



**Longparish Community Pub Ltd**

## **THE PLOUGH INN, LONGPARISH**

### **Memorandum of Understanding**

**between**

**Longparish Parish Council ("the PC")**

**and**

**Longparish Community Pub Limited ("LCPL")**

### **Background**

The Plough Inn in Longparish, Hampshire ("The Plough") has been a Public House (or drinking establishment) since 1721. Following a succession of failed tenancies, in 2016 EI Group (formerly Enterprise Inns) closed the pub and marketed it initially as a "free of tie" tenancy and subsequently offered the freehold for sale.

In February 2017, the freehold was acquired by Dorset Flint & Stone Blocks Limited ("Dorset") which immediately stripped the building of its bar and restaurant equipment and in May 2018 applied to the local authority, Test Valley Borough Council ("TVBC"), for Planning Permission for change of use to Residential. Concerned at the potential loss of this historic village facility, the local community decided to fight the application and set out to acquire the freehold for the wider benefit of the community.

The intention was, and remains, to create a community pub and hub; a community-owned asset in the heart of the village to be "a focal point for village life in Longparish, boosting the local economy and sense of community" (see the introduction to the Share Offer and accompanying Business Plan ("Business Plan") *(attached at Appendix X)*).

To this end the ambition is to create a successful 'not for profit' community business, namely a successful public house, which will provide the financial resources and facilities to support the community hub. The purpose of having a community pub is to provide a range of services much wider than just the provision of food and drinks to the local community.

Longparish Community Pub Limited is a Community Benefit Society owned by community shareholders and run for the benefit of the community. LCPL put together a comprehensive Business Plan *(see Appendix X)* to support their community share offer and it was on the basis of this 'more than a pub' scheme that the PC agreed to lend support to the project.

Appendix 1 contains a chronology of the events which culminated in The Plough being acquired by the PC and then leased to LCPL in January 2021.

### **Purpose of this MOU**

The purpose of this MOU is to record for the benefit of both the PC's and LCPL's successors the background to the decision to acquire The Plough, and the understanding reached between the PC and LCPL as to how matters should be regulated between them in relation to the operation of The Plough and the different responsibilities of the PC as freeholder and LCPL as lessee.

This MOU is not, however, intended to be legally binding but will hopefully inform decisions which may need to be made in the coming years.

Both the PC and LCPL recognise that they are acting in effect as "trustees" for future generations and residents of Longparish and indeed the surrounding communities.

The PC has a responsibility to the residents (and Council Tax payers) of the Parish of Longparish whereas LCPL's mandate is slightly wider in that, as a Community Benefit Society, its objects are for the benefit of the community that could extend beyond the parish boundary.

At the time of drafting this MOU there is a broad measure of agreement between the Councillors of the PC and the Management Committee of LCPL as to the operation of The Plough and the potential provision of additional community facilities on the site. In particular, both parties have proceeded on the basis of the Business Plan, which should guide the project in the short term.

It is recognised, however, that such might not always be the case in the future and accordingly the PC and LCPL have agreed to set out their vision as to how the relationship between the two bodies should be conducted in the future. In particular, it is recognised that the PC has broader obligations to its parishioners, who may in future request support for similar community projects, especially relating to other Assets of Community Value within the village such as The Cricketers public house and the village shop.

It is also recognised that changes in the law governing Parish Councils and/or Community Benefit Societies may necessitate changes to our proposals; furthermore there may be changes in property law and/or planning laws which would require changes to be made to The Plough's operations.

### **Our understanding concerning the future relationship between the PC and LCPL**

In making decisions in the future we agree that the following should be borne in mind:

- The original intention was that The Plough should be owned by LCPL, and LCPL has been the driving force behind the project.
- The ability to proceed has been possible only as a result of the support of the PC and its willingness to take out a substantial, long-term loan from the Public Works Loan Board ("PWLB"). The PWLB lending facility is operated by the UK Debt Management Office on behalf of HM Treasury. The facility provides loans to local authorities, and other specified bodies, from the National Loans Fund, operating within a policy framework set by HM Treasury. This borrowing is mainly for capital projects and is secured by a charge on the PC precept which will endure for the duration of the loan.
- The PC has many and varied obligations and does not believe it is either appropriate or possible in practice for Councillors to be involved in the day-to-day operation of The Plough. Nevertheless, in return for its commitment to facilitating the purchase and supporting the project, it wishes to retain a long-term interest in how The Plough is used for the benefit of the village community.

- Ownership by the PC protects The Plough as a community asset in the event of the failure of The Plough as a public house, or the insolvency of LCPL. The PC is an enduring, elected body and is therefore a reliable custodian of community property.
- Whilst the PC owns the property and has borrowed £300,000 towards the cost, the balance of the purchase price has been provided by LCPL by way a premium of £200,000 for the grant to it of a 99 year lease of the property (which under current law will automatically renew indefinitely).
- LCPL has agreed to fully refurbish The Plough at its expense so as to bring it back into operation as public house and community hub.
- In order to pay the lease premium and to be able to refurbish The Plough LCPL raised £330,000 from the local community pursuant to its Share Offer [*reference to website and document*]; in addition it received £17,800 in donations via Longparish Community Association (“LCA”) and obtained a further £100,000 in funding (£50,000 loan and £50,000 grant) from the Plunkett Foundation’s “More than a Pub” programme.

The PC and LCPL have therefore agreed that:

1. They will work together to enable The Plough to be a long-term asset for the benefit of the community. The intention is for The Plough to become a busy village pub and community hub able to adapt to changing village needs and utilising surplus profits for the benefit of the community as set out in the Business Plan, unless and until the needs of the community change, in which case the PC and LCPL will work together to continue to support community needs.
2. LCPL will run and manage The Plough, either directly or by sub-letting to a tenant operator (subject to the terms of the Lease) and the PC will have no role in day-to-day operations.
3. If and to the extent that the PC’s consent (as landlord) is required under the provisions of the Lease to any proposed action of LCPL then the PC will exercise its powers in the spirit of the Business Plan, so there will be a presumption (in such circumstances) that it would be unreasonable to withhold consent to projects or alterations anticipated in the Business Plan.
4. During the first 17 years of the Lease, i.e. until [*date*], both parties (and any sub-tenant or assignee) will be bound by the overage terms set out in the Transfer of The Plough from Dorset to the PC, which relate to development for residential purposes. Whilst there is no current intention on the part of either the PC or LCPL to undertake any residential development on the site, nevertheless special care needs to be taken during this time not to trigger overage payments unless both the PC and LCPL believe it is in the community’s best interests to do so.
5. LCPL will (as soon as practicable following the grant of the Lease) seek consent from its members to amend its constitution in order to grant the PC a permanent place ex officio on its Management Committee to ensure the free flow of information between the PC and LCPL.
6. LCPL has agreed to meet all the PC’s costs incurred in connection with the acquisition of The Plough, including for example any continuing costs associated with registering for VAT and the future management of VAT by the PC. The PC will invoice LCPL for these costs as expenses as agreed from time to time between them.
7. LCPL will pay a fixed rent at less than market rate to reflect the lease premium and the considerable investment it will make in renovating and maintaining the property. The rent paid under the Lease will be sufficient to cover the PC’s loan repayments for the term of the loan. The precise method (and whether they are liable to VAT) is to be agreed in the light of appropriate professional advice.

Both the PC and LCPL anticipate that The Plough will be a successful business operating for the long-term benefit of the community. The PC supports this project on the basis of LCPL's intent as set out in the Business Plan.

8. The rent payable under the Lease will reduce to a nominal figure in 2071 once the PWLB loan has been fully repaid. If for any reason the loan is repaid earlier or later, then the PC and LCPL should co-operate to amend the Lease accordingly.
9. If the principal use a Public House proves to be unviable, LCPL should be permitted to carry on such other commercial operations as provided in (but subject to the provisions of) the Lease (or as otherwise agreed with the PC), so long as they are for the benefit of the community (and in accordance with the constitution of LCPL).
10. LCPL will pay a lease deposit to cover 18 months' rental payments, so that if LCPL is unable to meet payments there will be time for LCPL and the PC to explore alternative sources of income and community uses.
11. If LCPL cannot meet rental payments (and the lease is therefore terminated) the PC will consider whether the property can be used in some other way for the benefit of the community. As a last resort the PC will decide in consultation with the community whether to sell The Plough and how to apply the proceeds, including whether to repay the PWLB loan early with penalties, or continue to make the loan payments and fund these through other means or ultimately from the precept.
12. In the unlikely event that the PC sells The Plough, the PC and LCPL would like (assuming the same is legally possible) the proceeds of sale, to be applied as follows:
  - (a) Repayment of all fees and expenses (including for example taxes, expert advice and any planning advice and costs) incurred in relation to the sale;
  - (b) Payment of any expenses incurred by the PC in relation to The Plough which have not previously been reimbursed by LCPL;
  - (c) If the PC decides to repay the PC's PWLB loan, repayment including any penalty for early repayment, but if the PC decides not to repay the loan a sum representing those costs to be retained by the PC;
  - (d) Payment to LCPL of sufficient to enable it to discharge any creditors (including (but not limited to) any loan creditors (such as The More Than a Pub Programme and Key Fund) so as to enable it to achieve a solvent winding-up;
  - (e) Payment to LCPL of sufficient to enable LCPL to repay its shareholders at par, or in proportion to their original investment; and
  - (f) The balance (if any) to be used for the benefit of the community of Longparish at the PC's discretion and in keeping with LCPL's objects as a Community Benefit Society.

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Christian Dryden – Chair - Longparish Parish Council

Date.....2021

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Andy Jolliffe – Chair – Longparish Community Pub Limited

Date.....2021

## **Appendix 1 - Chronology**

As a response to Dorset's application for change of use of The Plough to residential a community group, Plough Ahead, was formed with support from Longparish Community Association (LCA) and the PC to oppose the Planning Application and to seek to acquire the pub for the community. The application was opposed on the basis that:

- the application did not comply with the Test Valley Borough Council's Adopted Plan COM14; a) the use is no longer or cannot be made commercially viable; or b) the building can no longer provide suitable accommodation; or c) is no longer needed for the existing use and
- that it had not been marketed for sufficient time, or alternative uses discussed with the community.

On 12 June 2018 the LCA applied to TVBC for The Plough to be registered as an Asset of Community Value ("ACV"), and the PC applied for ACV registration for The Cricketers public house and the village shop, in recognition of the clear value to the community of each of these privately-owned businesses.

The Planning Application was opposed by the PC and LCA and was refused by TVBC on 25 July 2018. Dorset appealed and the Appeal was dismissed on 11 October 2019. A copy of that Decision is contained at Appendix 4.

### **Plunkett**

Starting in August 2018 and throughout the period up to today, The Plough Ahead Group (initially) and now LCPL has received a lot of help and advice from The Plunkett Foundation ("Plunkett") and it is right to record our gratitude to them for their help.

Plunkett was established in 1919 and exists for the purpose of providing practical advice, support and training to help communities establish and run successful community businesses with long-term survival rates.

In accordance with their advice a Business Valuation Report Survey was commissioned in November 2018 from Michael Hughes an experienced surveyor and valuer of public houses. A valuation of £400,000 was obtained for the property as a "closed" public house.

Following his Report, Plough Ahead proceeded to investigate how to raise the substantial sum which would be required to both purchase the freehold and refurbish The Plough.

Plunkett also advised that a Community Benefit Society should be established for the purpose of acquiring and running The Plough.

### **LCPL**

Acting on that advice and with support from Plunkett, Longparish Community Pub Limited was incorporated and registered, as a Community Benefit Society under the Co-Operative and Community Benefit Societies Act 2014, by the Financial Conduct Authority on 20 December 2018 with number RS007591.

Soon after its establishment, LCPL effectively took over the activities of The Plough Ahead Group.

### **Business Plan and Raising of Finance**

Based on discussions with Plunkett it was recognised that the funds required to acquire and refurbish The Plough would need to come from several sources:

- From the local community – probably by way of a share offer;
- Commercial loan; and
- any available grants.

Before proceeding with a share offer it was recognised that LCPL would need a Business Plan and would also need to inform and consult with the community.

A community survey was undertaken by LCPL in June 2019 with 85% of the respondents confirming that the reopening of the pub was important. The survey also asked what a reopened Plough should look like and was used to shape the Business Plan and proposed community hub facilities. A summary of the community survey findings is available at (<https://www.ploughahead.co.uk/community-survey>).

Accordingly work started on the development of a Business Plan in November 2018 and at the same time the actions necessary to register LCPL as a CBS were put in place leading to its Registration in December 2018.

Based on the valuation obtained from Michael Hughes, it was then estimated that a total of approximately £590,000 would be needed to cover the acquisition and related costs and the cost of refurbishment, and business capital.

Various iterations of the Business Plan were developed during 2019 but it was only once Dorset's Application for Change of Use had finally been dismissed that work could really begin in earnest.

A revised Business Plan was submitted to Plunkett in December 2019. Plunkett raised concerns about the level of the repayment and interest costs of a commercial loan and the impact on the Budgets in the Business Plan.

At this time the possibility of asking the PC to borrow monies from the Public Works Loan Board (PWLb) and then to on-lend it to LCPL was first considered as a possible option.

The advent of the COVID-19 pandemic in February/March 2020 and the closure of all non-essential shops/businesses (including Public Houses and Restaurants) required a major re-think of LCPL and the PC's plans, both commercial and financial.

### **ACV**

In accordance with the procedures set out in The Assets of Community Value (England) Regulations 2012 (made under the Localism Act 2011) Dorset notified TVBC on 16 December 2019 that it wished to market The Plough for sale. LCPL notified TVBC that it wished to exercise the right to try to acquire The Plough for the benefit of the local community. The 6 month moratorium period during which Dorset could not accept an offer from anyone other than a recognised community purchaser expired on 16 June 2020.

It now became necessary to proceed with the raising of the required finance etc as swiftly as possible so as to be in a position to make an offer to Dorset before the moratorium period expired.

### **Longparish Parish Council (the PC)**

From its inception in July 2018, Plough Ahead worked closely with the PC both in relation to the opposition of Dorset's Application for Change of Use, and in relation to Plough Ahead's decision to put together a package to acquire The Plough for the community.

The PC first became directly involved in late 2019/early 2020 when the possibility of the PC borrowing money from the PWLB was first seriously considered as an alternative to LCPL themselves taking a commercial loan to fund the project.

Following discussions at Parish Council meetings the PC confirmed its belief that there was a community benefit in the project to acquire The Plough and run it as a public house and community hub, and considered whether it could facilitate the project by borrowing funds from the PWLB. The PC set up a Working Party in March 2020 to look into the PWLB loan process and ensure proper consultation and communications with the community.

In April 2020 the PC was advised that funds borrowed by the PC from the PWLB could not be on-lent to LCPL. This resulted in much discussion as to the appropriate vehicle/structure for the PC and LCPL to work together to achieve their mutual goal. Various possibilities were considered including the incorporation of a Joint Venture company between the PC and LCPL or registering the property in joint names. It was finally decided (on the basis of specialist legal advice obtained by the PC) that the simplest way would be for the PC to acquire the freehold of The Plough in its sole name and to fund the purchase with a loan from the PWLB, with the balance coming from LCPL to whom the PC would grant a long term lease to operate The Plough as a community hub and pub.

On 10 June 2020 representatives of the PC and LCPL held a meeting via Zoom to decide how to move matters forward. The outcome of the meeting was that (subject to legal advice and a satisfactory outcome of its public consultation) the PC agreed to assist in the purchase of The Plough for the benefit of the community on the basis that it was "cost neutral" to the PC – i.e. that all costs associated with the purchase as well as any future "running" costs incurred by the PC would be covered by LCPL so that there would be no increase in the PC's precept.

The basis of the understanding may be summarised as follows:

The PC would assist LCPL to acquire The Plough by borrowing £300,000 from the PWLB on the basis that:

- This amount would be sufficient to allow the project to proceed, while minimising the risk that the value of the property, if needed to be sold, may not be sufficient to repay the outstanding loan to PWLB.
- The balance of the purchase price would be funded by LCPL by way of the payment of a substantial premium for the grant of a long lease (not less than 99 years) to it from the PC.
- LCPL would refurbish The Plough and re-open it as a public house and community hub.
- The PC would have the security, during the period of repaying the loan to PWLB, of owning the property.
- LCPL would fund (or reimburse) the PC's professional costs and disbursements incurred in relation to the acquisition of The Plough.
- As additional surety for the payment of rent, LCPL would put aside 18 months' worth of rental payments due under the Lease, to effectively allow a 6 month period for LCPL and the PC to jointly to review options, and a further 12 months should the PC need to further explore options, should LCPL be unable to fund rental payments. The PC separately agreed to set aside a sum to cover its PWLB

loan repayments for a further 12 months in case this was required to provide further time in which to make any necessary decisions.

- LCPL would also fund (or reimburse) additional costs incurred in the future in relation to the property (e.g. additional accounting/ secretarial costs, additional payments due to the Clerk etc).

Meanwhile the PC undertook a community consultation process to check whether the village supported the idea of the PC seeking a PWLB loan to facilitate the acquisition of The Plough for the community. The consultation was extensive, and resulted in a significant endorsement of the proposal. Details of the community consultation and results are available on the PC pages of the village website at [www.longparish.org.uk](http://www.longparish.org.uk)

The PC then resolved to proceed with the application for a PWLB loan of £300,000 at a fixed rate over 50 years, secured against the precept, to assist in the proposed purchase of The Plough. Formal approval of the PC's application for this loan was granted on 6 August 2020.

### **Share Offer**

On 26 June 2020, following completion of the PC's consultation process, LCPL launched its Community Shares Offer (i.e. an offer to the public to subscribe for shares in LCPL) to be used to assist the PC in the purchase of The Plough and thereafter to enable LCPL (as tenant) to refurbish it so as to re-open it as a public house and community hub.

The minimum shareholding was set at £50 to be as inclusive as possible. The offer was open to anyone with an interest in being involved and, as required by any Community Benefit Society, all members have equal voting rights independent of the value of shares held.

The offer initially raised £228,700 and in addition a further £17,655 was received by way of donations made through LCA.

Subsequently (in order to raise the additional funds required to support the increased purchase price of £500,000 (as described below)) LCPL decided on 16 November 2020 to extend the Share Offer and a further £101,300 was raised bring the total up to the maximum specified in the Share Offer of £330,000.

In total applications for shares in LCPL were received from 236 applicants of whom 157 lived in Longparish, 13 lived in surrounding villages and a further 28 living within a 15 mile radius, with the balance from further afield many of whom have or had a connection with Longparish.

### **Offer to Purchase**

Dorset marketed The Plough for sale (through Christies in Andover) at a price of £550,000 plus VAT.

Based on the valuation obtained from Michael Hughes (and in the light of COVID-19) an offer to purchase The Plough was made to Dorset on 12 August 2020 for £395,000 subject (inter alia) to receipt of a satisfactory survey. This offer (as anticipated) was summarily rejected - the indication received from the agents was that "other offers just below the asking price" had already been rejected and that we would need to offer the asking price or very close to it.

The PC and LCPL discussed what to do in the light of this information and it was decided to commission an updated Valuation from Fleurets, a recognised specialist in public house valuations.

Fleurets' Report, dated 10 September 2020, indicated a maximum value for The Plough (as a closed public house) of £450,000. Accordingly, a revised offer of £450,000 was made via Fleurets on 27<sup>th</sup> September 2020 and again rejected.

The question then for the PC and LCPL was whether an increased offer could be justified.

After a degree of "soul searching" LCPL decided that an increased offer of £500,000 was the maximum possible offer, but justifiable on the basis that (a) it was an opportunity which was unlikely to arise again and (b) the additional benefits to the community (over and above its use as a public house) and recommended the same to the PC.

The PC considered this revised offer in the circumstances, including the impact of COVID-19, the current valuation, the potential loss of this village asset and the additional value to the community, and agreed that the additional premium could be justified.

Negotiations continued between the Dorset's Agents and LCPL (on behalf of the PC) in particular in relation to Dorset's request for an "overage" provision to compensate for accepting an offer at less than its asking price.

A final offer of £500,000 plus VAT and overage at the rate of 35% for 10 years was made on 26 October 2020. Dorset countered with a proposal of 20 years overage. Ultimately agreement subject to contract and satisfactory survey was reached on 05 November 2020 as follows:

- Purchase price £500,000 plus VAT
- Overage at the rate of 35% of any increase in value during the period of 17 years from completion resulting from either change of use of the premises to residential or any residential development within the curtilage.
- Dorset claimed not to have any historic mementos or artefacts that could be handed over on completion

### **Survey**

The PC commissioned a structural survey (for the benefit also of LCPL) which was carried out by 1<sup>st</sup> Associated on 23 November 2020. In general terms the survey did not reveal anything major which had not already been anticipated and factored in to LCPL's refurbishment costs as outlined in its Business Plan.

Additional inspections by builders, electricians and heating engineers were undertaken subsequently by LCPL on behalf of the PC, and an Asbestos Management Report was commissioned.

Having reviewed and revised its refurbishment budget LCPL agreed on 8 December 2020 to recommend to the PC that the survey report was satisfactory thus satisfying one of the pre-conditions of the offer to purchase.

Owing to the refusal of Dorset to provide an Asbestos Report, LCPL commissioned one which was carried out on 18 December 2020 and disclosed 2 minor incidences both of which can be labelled and monitored.

### **VAT**

The PC took specialist VAT advice from Elysian Associates as a result of which it was decided that the PC would need to register for VAT in order to be able to reclaim the £90,000 VAT charged on purchase (without which refund the purchase could not go ahead) and would also need to "Opt to Tax" The Plough for VAT following its acquisition, which would have an impact on future VAT supplies by the PC, including invoices to LCPL.

### Legal process

The PC instructed Ian Davison of Surrey Hills solicitors and LCPL instructed Matthew Hudson of Ancora Law to act for them respectively.

It was agreed that as well as (a) the normal contract and transfer documents required for the acquisition of the freehold title of The Plough and (b) the lease to be granted by the PC to LCPL (immediately following completion of the acquisition of The Plough) an Agreement for Lease was also required between the PC and LCPL to give each of them the comfort that they required – in the case of the PC that LCPL would take a lease and pay a premium to the PC (which was required to cover the balance of the purchase price in excess of the PWLB loan) and in the case of LCPL that the PC would grant LCPL a long term lease on terms previously agreed between them.

Following discussions between the parties and their respective lawyers the terms of all the necessary documents were agreed in mid-January 2021 and the purchase of the Property and the grant of the Lease to LCPL were completed on 4<sup>th</sup> February 2021.

## **Appendix 2**

### **Share Offer and Business Plan**

**Appendix 3**

**Decision of the Planning Inspector dated [11] October 2019**

**Appendix X: Transfer and Lease**