

DATE: 17<sup>th</sup> April 2020

**BAXI HEATING UK LIMITED**

**UNILATERAL UNDERTAKING**

**TO**

**BURNLEY BOROUGH COUNCIL**

**SECTION 106**

**TOWN AND COUNTRY PLANNING ACT 1990**

**RELATING TO THE PROPOSED DEVELOPMENT OF UP TO 40 RESIDENTIAL  
UNITS AT LAND ACCESSED FROM GROVE LANE, PADIHAM**

**Planning Application Ref: APP/2018/0598**

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**THIS UNDERTAKING** is made as a deed the 17<sup>th</sup> day of April 2020

**PARTIES**

**BAXI HEATING UK LIMITED (Company Number 03879156)** of Brooks House, Coventry Road, Warwick, Warwickshire, CV34 4LL ("the Owner")

**TO**

**BURNLEY BOROUGH COUNCIL** of Burnley Town Hall, Manchester Road, Burnley, Lancashire, BB11 9SA ("the Council")

**1. DEFINITIONS**

In this Undertaking (except where the context otherwise requires):

1.1 "the 1972 Act" means the Local Government Act 1972.

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

"the 2011 Act" means the Localism Act 2011.

"Affordable Housing" means social rented, affordable rented and intermediate housing provided to eligible households whose needs are not met by the market and as defined in Annex 2 of the National Planning Policy Framework 2019 (NPPF), or any amendment or supplemental guidance issued thereof.

"Affordable Housing Scheme" means a scheme for the provision of Affordable Housing Units on the Site which confirms:

- a) the tenure type size and location of the Affordable Housing Units
- b) the timing of the construction of the Affordable Housing Units
- c) the identity of any prospective Registered Provider for the Affordable Housing Units to be provided
- d) the occupancy criteria for determining the identity of the occupiers of the Affordable Housing Units and the means by which such occupancy shall be enforced
- e) a single point of contact for all matters concerned with the provision of Affordable Housing within this Development

"Affordable Housing Units" means the Dwellings to be provided for use as Affordable Housing in accordance with Schedule 1 of this Undertaking.

**“Commencement of Development”** means the commencement of the Development by the Owner carrying out a material operation within the meaning of Section 56(4) of the 1990 Act PROVIDED THAT for the purpose of this Undertaking but not further or otherwise the Development shall not be deemed to have been Commenced by the carrying out of any operations in connection with site clearance, demolition, archaeological investigation, investigation for the purposes of assessing contamination, remedial action in respect of any contamination, diversion and laying of services whether existing or new, the erection of a means of enclosure for the purposes of site security and for the display of advertisements and reference to “Commence Development” and all cognate expressions shall be construed accordingly.

**“County Council”** means Lancashire County Council

**“the Development”** means the development authorised by the Planning Permission.

**“Dwellings”** means all houses, maisonettes, flats, bungalows and all other types of accommodation which may be built or are intended to be built on the Site to be used as individual units of accommodation for independent Occupation by one or more people;

**“Education Contribution”** means a contribution to accommodate the additional primary and secondary school places that would be generated by the development to be calculated in accordance with paragraph 2 of Part B of Schedule 1

**“Occupation”** means beneficial occupation of the Dwellings on the Development other than occupation by personnel engaged in construction, for the purposes of fitting out or decoration or occupation for marketing or display and the phrases “Occupy” “Occupiers” and “Occupied” shall be construed accordingly

**“Plan”** means the plan annexed to this Undertaking.

**“Planning Permission”** means the planning permission granted by the Council for the erection of up to 40 dwellings including details of access (all other matters reserved for future approval) at land accessed from Grove Lane, Padiham with Planning Reference APP/2018/0598.

**“Protected Tenant”** shall mean any tenant who:

(a) has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Dwelling;

(b) has been granted a shared ownership lease of a particular Dwelling and the tenant has subsequently purchased all the remaining shares so that the tenant owns the entire Dwelling; or

(c) any mortgagee charge and or successor in title to anyone falling with categories (a) or (b) above.

**“Registered Provider (“RP”)”** means a registered provider as defined by Section 80 of the Housing and Regeneration Act 2008 which has also been added to the Council’s list of approved housing providers.

**“Rented Housing”** means the affordable rented housing as defined in Annex 2 of the National Planning Policy Framework 2019 or any amendment or supplemental guidance issued thereof.

**“Rented Housing Unit”** means the Dwellings to be provided as Rented Housing in accordance with Schedule 1 of this Undertaking.

**“Reserved Matters”** means a reserved matters approval granted pursuant to the Planning Permission

**“Shared Ownership Housing”** means Dwellings that meets the criteria of Annex 2 of the National Planning Policy Framework 2019 or any amendment or supplemental guidance issued thereof and is made available on low cost ownership terms.

**“Shared Ownership Housing Unit”** means the Dwellings to be provided as Shared Ownership Housing in accordance with Schedule 1 of this Undertaking.

**“the Site”** means the land shown for the purposes of identification only edged red on the Plan known as Land accessed from Grove Lane, Padiham.

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

## **2. INTERPRETATION**

2.1 References to the masculine, feminine and neuter genders shall include the other genders.

2.2 References to the singular include the plural and vice versa unless the contrary intention is expressed.

2.3 References to natural persons are to include corporations and vice versa.

- 2.4 Headings in this Undertaking are for reference purposes only and shall not be taken into account in its construction or interpretation.
- 2.5 The expressions the Owner and the Council shall include their respective successors in title and assigns.
- 2.6 A reference to a Clause, Paragraph or Schedule is (unless the context otherwise requires) a reference to a Clause, Paragraph or Schedule of this Undertaking.
- 2.7 Words denoting an obligation on a party to do any act or thing include an obligation to procure that it be done and words placing a party under a restriction include an obligation not to cause, permit or suffer any infringement of such restriction.
- 2.8 Where in this Undertaking a party includes more than one person any obligations of that party shall be joint and several.
- 2.9 Any reference in this Undertaking to any statute, or to any section of a statute, includes any statutory re-enactment or modification of it and any reference to any statutory instrument includes any amendment or consolidation of it from time to time and for the time being in force.

### **3. INFORMATION**

- 3.1 The Owner owns the freehold interest in the Site shown edged red on the Plan and is registered as proprietor of it with Title Absolute at H M Land Registry free from incumbrances other than those matters contained or referred to in the Property and Charges Registers of Title Number LA529763 at the date of this Undertaking.
- 3.2 The Council has granted outline planning permission for the erection of up to 40 dwellings including details of access (all other matters reserved for future approval) at land accessed from Grove Lane, Padiham.
- 3.3 The Owner made the application for Planning Permission to the Council and is willing to give an undertaking to perform the obligations set out in this Undertaking in order to facilitate the grant of the Planning Permission by ensuring that the Council can regulate the Development by securing the benefits contained in this Undertaking.
- 3.5 The Council is the local planning authority for the purposes of the 1990 Act for the area within which the Site is situated and by whom the obligations and covenants contained in this Undertaking are enforceable.
- 3.6 The Council is a local authority for the purposes of the 1972 Act and the 2011 Act.

- 3.7 The Council is satisfied that the Development is such as may be approved by the Council under the 1990 Act and planning permission granted (subject to conditions) subject to the Owner covenanting in the terms of this Undertaking.

**4. CHARGEEXEMPTION CLAUSE**

- 4.1 The affordable housing provisions of this Deed shall not be binding on a mortgagee or chargee (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a Receiver)) of the whole or any part of the affordable dwellings or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT:

- (a) such mortgagee or chargee or Receiver shall first give written notice to the Council of its intention to dispose of the affordable dwellings and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the affordable dwellings to another registered provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and
- (b) if such disposal has not completed within the three month period, the mortgagee, chargee or Receiver shall be entitled to dispose of the affordable dwellings free from the affordable housing provisions in this Deed which provisions shall determine absolutely

## **5. STATUTORY AUTHORITY AND LEGAL EFFECT**

- 5.1 This Undertaking shall constitute a planning obligation for the purposes of and made pursuant to Section 106 of the 1990 Act, Section 111 of the 1972 Act and all other enabling powers.
- 5.2 The obligations of the Owner in this Undertaking are planning obligations for the purposes of Section 106 of the 1990 Act and are enforceable by the Council as local planning authority.
- 5.3 Save as otherwise provided in this Undertaking, the Owner covenants with the Council to the intent that this Undertaking shall be enforceable without limit of time (other than as expressly mentioned in this Undertaking) against the Owner and any person deriving title through or under it to the Site or any part or parts of them as if that person had also been an original covenanting party in respect of the interest or estate for the time being held by that person.
- 5.4 No person shall be bound by any obligations, rights and duties contained in this Undertaking and/or be liable for any breach of a covenant and/or obligation contained in this Undertaking after they shall have parted with all interest in the Site or the part in respect of which such obligation relates or such breach occurs PROVIDED THAT they shall remain liable for any subsisting breach of covenant prior to parting with their interest.
- 5.5 No statutory undertaker shall be bound by any obligations, rights and duties contained in this Undertaking and/or be liable for any breach of a covenant and/or obligation contained in this Undertaking in respect of any site used only as an electricity substation, gas governor or pumping station.
- 5.6 No Protected Tenant of the Dwellings shall be bound by any obligations, rights and duties contained in this Undertaking and/or be liable for any breach of covenant and/or be liable for any breach of a covenant and/or an obligation contained in this Undertaking.
- 5.7 Nothing in this Undertaking shall be construed as prohibiting or limiting any 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 Undertaking.
- 5.8 Nothing in this Undertaking shall be construed as restricting the exercise by the Council of any powers exercisable by it under the 1990 Act or under any other Act or



any statutory instrument, order or byelaw in the exercise of their functions as a local authority.

- 5.9 The Owner shall give the Council written notice of any change in ownership of its interest in the Site within 14 days of the change taking place and for the avoidance of doubt this does not include transfers of individual Dwellings.

## **6. CONDITIONALITY**

- 6.1 This Undertaking is conditional upon:

6.1.1 the grant by the Council of the Planning Permission; and

6.1.2 the Commencement of Development

except for any relevant provisions of clauses 5.9, 8.1 and 17.1 which shall come into effect immediately on completion of this Undertaking.

## **7. OBLIGATIONS**

7.1 The Owner covenants, agrees and declares in respect of the Site as set out in the Schedules.

7.2 The Owner further covenants to bind the Site into whosoever hands the same may fall to comply with their obligations as set out in Schedules.

7.3 For the avoidance of doubt the covenants and other obligations on the part of the Owner imposed by this Undertaking may be discharged by the Owner or its agents or sub-contractors or any person for the time being operating or managing the Site or any part of the Site whether pursuant to a lease, sub-lease, joint venture agreement, management agreement, franchise agreement or otherwise.

## **8. COSTS**

8.1 The Owner agrees to pay to the Council on the signing of this Undertaking the Council's reasonable and proper costs and disbursements in relation to the preparation, negotiation and completion of this Undertaking.

## **9. INVALIDITY**

- 9.1 It is agreed and declared that if any clause or sub-clause of this Undertaking shall be deemed to be unenforceable or ultra vires the remainder of this Undertaking shall remain in full force and effect provided severance from this Undertaking is possible.

## **10. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

- 10.1 Nothing contained in this Undertaking shall give, or be construed as giving, any rights, privileges, powers or enforceability other than to the Council and to the specific person executing this Undertaking as the Owner and its successors (if any) as defined in this Undertaking and the provisions of the Contracts (Rights of Third Parties) Act 1999 and any benefits or rights which could arise from it are expressly excluded to the intent that no other third party within the meaning of that Act shall have any rights of enforcement in respect of any matter contained in this Undertaking.

## **11. GOVERNING LAW AND JURISDICTION**

- 11.1 This Undertaking and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and interpreted in accordance with the law of England and Wales.

## **12. NOTICES**

- 12.1 A notice given under this Undertaking:

12.1.1 shall be in writing; and

12.1.2 shall be sent for the attention of the person and to the address specified in clause 12.2 (or such other address or person as each party may notify to the others in accordance with the provisions of this clause 12); and shall be delivered personally or sent by prepaid first class post or recorded delivery or (if the notice is to be served by post outside the country from which it is sent) sent by air mail.

- 12.2 The address for service of notices are:

12.2.1 The Council - as set out on page 1 of this Undertaking.

12.2.2 The Owner - as set out on page 1 of this Undertaking.

- 12.3 A notice is deemed to have been received:
- 12.3.1 if delivered personally at the time of delivery; or
  - 12.3.2 in the case of prepaid first class post or recorded delivery 2 Working Days from the date of posting; or
  - 12.3.3 in the case of airmail 5 Working Days from the date of posting; or
  - 12.3.4 if deemed received under the previous sub-clauses of this clause 12.3 is not within business hours (meaning 9am to 5.30pm on a Working Day) when business next starts in the place of receipt.
- 12.4 To prove service it is sufficient to prove that in the case of post the envelope containing the notice was properly addressed and posted.
- 12.5 Any notice or other written communication to be given by the Council shall be deemed valid and effectual if on its face it is signed on behalf of the Council by an officer or duly authorised signatory.

### **13 WAIVER**

- 13.1 No waiver (whether express or implied) by the Council or the Owner of any breach or default in performing or observing any of the covenants terms or conditions of this Undertaking shall constitute a continuing waiver and no such waiver shall prevent the Council or the Owner from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

### **14 DISPUTE RESOLUTION**

- 14.1 In the event of there being a dispute arising out of this Undertaking or the subject matter thereof (including any matter to be agreed or approved under this Undertaking but excluding matters of its interpretation) the following provisions shall apply:
- 14.1.1 the parties shall use their reasonable endeavours to resolve the dispute by agreement;
  - 14.1.2 if agreement cannot be reached the matter in dispute shall be referred to and settled by a single expert to be agreed between the Owner and the Council or failing agreement to be nominated by the President of the Royal Institution of Chartered Surveyors on the application of either the Owner or the Council after giving notice in writing to the other party to this Undertaking;

14.1.3 the person to be appointed pursuant to clause 14.1.2 shall be a person having 10 years or more post qualification experience of projects comprising works of the scale and nature of the Development;

14.1.4 reference to the expert shall be on terms that determination shall take place within 28 Working Days of the expert accepting his instructions;

14.1.5 the expert shall have the power to award costs of the determination in favour of either party to the dispute at the expense of the other party and failing such determination such costs shall be borne by the Owner and the Council in equal shares;

14.1.6 the expert shall be limited in his findings to the matter in dispute referred to him and shall provide written reasons for his decision;

14.1.7 the findings of the expert shall (other than in the case of a manifest error or fraud) be final and binding on the parties to the dispute.

## **15 VAT**

15.1 All consideration given in accordance with the terms of this Undertaking shall be exclusive of any value added tax properly payable.

## **16 OTHER MATTERS**

16.1 The provisions of Section 196 of the Law of Property Act 1925 (as amended) shall apply to any notice or approval to be served under or in connection with this Undertaking and any such notice or approval shall be in writing and shall specifically refer to the name, date and parties to this Undertaking and shall cite the number and clause of this Undertaking to which it relates.

16.2 This Undertaking shall be registered as a Local Land Charge.

## **17 EXECUTION AND DELIVERY**

17.1 This document is executed as a deed and is delivered on the date stated at the beginning of this Undertaking.

**IN WITNESS** of which the Parties have executed this Undertaking as a deed and have delivered it upon dating the day and year first before written.

**EXECUTED AS A DEED**

) *SO Li*  
)  
)

By *SIMON OLIVER*

a director, for and on behalf of )  
)

**BAXI HEATING UK LIMITED** )  
)

in the presence of: )

  
\_\_\_\_\_

Witness' signature:

Name: *TANYA RUSSELL*

Address: *BRACKS HOUSE, COVENTRY ROAD, WARWICK, CV34 4LL*

## **SCHEDULE 1**

### **PART A** **AFFORDABLE HOUSING**

The Owner covenants:

1. To submit the Affordable Housing Scheme to the Council for approval prior to the Commencement of Development.
2. Not to Commence Development until the Affordable Housing Scheme has been agreed in writing by the Council.
3. That the Affordable Housing Units will at all times after construction be used as Affordable Housing in accordance with the approved Affordable Housing Scheme

### **PART B** **EDUCATION CONTRIBUTION**

The Owner covenants:

1. At the same time as the submission by the Owners of application for Reserved Matters Approval pursuant to the Planning Permission (or the first of such applications if there is more than one) the Owners will invite an assessment of whether the Development will produce a requirement for additional education facilities at local schools and for the avoidance of doubt such assessment to be based on the number of implementable reserved matters and/or full planning permissions in existence within the local area at the date of the assessment.
2. In the event that such a requirement is demonstrated by the County Council then the Education Contribution shall be calculated using its published methodology for assessing and evaluating education contributions, unless a lower figure is agreed in writing by the Council. In the event that the Education Contribution is required, the Council must give notice to the Owners of the amount of the Education Contribution prior to the grant of Reserved Matters Approval.
3. The Education Contribution shall be paid by the Owners to the Council (or at the direction of the Council, to the County Council) prior to the Occupation of the 1<sup>st</sup>

Dwelling. The Owners will not Occupy or cause to allow the Occupation of any Dwellings unless and until the Education Contribution has been paid.

4. For the avoidance of doubt, if the County Council's assessment is that the Development will not produce a requirement for additional education facilities, or notice of the Education Contribution is not communicated to the Owners prior to the grant of the Reserved Matters Approval, then then the Owners will not be required to pay a financial contribution for additional education facilities and Education Contribution shall be £zero.

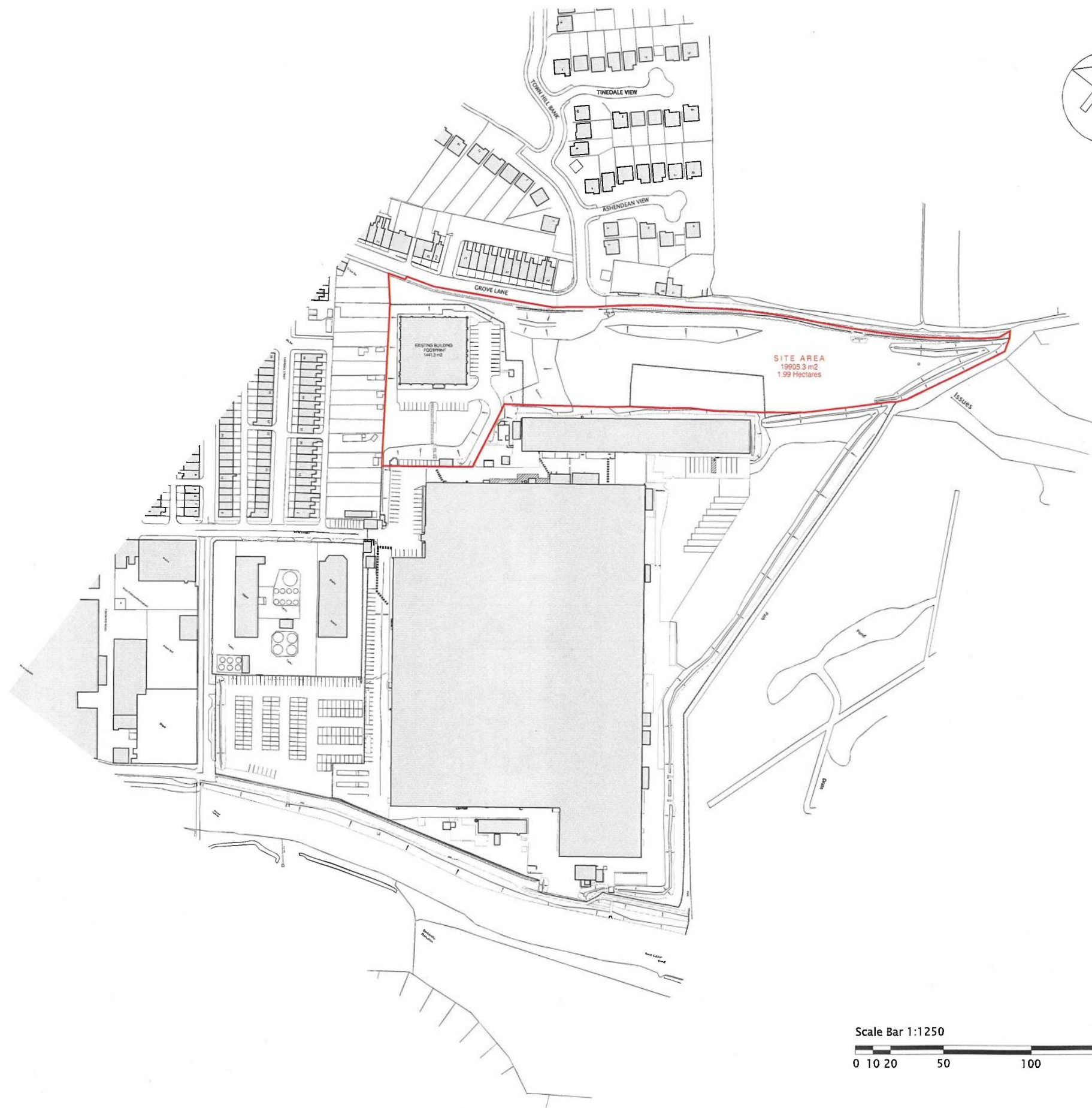
## **SCHEDULE 2**

### **The Plan**



PLEASE INFORM THE ARCHITECT IF YOU HAVE DIFFICULTIES  
READING ANY NOTES OR DIMENSIONS ON THIS DRAWING.

Work only from figured dimensions.  
Read this drawing with all other architects and consultants' drawings  
and specifications and report any errors or omissions to the architect.  
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Scale Bar 1:1250



REV.	DESCRIPTION	DATE	BY	CHKD
<b>PLANNING DRAWING (P)</b>				
<b>GROVE LANE PADIHAM, LANCS</b>				
Location Plan				
DATE	PM	22/06/2018		
PREP	MM	1:1250(A1)		
REV	856 - P10			

MMA Design Ltd  
The Cheese Factory  
Longford Lane, Longford,  
Ashbourne, Derbyshire,  
DE6 3DT

Tel: 01335 330510  
Fax: 01332 362016

info@matthewmontague.co.uk  
www.matthewmontague.co.uk

**MATTHEW MONTAGUE**  
**ARCHITECTS**