local residents and ensuring a variety of uses at street level in the redeveloped area in accordance with saved policy DC 26 in accordance with the Unitary Development Plan for the City of Manchester and policies SP1 and DM1 of the Core Strategy

24) Deliveries, servicing and collections, including waste collections shall not take place outside the following hours

07 30 to 20 00, Monday to Saturday

no deliveries/waste collections on Sundays/Bank Holidays.

Reason - In order to protect the amenity of local residents and in accordance with policies SP1 and DM1 of the Core Strategy.

25) The development hereby approved shall only be carried out in accordance with the recommendations of the Crime Impact Statement Version B 25 November 2020 reference 2020/0624/CIS/01 by Greater Manchester Police and each building shall not be occupied or used until the City Council as local planning authority has acknowledged in writing that it has received written confirmation of a secure by design accreditation.

Reason - To reduce the risk of crime pursuant to Policy DM1 of the Adopted Core Strategy for the City of Manchester

26) No part of the development shall be occupied unless and until space and facilities for bicycle parking have been provided in accordance with the approved details The approved spaces and facilities shall then be retained and permanently reserved for bicycle parking.

Reason - To ensure that adequate provision is made for bicycle parking so that persons occupying or visiting the development have a range of options in relation to transport mode, pursuant to policy T1 of the City of Manchester Core Strategy

27) No part of the development shall be occupied unless and until car parking spaces suitable for use by disabled persons have been provided in accordance with the approved drawings and documents These parking spaces shall be retained and permanently reserved for use by disabled persons

Reason - To ensure that adequate provision is made for parking for disabled persons, pursuant to policies CC10 and DM1 of the City of Manchester Core Strategy

28) Facilities for the storage and disposal of waste for the residential (C3) part of the development shall be provided in accordance with the Waste Management Strategy Ref 2904-01-WMS01 dated November 202 by Axis before first occupation of the residential units. The Waste Management Strategy Ref 2904-01-WMS01 dated November 2020 by Axis shall be implemented in full and shall remain in situ whilst the development is in operation.

Reason - In the interests of amenity and public health, pursuant to policy DM1 of the Core Strategy for the City of Manchester

29) The commercial uses (Class E) hereby approved shall not commence unless and until a scheme for the storage (including segregated waste recycling) and disposal of refuse relating to the proposed use has been submitted to and approved in writing by the City Council as local planning authority. The details of the approved scheme shall be implemented as part of the development and shall remain in situ whilst the use or development is in operation.

Reason - In the interests of amenity and public health, pursuant to policy DM1 of the Core Strategy for the City of Manchester.

30) The development shall be undertaken in accordance with the Pedestrian Level Wind Microclimate Assessment (reference RWDI#2100815-Rev A dated 30 October 2020). The recommended mitigation shall be implemented in full and shall remain in situ whilst the development is in operation.

Reason - To ensure that the environs in and around the site are suitable for their intended uses, in the interests of amenity and safety, pursuant to policy DM1 of the Core Strategy

31) The commercial unit hereby approved shall achieve a post-construction Building Research Establishment Environmental Assessment Method (BREEAM) rating of at least 'Very Good'. A post construction review certificate shall be submitted to and approved in writing by the City Council as local planning authority before any of the building hereby approved is first occupied.

Reason - In order to minimise the environmental impact of the development pursuant to policies EN4, EN5, EN6 and EN7 of the City of Manchester Core Strategy, and the principles contained within The Guide to Development in Manchester 2 SPD

32) Before first occupation of the development, a Travel Plan, including details of how the plan will be funded, implemented and monitored for effectiveness, shall be submitted to and approved in writing by the City Council as local planning authority. The strategy shall outline procedures and policies that the developer and occupants of the site will adopt to secure the objectives of the overall site's Travel Plan Strategy. Additionally, the strategy shall outline the monitoring procedures and review mechanisms that are to be put in place to ensure that the strategy and its implementation remain effective. The results of the monitoring and review processes shall be submitted in writing to the local planning authority and any measures that are identified that can improve the effectiveness of the Travel Plan Strategy shall be adopted and implemented. The Travel Plan shall be fully implemented, prior to first occupation of the development, and shall be kept in operation at all times thereafter.

Reason - In accordance with the provisions contained within planning policy guidance and in order to promote a choice of means of transport, pursuant to policies T2 and EN16 of the Core Strategy.

33) The apartments (C3) hereby approved shall be used only as private dwellings (which description shall not include serviced apartments/apart hotels or similar use where sleeping accommodation (with or without other services) is provided by way of trade for money or money's worth and occupied by the same person for less than ninety consecutive nights) and for no other purpose (including any other purpose in Class C3 of the Schedule to the Town and Country Planning (Use Classes) Order 1995, or any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).

Reason - To safeguard the amenities of the neighbourhood by ensuring that other uses which could cause a loss of amenity such as serviced apartments/apart hotels do not commence without prior approval pursuant to Core Strategy policies SP1 and DM1 and to ensure the permanent retention of the accommodation for normal residential purposes

34) No externally mounted telecommunications equipment shall be mounted on any part of the buildings hereby approved, including the roofs

Reason - In the interest of visual amenity pursuant to policy DM1 of the Core Strategy.

35) Construction and or demolition works shall be confined to the following hours unless otherwise agreed in writing by the City Council as local planning authority

Monday - Friday 7.30am - 6pm

Saturday 8.30am - 2pm

Sunday and or Bank holidays No work

Reason - To safeguard the amenities of the occupiers of nearby residential and commercial properties during the construction/demolition phase.

36) No removal of or works to any hedgerows, trees or shrubs shall take place during the main bird breeding season 1 March and 31 August inclusive, unless a competent ecologist has undertaken a careful, detailed check of vegetation for active birds' nests immediately before the vegetation is cleared and provided written confirmation that no birds will be harmed and/or that there are appropriate measures in place to protect nesting bird interest on site. Any such written confirmation should be submitted to the local planning authority

Reason - In order to provide protection to nesting birds, pursuant to Policy EN15 of the Core Strategy.

37) Above grounds works shall not commence until details of biodiversity enhancements, including a timetable for their installation and maintenance regime, have been submitted to and been approved by the City Council as local planning authority. The enhancements should include locally native species of trees/shrubs and if ornamental beds created should include non-invasive species and those of value to insect pollinators. The development shall be carried out in accordance with the agreed details.

Reason - To ensure the protection of habitat of species in accordance with policy EN15 of the Manchester Core Strategy

Informatives

Building Regulations 2010

This permission does not grant approval under Building Regulations.

Street Naming & Numbering Requirements

Manchester City Council is responsible for allocating street naming and numbering within Manchester for new developments or property conversions. Individuals or businesses are not permitted to allocate their own property numbers, building or street names.

If your development includes the creation of new dwellings (either new build or conversion of existing buildings), creation of new commercial properties or the subdivision of existing properties you must ensure that you request new or changes to addresses through us so they can be officially allocated and registered in accordance with the Public Health Act 1925 Sections 17-19 & Greater Manchester Act 1981 Section 22.

Failure to do this may result in difficulties for the developer/occupier when requiring services such as connections to utilities, phone lines and postal services and may delay your development.

You can apply online at the following address:

http://www.manchester.gov.uk/info/100011/roads_parking_and_transport/1988/naming_and_numbering_of_houses_buildings_streets_and_roads/2

Mining Information

The proposed development lies within an area which could be subject to current coal mining or hazards resulting from past coal mining. Please read the Standing Advice from the Coal Authority in Appendix A.

DRAFT DECISION

Date:

Notes

1. This permission refers only to that required under the Town and Country Planning Act 1990 does not include any consent or approval under any other enactment, byelaw, order or regulation.

2 If the applicant is aggrieved by the decision of the local planning authority to refuse permission or approval for the proposed development, or to grant permission or approval subject to conditions, they may appeal to the Secretary of State in accordance with Section 78(1) of the Town and Country Planning Act 1990 within six months of the date of the notice of the decision.

The Planning Inspectorate have introduced an online appeals service that can be used to make appeals online. This service is available through the gov.uk website – www.gov.uk/appeal-planning-decision The Inspectorate will publish details of your appeal on the internet. Alternatively If you are unable to access the online appeal form, please contact the Planning Inspectorate to obtain a paper copy of the appeal form on tel: 0303 444 5000.

The Secretary of State has power to allow a longer period for the giving of a notice of appeal but they will not normally be prepared to exercise this power unless there are special circumstances that excuse the delay in giving notice of appeal.

If you intend to submit an appeal that you would like examined by inquiry then you must notify the City Council (planning@manchester.gov.uk) and the Planning Inspectorate (inquiryappeals@planninginspectorate.gov.uk) at least 10 days before submitting the appeal. Further details are on GOV.UK.

3. The statutory requirements are those set out in Section 79(6) of the Town and Country Planning Act 1990, namely Sections 70(1) and 72(1) of the Act.

4. If either the local planning authority or the Secretary of State refuses permission to develop land or grants it subject to conditions, the owner may claim that they can neither put the land to a reasonably beneficial use in its existing state nor render the land capable of a reasonably beneficial use by the carrying out of any development which has been or would be permitted.

In these circumstances, the owner may serve a purchase notice on the Council in whose area the land is situated. This notice will require the Council to purchase his interest in the land in accordance with the provisions of Part VI of the Town and Country Planning Act 1990

5. In certain circumstances, a claim may be made against the local planning authority for compensation, where permission is refused or granted subject to conditions by the Secretary of State on appeal or on a reference of the application to them. The circumstances in which such compensation is payable are set out in Section 114 of the Town and Country Planning Act 1990.

Appendix A



The Coal
Authority

STANDING ADVICE - DEVELOPMENT LOW RISK AREA

The proposed development lies within a coal mining area which may contain unrecorded coal mining related hazards. If any coal mining feature is encountered during development, this should be reported immediately to the Coal Authority on 0345 762 6848.

Further information is also available on the Coal Authority website at:
www.gov.uk/government/organisations/the-coal-authority

Standing Advice valid from 1st January 2023 until 31st December 2024

SCHEDULE 3

THE OWNERS' GENERAL COVENANTS

The Owners hereby covenant with the Council as follows

- 1 To notify the Council in writing within 5 (five) Working Days of Commencement of Development
- 2 To pay to the Council the Initial Contribution prior to the Commencement of Development
- 3 To provide prior notification to the Council in writing at least 10 (ten) Working Days in advance of the Anticipated Date of Completion of Construction of 75% (seventy five per cent) of the Dwellings
- 4 Within 10 (ten) Working Days of the Calculation Date
 - 3 1 to confirm to the Council in writing whether the Development was subject to a Pre Sale, and
 - 3 2 to provide the Council with a copy of the Viability Appraisal for possible agreement by the Council,
- 5 Within 28 (twenty eight) Working Days of its receipt of the Viability Appraisal the Council shall give written notice to the Owners either -
 - 5 1 Stating that it accepts the Viability Appraisal or
 - 5 2 Correcting or challenging any of the amounts or conclusions included in the Viability Appraisal and giving details of the disputed amounts or conclusions,
- 6 In the event that the Council shall have served a notice on the Owners pursuant to paragraph 5 2 of this Schedule 3 the Owners and the Council shall use reasonable endeavours to reach agreement in respect of the Viability Appraisal but if the Owners and the Council shall have failed to agree the Viability Appraisal within 28 Working Days of the notice served by the Council pursuant to Paragraph 5 2 of this Schedule 3, then the matter in dispute shall be referred to the Chartered Surveyor, in accordance with the provisions of Clause 7 with the Chartered Surveyor being requested that he/she should as soon as practicable issue a written determination as to the matter in dispute and a written determination of the correct Viability Appraisal, which the parties agree will be final and binding upon them,
- 7 The Viability Appraisal not by way of limitation shall include and confirm
 - 7 1 the GDV, and
 - 7 2 the GDC,
- 8 Viability Payment
 - 8 1 In the event that the Viability Appraisal is agreed by the Council or determined pursuant to Paragraph 6 of this Schedule 3 and the information contained therein shows that in accordance with the provisions of this Agreement a Viability Payment is due then the Owners shall pay to the Council the Viability Payment PROVIDED ALWAYS that this does not exceed the Maximum Contribution and the Viability Assessment Fee in accordance with Paragraph 8 2 below,

- 8 2 The Owners shall pay to the Council the Viability Payment within 28 days of the agreement by the Council of the Viability Appraisal or if applicable within 28 Working Days of the Viability Appraisal being determined pursuant to Paragraph 6 of this Schedule 3,
- 8 3 In the event that the information contained in the Viability Appraisal (as agreed by the Council or determined pursuant to Paragraph 6 of this Schedule 3) shows that a Viability Payment is not due then it is agreed by the Council that the Viability Payment shall not be payable although the Viability Assessment Fee shall still be due
- 8 4 The Owners covenant with the Council that they will indemnify the Council to the full extent of any Viability Payment and related Viability Assessment Fee due that remains unpaid on the expiry of the time limit for payment set out in paragraph 8 2 of this Schedule (the "Outstanding Amount") and will pay the Outstanding Amount to the Council within 28 days of its receipt of a written request from the Council for the Outstanding Amount
- 9 The Owners shall pay
- 9 1 50% (fifty per cent) of the Tree Planting Contribution within 3 months of completion of the Agreement, and
- 9 2 50% (fifty per cent) of the Tree Planting Contribution within 6 months of completion of the Agreement

SCHEDULE 4

The COUNCIL'S COVENANTS

The Council hereby covenants with the Owners as follows

- 1 To use the Initial Contribution and any Viability Payment towards the provision of Affordable Housing within the Administrative Boundaries of Manchester and for no other purpose
- 2 To use the Tree Planting Contribution towards the provision of tree planting in Hulme Ward and for no other purpose
- 3 At the written request of the Owners to provide written confirmation of the discharge of the obligations contained in this Agreement when satisfied that such obligations have been performed within twenty (20) Working Days of receipt of the request
- 4, The Council shall provide written details of any expenditure incurred by the Council using the Viability Payment within 20 Working Days of a written request to do so from the party/person who paid the Viability Payment to the Council
- 5 To issue the Planning Permission within two (2) Working Days of the date hereof

SCHEDULE 5

VIABILITY TEMPLATE

Site location, Land known as land and buildings on the south east side of Ellesmere Street, Manchester and land and buildings on the north west side of Chester Road, Manchester

Open Market Gross Development Value (GDV) £

Open Market Net Development Value (NDV) = GDV less Sales Incentives £

GDV of Pre Sale (PS) Element (Contract to be evidenced) £

Profit Level – based upon 20 % of GDV of Open Market Value	£
Profit Level – based upon 15% of GDV of PS Element	£
All in build cost	£
Schedule of abnormals	£
Contingency on build costs and abnormals	£
Professional fees on build costs and abnormals	£
Sales and Marketing Costs	£
Agreed planning stage Section 106 commuted sum payment	£250,000
Finance cost	£
Interest cost on Deposits	£
Tax Relief	£
Agreed Land Value (The Lower of 1) Benchmark Land Value set at Planning Consent Stage of £4,423,000 or 2) Actual Land Value – to be evidenced)	£
Agreed Stamp Duty @ 4%	
Agreed Site Legal & Agents Fees @ 1% of Land Value	
TOTAL GROSS DEVELOPMENT COSTS (GDC)	
Surplus = NDV - GDC	
VIABILITY PAYMENT	

NB – Viability Payment cannot exceed the Maximum Contribution of £6,173,412

THE COMMON SEAL of THE COUNCIL OF THE

CITY OF MANCHESTER was hereunto affixed in

pursuance of [REDACTED] City:



AUTHORISED SIGNATORY [REDACTED]

01121308

EXECUTED AS A DEED by HARGEST LIMITED

acting by two directors

Signature: [REDACTED]

Name (in block capitals) [REDACTED]

Signature: [REDACTED]

Name (in block capitals) [REDACTED]

EXECUTED AS A DEED by CROSBY HOMES LIMITED

acting by a director in the presence of a witness

DIRECTOR

Signature

Name (in block ca

IN THE PRESENCE OF

Signature

Name (in

Address