

Rossendale Borough Council

**NOTICE OF COMPLETION OF
S.106 LEGAL AGREEMENT**

TO: DIANE DUNGWORTH
CAROLINE RIDGE
KEITH BELL
PHIL SEDDON
VINCENT HINDLEY – PLEASE REGISTER AS A LOCAL LAND CHARGE

FROM : STUART SUGARMAN

LEGAL FILE NO: Z.12/001049

The following has been completed:

Planning Ref: APP/2009/641 – Pendle Avenue, Bacup.

Proposal: Revised plot layout and substitution of house types for 11 plots

Completion Date (as on Deed) 12th March 2010

Parties: Rossendale Borough Council, B. And E. Boys Limited and National Westminster Bank Plc.

Terms: Not to dispose of the legal interest unless to a registered provider. The registered provider to nominate tenants from Pennine Lancashire Choice Base Letting Scheme. In the event of Right to Acquire the funds are recycled and used to provide affordable property within Rossendale. The registered provider to have first refusal on buy back of property.

Receipt of money: legal fees - £750.00.

Request for payments _____

Details _____

Others _____

Commuted Sum _____ Amount _____

*** Planning permission can now be issued
* Please now register the Section 106 Agreement in Part 2
of the Planning Register**

LEGAL AGREEMENT CONFIRMATION FORM

**Planning
Application No**

APP/2009/641

Site Details

Land at Pendle Avenue, Bacup.

Date Legal Agreement signed

12th March 2010

Confirmation that planning permission can be issued and legal agreement checked

Decision notice issued on 12th March 2010.

Name: Stuart Sugarman

Date: 22nd March 2010.

Signature:

Updated 22.3.10

Dated 12th March 2010

Rossendale Borough Council (1)

B. and E. Boys Limited (2)

National Westminster Bank plc (3)

AGREEMENT

Pursuant to Section 106 of the Town & Country Planning Act 1990
Relating to the site on the South West Side of Cowtoot Lane and Pendle Avenue,
Bacup, Lancashire.
(Planning Permission 2009/641)

CLB/SS/Z.12/001049 v.5

Stuart Sugarman,
Director of Business,
Rossendale Borough Council,
P. O. Box 74,
The Business Centre,
Futures Park,
Bacup. OL13 0BB

THIS PLANNING OBLIGATION is made the 12th day of March 2010

BETWEEN:

- (1) **ROSSENDALE BOROUGH COUNCIL** of The Business Centre, Futures Park, Bacup, Lancashire, OL13 0BB (the "Council"); and
- (2) **B. AND E. BOYS LIMITED** whose company registration number is (3288386) and whose head office is at Todd Carr Road, Waterfoot, Rossendale, Lancashire. BB4 9SJ (the "Owner"); and
- (3) **NATIONAL WESTMINSTER BANK PLC** (whose company registration number is: 0929027) of 8th floor 1 Hardman Boulevard Manchester M3 3 AQ Depot Code – 049 (the "Mortgagee")

(Together: the "Parties")

WHEREAS:

- (A) The Council is the local planning authority for the purposes of the Act for the area within which the Site is situated.
- (B) The Owner is the registered proprietor with title absolute of the freehold interest in the Site which forms part of the land registered at the Land Registry under title number LA434583 **edged red on the Plan marked "A" attached hereto** save for a Registered Charge over the Site in favour of the Mortgagee.
- (C) The Owner by Application to the Council has applied for the Planning Permission for the Development on the Site. The Application was a full application and was given reference number 2009/641 by the Council, formerly noted as 2004/277.
- (D) The Council has resolved to grant Planning Permission pursuant to the Application subject to the making of this Agreement, without which the Planning Permission will not be granted.

(E) It is intended that Calico Homes Limited ("Calico") of Centenary Court, Croft Street, Burnley, BB11 2ED intends to buy the Site from the Owner.

NOW THIS DEED WITNESSETH as follows:

1 **Definitions**

1.1 In this Agreement unless the context otherwise requires the following words, expressions and phrases shall have the meanings hereby ascribed to them:

"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;

"Application"

the application for planning permission under the Council reference 2009/641 seeking Planning Permission on the Site for the erection of 11 houses, with the provision of a new access road and associated external works;

"Commencement"

the carrying out of a material operation as defined by section 56(4) of the Act (excluding any act of demolition remediation or clearance of the Site) in accordance with the Planning Permission and "Commencement" shall be construed accordingly;

"Development"

the development of the Site in accordance with the Planning Permission;

"The Pennine Lancashire Choice-Based Lettings Scheme"

A housing allocation scheme established between the Pennine Lancashire Authorities and more particularly described in an agreement between the Council and the Northern Housing Consortium Limited dated January 2009

"Plan"

the area edged red on the plan annexed hereto;

"Planning Permission"

the planning permission to be granted pursuant to the Application and the completion of this Agreement with conditions not materially different from those in the draft list of conditions attached hereto in Appendix A;

"Registered Provider"

means Calico Housing Limited which is a Registered Provider (previously a Registered Social Landlord) registered with the Tenants Service Authority pursuant to the Housing and Regeneration Act 2008 and who shall be registered with the Homes and Communities Agency (previously the Housing Corporation) and who shall allocate tenancies to occupants at the Site in accordance with the Pennine Lancashire Choice-Based Lettings Scheme unless otherwise agreed in writing with the Council;

"Site"

the land situated at land to the South West Side of Cowtoot Lane and Pendle Avenue, Bacup, Lancashire which is shown edged red on the Plan.

2 Operative provisions

- 2.1 This Agreement is entered into pursuant to Section 106 of the Act with the intention that the obligations contained herein are planning obligations for the purposes of that section in respect of the Site which may be enforced by the Council against the Owner or any person deriving title under them.
- 2.2 Save for the provisions of Clause 2.17 the provisions of this Agreement shall come into effect only on the Commencement of the Development.

- 2.3 The Owner shall be considered to be liable for the obligations and covenants contained herein until such time as the Owner disposes of its legal interest in the Site or any part thereof to the Registered Provider.
- 2.4 No person shall be liable for any breach of the covenants conditions or restrictions contained in this Agreement after it shall have parted with his interest in the Site or the relevant part of the Site in respect of which such breach occurs (but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest).
- 2.5 This Agreement shall cease to have effect if:
- 2.5.1 the Planning Permission shall be quashed revoked or otherwise withdrawn;
- 2.5.2 the Planning Permission shall expire prior to the Commencement of the Development;
- 2.5.3 the Council or any other competent authority shall at any time after the date hereof grant a new planning permission under which development of the Site is initiated for the purposes of Section 56 of the Act.
- 2.6 This Agreement is a local land charge and shall be registered as such on its completion by the Parties
- 2.7 For the purposes of the Contracts (Rights of Third Parties) Act 1999) nothing in this Agreement shall confer on any third party any right to enforce any benefit or any terms of this Agreement.
- 2.8 The Owner hereby covenants with the Council to perform the obligations specified in Schedule 1 of this Agreement so far as they shall derive legal title to the Site or any part thereof.

- 2.9 Wherever in this Agreement there is reference to the Council giving its approval to any matter or scheme that reference is on the basis that such approval shall not be unreasonably withheld or delayed.
- 2.10 The Mortgagee hereby consents to the completion of this Agreement and acknowledges that from the date hereof the Site shall be bound by the restrictions and obligations contained herein except that the Mortgagee shall not be bound by the provisions of this Agreement if it exercises its powers of sale or a receiver is appointed or its successors in title.
- 2.11 Where any dispute or difference arises between the Owner and the Council, or any such person or organisation deriving a legal title to the Site and the Council in respect of this Agreement either party to such dispute or difference shall be entitled to have the matter referred to the determination of an expert ("the Appointed Expert") having not less than 10 years' relevant experience in the field of the matter in dispute and being a member of the Royal Institution of Chartered Surveyors. The identity of such person in default of agreement being an appointment made on the application of either party at any time by or on behalf of the President for the time being of the Royal Institution of Chartered Surveyors provided in that in the absence of a direction by the Appointed Expert in accordance with this clause as to how costs of the reference to the Appointed Expert should be borne as between the parties to the dispute the parties shall bear their own costs and shall share equally the costs and charges of the Appointed Expert.
- 2.12 The Appointed Expert shall:

- 2.12.1 Afford to each of the parties to the dispute an opportunity to make representations to him/her in writing and if he/she so directs submissions upon one another's representations;
 - 2.12.2 Be entitled to stipulate the periods of time for the making of such representations as is reasonable in the circumstances;
 - 2.12.3 Be bound to have regard to such representations;
 - 2.12.4 Have the power of making directions as to the responsibility for the costs of his/her award (including both the costs of the relevant parties and the cost and charges of the Appointed Expert) to be met by any party behaving unreasonably;
 - 2.12.5 In the making of his/her award not to be liable save to the extent in law as provided in relation to discussions of an Expert;
 - 2.12.6 Make awards which are final and conclusive as between the parties to the dispute (except that such award shall not remove the parties' right of appeal on matters of law and any manifest material error);
and
 - 2.12.7 Be replaced by a fresh appointee in the event of his/her becoming at any time unable or unwilling for any reason to discharge his/her function such fresh appointee to be appointed in the manner prescribed in this clause.
- 2.13 Any notice or other communication given or made in accordance with this Agreement shall be in writing, shall be sent by recorded delivery, shall be deemed to have been properly served on the date following the date on which such notice or communication was posted, and shall unless otherwise notified to all the Parties in writing be sent to:

2.13.1 In the case of the Council:

The Director of Business (Monitoring Officer)

The Business Centre, Futures Park, Bacup, Lancashire, OL13 0BB

2.13.2 In the case of the Owner:

The Managing Director, B & E Boys Limited of Todd Carr Road,
Waterfoot, Rossendale BD4 9SJ

2.14 In this Agreement the expressions "the Owner" and "the Council" shall include their respective successors in title and assigns.

2.15 The Owner shall pay the Council's legal fees and disbursements incurred in relation to this Agreement on the date of this Agreement, being a sum of £750.00 and shall reimburse the Council any fees paid to H. M. Land Registry and other searches including company search fees in connection herewith.

2.16 In this Agreement unless the context otherwise requires words importing the neuter gender only include the masculine and feminine genders and the masculine shall include the feminine and vice versa and words importing the singular number only include the plural number.

2.17 The Council shall issue the Planning Permission immediately that this Agreement is signed with conditions that are not materially different to those that are attached at Appendix A (but no further or other conditions)

2.18 Clauses 3, 4 and 6 of Schedule 1 shall not bind:

- (a) any mortgagee of the site or receiver appointed thereby or any successors in title thereto; or
- (b) any mortgagee of a house constructed on the site or receiver appointed thereby or successors in title thereto; and

(c) any person or persons acquiring one of the houses on the site pursuant to a Right to Buy or Right to Acquire or any person or persons acquiring a 100% interest in a house pursuant to a shared ownership Lease.

2.19 Where the Registered Provider receives payment from a tenant under a right to acquire or right to buy or from share ownership sales it shall after repayment of any mortgage ensure that such balance of funds are recycled and are used to provide an affordable property or properties within the Rossendale area.

2.20 Where a house has been purchased by a tenant under right to acquire or right to buy and the said former tenant wishes to sell the house the Registered Provider shall wherever possible, but shall not be compelled to do so, purchase back the house.

Schedule 1

Owner's obligations

The Owner covenants with the Council as follows:

- 1 To notify the Council in writing of the Commencement of the Development, such notice to be served on the Council within 7 days of the Commencement of the Development.
- 2 To build and complete the Development in accordance with the Planning Permission.
- 3 To ensure that the Development and each of the houses in the Development are constructed in accordance with the Planning Permission and are thereafter retained by the Owner or another Registered Provider.
- 4 Not to dispose of the legal interest in the Site or any part or parts thereof unless to a Registered Provider SAVE THAT this obligation shall not apply to the grant of any lease or transfer of the freehold in any part of the Site pursuant to the exercise of any statutory rights or to the grant of any tenancies by the Registered Provider in the course of its business as a provider of housing.
- 5 To give the Council immediate written notice of any changes in ownership of any of its interests in the Site, such notice to give full details of the transferee's full name and registered office together with the area of the Site transferred by reference to a plan.
6. Once the Owner is a Registered Provider it shall nominate tenants to occupy the houses from the Pennine Lancashire Choice Based Lettings Scheme or where a tenant is not nominated from the list a tenant from the Registered Providers own list

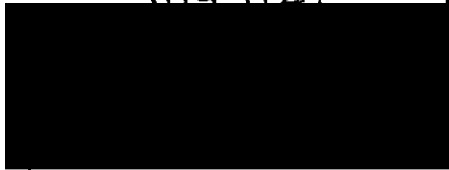
IN WITNESS whereof the Parties have executed this Agreement the day and year first before written.

THE COMMON SEAL of **ROSSENDALE**)
BOROUGH COUNCIL was hereunto affixed)
in the presence of:)



Mayor/Chief Executive/Director of Business

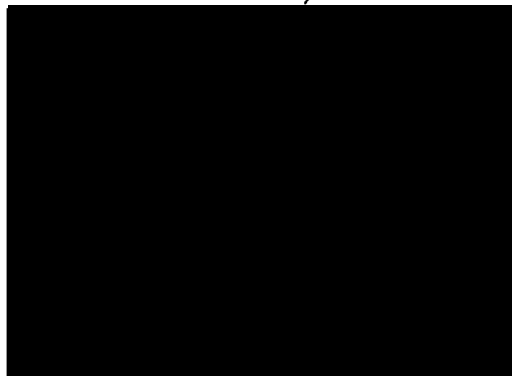
No. IN SEAL REGISTER
114912



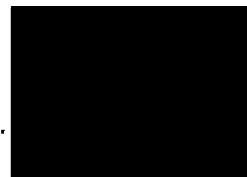
EXECUTED as a Deed
by **B. AND E. BOYS LIMITED**
acting by:)

Director

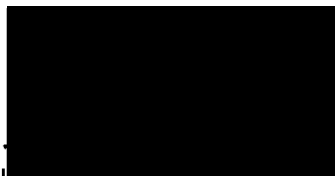
Director/Secretary

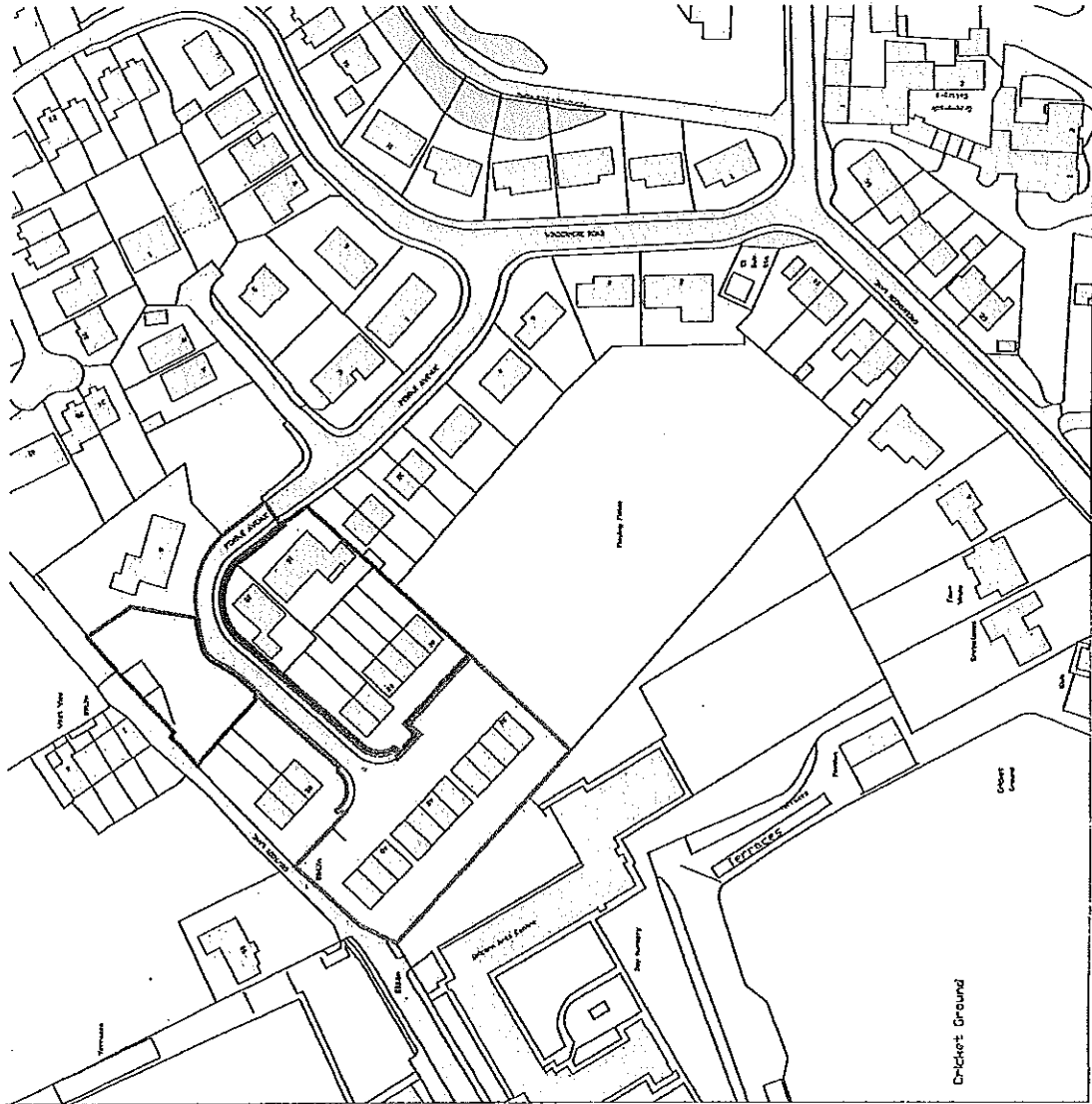
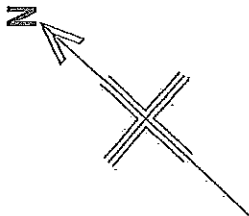


SIGNED and **DELIVERED** as a Deed
For and on behalf of
THE NATIONAL WESTMINSTER BANK PLC
By a duly authorised Attorney
In the presence of:



.....
Witness Signature.





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- NOTES:**
1. UNLESS OTHERWISE SPECIFIED, DIMENSIONS ARE TO BE TAKEN FROM THE DRAWING TO THE INDICATED POINT.
 2. THIS DRAWING IS TO BE READ IN CONJUNCTION WITH ALL OTHER RELEVANT DRAWINGS. ANY DISCREPANCIES, ERRORS OR OMISSIONS TO BE BROUGHT TO THE ATTENTION OF TAYLOR YOUNG.
 3. ALL DIMENSIONS TO BE CHECKED BEFORE COMMENCEMENT.
 4. THIS DRAWING IS THE PROPERTY OF TAYLOR YOUNG AND MUST NOT BE COPIED OR REPRODUCED EITHER IN WHOLE OR IN PART WITHOUT WRITTEN PERMISSION.
- Drawing originated by: **hobby** title: **22/12/08**
 prepared by: **crum** date: **08/01/09**
 REV: **A** 7/21/2010
 Site boundary and edge amendments by: **Planners comments**



PLANNING

Pendle Avenue
Bucup

Site Location Plan

Scale: 1:1500 A3
Reviewed by: **WDC**

job: **4596** drawing: **1.00** rev: **A**

taylor young | **ty**

architecture
 graphics
 healthcare planning
 interior design
 landscape architecture
 regeneration
 town planning
 urban design
 3D Visualisation

Appendix A

Rossendale Borough Council

Town & Country Planning Act 1990 Planning Permission

Applicants Name: B & E Boys Ltd

Notice Recipient : Taylor Young Ltd
Chadsworth House
Wilmslow Road
Handforth
Cheshire
SK9 3HP

Part 1 - Particulars of Application:

Date Received: 05/01/2010 Application Number: 2009/0641

Proposed Works : Revised plot layout & substitution of house types for 11 plots

Location : Pendle Avenue Bacup Lancashire

Part 2 – Particulars of Decision

Rossendale Borough Council hereby give notice that planning permission has been granted for the execution of works referred to in Part 1 hereof in accordance with the application and plans submitted subject to the following conditions and reasons:

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason for Condition:

Required by Section 51 of the Planning and Compulsory Purchase 2004 Act.

2. The development shall be undertaken in full accordance with the drawings listed below unless otherwise required by the conditions below or first agreed in writing by the Local Planning Authority .

Reason for Condition:

3. The facing materials to be used for the construction of the dwellings hereby permitted shall match in colour, form and texture those of the houses constructed under Planning Permission 2004/277.

Reason for Condition:

In the interests of visual amenity, in accordance with Policy EM1 of the Regional Spatial Strategy and Policy DC1 of the Rossendale District Local Plan.

4. Prior to first use of any house hereby permitted the car parking facility to serve it shall be provided with a hard and permeable surface, and this area shall thereafter be kept freely available for use as such.

Reason for Condition:

In the interests of highway safety and neighbour amenity, in accordance with Policy RT2 / RT4 of the Regional Spatial Strategy and Policy DC1 of the Rossendale District Local Plan.

5. Notwithstanding the details shown on the approved drawings, before the development commences full details shall be submitted to and approved in writing by the Local Planning Authority in respect of :
 - i. The proposed bin-stores and cycle-stores;
 - ii. The proposed boundary treatments; &
 - iii. The proposed scheme of hard and soft-landscaping.

Reason for Condition :

In the interests of visual and neighbor amenity and highway safety, in accordance with Policies RT2 / RT4 / EM1 of the Regional Spatial Strategy and Policy DC1 of the Rossendale District Local Plan.

6. All bin-stores/cycle-stores/hard-surfaced areas/walls/fences/gates forming part of the approved details in respect of the preceding condition shall be completed prior to first occupation any of the dwellings hereby permitted, unless otherwise first agreed in writing with the Local Planning Authority. All new planting, seeding or turfing forming part of the approved details shall be carried out in the first planting and seeding seasons following first occupation of any of the dwellings hereby permitted, unless otherwise first agreed in writing with the Local Planning Authority. Any trees or plants forming part of the approved details which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any

variation.

Reason for Condition:

In the interests of visual and neighbor amenity and highway safety, in accordance with Policies RT2 / RT4 / EM1 of the Regional Spatial Strategy and Policy DC1 of the Rossendale District Local Plan.

7. Any construction works associated with the development hereby approved shall not take place except between the hours of 7:00 am and 7:00 pm Monday to Friday and 8:00 am and 1:00 pm on Saturdays. No construction shall take place on Sundays, Good Friday, Christmas Day or Bank Holidays.

Reason for Condition: To safeguard the amenities of neighbours, in accordance with Policy DC1 of the Rossendale District Local Plan.

Summary of Reasons for Approval

The proposed development is appropriate in principle having regard to extant Planning Permission 2004/277 and, subject to the provisions of the accompanying S.106 Obligation and the Conditions, would not detract to an unacceptable extent from visual and neighbour amenity or highway safety. It is considered that the proposed development is in accordance with PPS1 / PPS3 / PPG13 / PPG15, Policies DP1-9 / L4 / L5, RT2 / RT4 / EM1 of the Regional Spatial Strategy, and Policies DS1 / DC1 / DC4 of the Rossendale District Local Plan.

Summary of the policies and proposals in the Development Plan(s) which are relevant to the decision

Rossendale District Local Plan

DC.1 Development Criteria
DC.4 Materials
DS.1 Urban Boundary

Regional Spatial Strategy (adopted 2008)

DP1-9 Spatial Principles
L 4 Regional Housing Provision
L 5 Affording Housing
RT2 Managing Travel Demand
RT4 Management of the Highway Network
EM1 Environmental Assets

Date: 19 February 2010

Development Control
Town Centre Offices
Rawtenstall, BB4 7LZ

Neil Birtles
Principal Planning Officer

DRAFT

Notes

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

Appeal

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, he or she may appeal to the Secretary of State in accordance with sections 78 and 79 of the Town and Country Planning Act 1990 within six months of the date of this notice. (Appeals must be made on a form which is obtainable from The Planning Inspectorate, Customer Support Unit, Temple Quay House, 2 The Square, Temple Quay, Bristol BS1 6PN or from the web site www.planning-inspectorate.gov.uk). The Secretary of State has the power to allow a longer period for the giving of a notice of appeal but he will not normally be prepared to exercise this power unless there are special circumstances which excuse the delay in giving notice of appeal. The Secretary of State is not required to entertain an appeal if it appears to him that permission for the proposed development could not have been so granted otherwise than subject to the conditions imposed by the Council. Appeals that are pursued unreasonably may be the subject of an award of costs in accordance with the provision of Circular 8/93.

Purchase Notices

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 he can neither put the land to a reasonably beneficial use in its existing state nor can he 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 provision of Part VI of the Town and Country Planning Act 1990.