

HEADS OF TERMS

Subject to Contract and Without Prejudice

**For the Purchase of Land by Creekmoor Community Land Trust (CCLT)
and lease to Sovereign Housing Association (RP) from the Landowner, Bournemouth,
Christchurch and Poole Council (the Landowner)
Dated 2023**

1. Background

CCLT is a community land trust (as defined in section 79 of the Housing and Regeneration Act 2008)

CCLT aims to provide affordable homes for local people by working in partnership with a housing association in accordance with a model developed and supported by Middlemarch CLH, which has supported a number of similar projects in Dorset.

The Landowner is willing to dispose of a site in its ownership to CCLT to enable the development of 14 two- and three-bedroom homes for social rent to be allocated in accordance with the agreed Local Lettings Plan and Homes England Tenancy Standard (April 2012) or any successor guidance in perpetuity, of sizes meeting nationally described space standards, subject to these Heads of Terms **(the Development)**.

2. Definitions and interpretation

LAND

The land at Northmead Drive, Creekmoor edged orange and owned by the Landowner currently comprises undeveloped grassed verge immediately adjoining Northmead Drive. Overall, the land extends to some .312 ha currently held in the General Fund Account. The land is not allocated in the local plan and is vacant.



VENDOR

The Landowner: Bournemouth, Christchurch and Poole Council [BCP], BCP Council Civic Centre, Bourne Avenue, Bournemouth, BH2 6DY.

VENDOR'S SOLICITOR

Legal Services, BCP Council (property.legal@bcpcouncil.gov.uk).

PURCHASER

Creekmoor Community Land Trust, Registered Office: 28 Blackbird Close, Creekmoor, Poole, Dorset, BH17 7YA.

Sovereign Housing Association (under a 125-year lease).

LEASEHOLDER/RP

PURCHASER'S SOLICITOR

CCLT's Solicitor:
Anthony Collins Solicitors, 134 Edmund Street, Birmingham B3 2ES.

LEASEHOLDER'S SOLICITOR

RP's Solicitor: Devonshires Solicitors, 30 Finsbury Circus, London EC2M 7DT

PURCHASE PRICE

(1) Freehold by CCLT: £1.00 (one pound) exclusive of any applicable VAT

(2) Leasehold by RP: No premium will be payable for the grant of the lease. The RP will not be paying any rent other than ground rent to CCLT of £4pw per unit index linked from practical completion by reference to subject CPI.

ADDITIONAL INFORMATION

Each party is to meet its own costs in the preparation and negotiation of the Agreement.

DEVELOPMENT AGREEMENT

It is intended that the Agreement will be entered into by CCLT, the Landowner and RP (as developer) within three months from the date of these Heads of Terms being approved by BCP Council's Cabinet.

Subject to acceptable negotiations being concluded between the parties, the Agreement will be drafted by the Landowner and will define the precise area of land to be sold by the Landowner to the Purchasers.

The Agreement will be conditional on satisfaction of one condition precedent: planning permission for the Development which is not subject to specified onerous conditions (the parties will agree in advance what these are) and which is immune from legal challenge.

The Purchaser will have two years to satisfy the condition, unless legal proceedings are ongoing or the planning application has not been determined, in which case (subject to the obligations below) the period will be extended to 20 working days after such proceedings are concluded.

The Agreement will be terminable by any party if the condition is not satisfied within five years of exchange. The development obligations in the lease will provide for a separate two-year period from the grant of the lease to carry out and complete the works, extendible to up to four years due to usual delay events beyond the RP's reasonable control.

Following the satisfaction of the condition precedent, the Landowner will grant the RP a building lease so that the RP has a secure legal interest whilst it is carrying out the works. The building lease will grant step-in rights to, and be terminable by, the Landowner if the RP does not comply with its obligations in respect of the Development (subject to prior notice and opportunity to rectify the breach being given and funder step in), and the Lease will include a tenant covenant that in these circumstances the RP will assign its rights against the building contractor and the professional team to the Landowner. If the building lease is terminated due to a breach of these obligations, the Landowner will pay compensation to the RP in relation to the costs incurred by the RP in obtaining planning permission and carrying out the Development (less any costs of making good any breach of the RP's obligations, which for the avoidance of doubt the Landowner shall be entitled to deduct in full before paying any compensation).

The RP will be required to procure collateral warranties with step in rights in favour of the Landowner from its building contractor and members of the professional team.

Landowner Obligations

3. PLANNING AND CONSTRUCTION OBLIGATIONS

The Landowner is to approve the draft planning application within 20 days prior to submission to the local planning authority (such approval not to be unreasonably withheld or delayed), with deemed approval if the Landowner does not notify rejection of the application within 20 days and expert determination of disputes.

Not to oppose the planning application as landowner, although for the avoidance of doubt BCP Council will not be liable if individual members of the local authority do so.

To enter into any necessary statutory planning or highway agreement, provided that the Purchaser/developer indemnifies BCP Council against the full value of any liability thereunder.

4. OFF-SITE SERVICES

That if any of the road, footpath, drainage and/or services for the scheme are to be provided over or under the Landowner's retained land, then appropriate rights of use can be obtained by the Purchasers meeting only any necessary legal and professional fees (including for the avoidance of doubt reimbursement of officer time).

If such rights are required in respect of the Landowner's retained land these will be provided at nil cost subject to agreement with the Landowner of the proposed route and subject to any necessary licence, covenant or agreement. Including the satisfactory completion of any statutory process the Landowner is obliged to carry out.

5. VACANT POSSESSION

That the Landowner will provide vacant possession of the proposed site.

Purchaser's Obligations

A. SITE ACCESS

The Landowner will allow access to the Land for CCLT and RP to carry out surveys and investigations in relation to the planning application and proposed development. Access to the land to be exercised in a reasonable manner.

B. FINANCIAL VIABILITY

The Purchasers/RP to demonstrate that adequate funding is/can be achieved.

The funding to be identified, applied for and/or subject to legal agreement before the Development can be commenced.

C. PLANNING APPROVAL

To enter into any pre-planning agreement required by the local planning authority.

To submit the draft planning application to the Landowner and the RP in a form acceptable to, and capable of registration by, the local planning authority, and not to submit it to the local planning authority until approved by the Landowner and the RP.

To pursue the planning application diligently.

**DEVELOPMENT
AGREEMENT
Phase 2**

The RP will submit the standard form building contract and deeds of appointment of the professional team to the Landowner and CCLT for approval (such approval not to be unreasonably withheld). The Landowner and CCLT to confirm approval within 10 days of receipt of the contract and deeds of appointment, with expert determination of disputes. Within a reasonable period of time following approval or the RP will enter into the relevant agreements and will use all reasonable but commercially prudent endeavours to enforce their terms. Certified copies of the relevant agreements will be provided to the Landowner and CCLT. RP will ensure that the building contract and professional appointments include a covenant for the contractor, subcontractors and consultants to enter into collateral warranties in the Landowner's and CCLT's favour and will use reasonable endeavours to ensure that such warranties are provided.

The building contract will contain a covenant requiring the contractor to insure the works for the full reinstatement value including demolition, site clearance and professional fees.

Each of the relevant agreements and warranties will include a covenant to arrange and keep in force professional indemnity insurance for at least 12 years from practical completion of the Development.

1. Developer to comply with all relevant statutory provisions including: CDM Regulations, Party Wall Act 1996, Building Regulations etc, and to indemnify CCLT and the Landowner accordingly.
2. Developer to secure the site appropriately with suitable fencing and hoardings.
3. The Development is to be carried out using good quality materials, in accordance with all British Standards and building industry standards.
4. Developer to minimise the inconvenience to neighbouring occupiers.
5. The Landowner and CCLT will be entitled to attend site/project meetings until practical completion, inspect the Development and be joined in discussions with the Developer regarding the programme of works, construction phases etc PROVIDED THAT the Landowner and CCLT will not interfere with the carrying out of the works save as to matters of safety or non-compliance with the planning consent.
6. Likewise, as the Landowner requires 10 working days' notice prior to practical completion of the last unit, RP will serve notice on the Landowner and CCLT, certifying that the Development is complete.

Other terms

7. The Landowner will within 7 working days of notification inspect and may raise comments with the EA (which the RP will use reasonable endeavours to procure that the EA takes account of). Practical completion will be certified by the EA or in the event of dispute by CCLT, the matter can be referred to an expert.

8. The collateral warranties will grant step in rights in favour of the Landowner and CCLT which may be exercised if the building lease is terminated. The Landowner and CCLT will have the right to complete the Development on RP's behalf.
9. If RP fails to perform and the building lease is terminated, CCLT has the right to select another development partner, subject to the approval of the Landowner (not to be unreasonably withheld or delayed in the event that the new delivery partner is of at least the same financial standing and experience), and who will be bound by the same terms and conditions to deliver the scheme.
10. If the Development is incapable of completion due to withdrawal of funding, financial collapse of RP, legal challenge or other action outside the control and influence of CCLT, other than as provided for in the Building Lease the Landowner will not reimburse RP for works completed to date and will require all permissions, consents and agreements to be transferred to the Landowner and the freehold title will not transfer to CCLT.

Freehold transfer

1. The Landowner will transfer the freehold to CCLT for £1 following Practical Completion of the Development, being less than the best consideration reasonably obtainable under section 123 of the Local Government Act 1972, but relies on the Secretary of State's consent on the terms of General Disposal Consent (England) 2003.
2. The transfer will be subject to a covenant restricting the use of the land to affordable housing for rent by local residents in perpetuity. The Landowner will rely on its powers under section 33 of the Local Government Miscellaneous Provisions Act 1982, and any other applicable statutory provision.

Lease

1. The lease will be granted by the Landowner for a term of 125 years to the RP for subletting to local residents on assured or assured shorthold tenancies at affordable rents. The Landowner will nominate the tenants in accordance with the relevant local lettings plan and nomination agreement, a template of which will be attached to the lease.
2. The leaseholder will covenant to keep the properties in good repair and fully insured, restrict the permitted use, inter alia, to residential lettings to tenants nominated by BCP Council (or its statutory successor) as local housing authority, and otherwise as affordable housing in accordance with the relevant s.106 agreement (or any replacement or variation thereto), and to assign only to other registered providers, and there will be standard forfeiture provisions subject to funder step-in rights.

These Heads of Terms are intended to record the negotiations so far between the parties, in order to enable them to take the next steps to progress this project before considering entering into any legally binding agreement. The terms in these Heads of Terms are not exhaustive and are expressly subject to contract and the execution of a legally binding agreement.

These Heads of Terms are not intended to be legally binding between the parties and do not constitute a contract within the meaning of Section 2 of the Law of Property (Miscellaneous Provisions) Act 1989.

Nothing in these Heads of Terms will prejudice or affect the Landowner acting in its capacity as local planning authority or highway authority and these Heads of Terms are intended to record the negotiations with the Landowner only in its capacity as owner of the relevant property.