

DATED

10th April

2015

GREEN VALE HOMES LIMITED (1)

And

ROSSENDALE BOROUGH COUNCIL (3)

PLANNING OBLIGATION BY AGREEMENT

relating to the land at

Burnley Road Rawtenstall

THIS AGREEMENT is dated

10th April

2015

BETWEEN:

- (1) **ROSSENDALE BOROUGH COUNCIL** of the Business Centre/Futures Park, Bacup OL13 0BB (the "Council")
- (2) **GREEN VALE HOMES LIMITED** (Industrial and Provident Society registered number 30035R) whose registered office is Bull Green House, Bull Green, Halifax, HX1 2EB ("the Developer")

BACKGROUND

- (A) The Developer has submitted the Application to the Council for permission to develop/use the Site for the purposes and in the manner described in the Application
- (B) The Developer is the freehold owner of the Site
- (C) The Developer intends to develop the Site in accordance with the Application
- (E) For the purposes of the Town and Country Planning Act 1990 (as amended) (referred to as "the 1990 Act") the Council is the Local Planning Authority for the area within which the Site is situated

NOW IT IS AGREED as follows:-

1 DEFINITIONS

1.1 In this Agreement, unless the context otherwise requires:

'Agreement' means this planning obligation by agreement and any modification thereof approved by the Council made pursuant to the power of section 106 of the 1990 Act

'Application' means the application for full planning permission for the Development submitted to the Council and bearing the reference number 2014/0232

'Development' means the construction of a two storey building comprising twelve, one bedroom flats and four, two bedroom flats at the Site pursuant to the Permission

'Parties' means the parties to this Agreement and 'Party' shall be construed accordingly

'Permission' means full planning permission under planning reference 2014/0232 together with any modification made thereto with the consent of the parties to this Agreement

'Plan' means the plan attached to this Agreement

'Site' means the land the freehold land shown for the purposes of identification only edged red on the Plan being land at Burnley Road Rawtenstall registered at the Land Registry under title number LA847107

'Traffic Commuted Sum' means a non-refundable sum of one thousand five hundred pounds (£1,500.00) to cover the cost of a traffic regulation order relating to the Development

'Units' means the residential units comprised in the Development

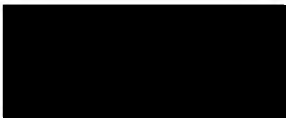
'Waste Bin Commuted Sum' means the sum of one thousand six hundred pounds (£1,600.00) to cover the cost of the provision of waste bins for the Units

'1990 Act' means Town and Country Planning Act 1990 (as amended)

- 1.2 Where in this Agreement reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Agreement
- 1.3 Words importing the singular meaning where the context so admits include the plural meaning and vice versa
- 1.4 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
- 1.5 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and severally unless there is an express provision otherwise
- 1.6 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it
- 1.7 References to any party to this Agreement shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the Council the successors to its statutory functions



— Site edged red



Rev	Date	Int	Description
A	05/05/14		Updated generally for planning



Burnley Road
Location Plan

Job No: **2482**
Scale @ A4: 1 : 1250

Green Vale Homes

Drawn By: DS Checked By: VJJ Date: 17/02/14 Drawing No: **P100** Rev: **A**

DO NOT SCALE FROM THIS DRAWING
ALL DIMENSIONS MUST BE CHECKED ON SITE BY CONTRACTOR PRIOR TO CONSTRUCTION

Elizabeth House, 486 Didsbury Road, Heaton Mersey, Stockport, SK4 3BS
t 0161 443 1221 f 0161 442 1672 e info@bernardtaylor.co.uk
www.bernardtaylor.co.uk

- 1.8 The headings and contents list are for reference only and shall not affect construction

2 LEGAL EFFECT

- 2.1 This Agreement is a planning obligation for the purposes of the section 106 of the 1990 Act, section 2 of the Local Government Act 2000 and section 111 of The Local Government Act 1972, to the intent that it shall bind the Developer, the Developer and their successors in title to each and every part of the Site and their assigns as provided in those sections
- 2.2 This Agreement shall be enforceable by the Council
- 2.3 No person or company shall be liable for any breach of this Agreement unless he or it holds an interest in the part of the Site in respect of which such breach occurs or held such an interest at the date of the breach
- 2.4 This Agreement shall take effect on the date of the implementation of the Permission by the carrying out of a material operation as defined in the 1990 Act S56(4)
- 2.5 For the purpose of determining whether or not a material operation has been carried out there shall be disregarded operations consisting of site clearance, demolition work, site preparation, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, erection of any temporary means of enclosure and the temporary display of site notices or advertisements
- 2.6 If the Permission expires within the meaning of sections 91, 92 or 93 of the 1990 Act or is revoked or otherwise withdrawn or modified by any statutory procedure without the consent of the Developer the Developer or their successors in title this Agreement shall cease to have effect
- 2.7 The Developer shall pay the Council's costs of £500.00 for the preparation and completion of this Agreement

3 DEVELOPERS COVENANTS

The Developer covenants with the Council as follows:

- 3.1 The Development permitted by the Permission shall not be started by the undertaking of a material operation as defined in Section 56(4)(a-d) of the Town and Country Planning Act 1990 until this Agreement has been executed by all parties and lodged with the Council

- 3.2 Before the commencement of Development the Developer shall pay to the Council the Traffic Commuted Sum and the Waste Bin Commuted Sum
- 3.3 The payment the Traffic Commuted Sum and the Waste Bin Commuted Sum shall not constitute a material operation within the meaning of the Town and Country Planning Act 1990 s56 (4)
- 3.4 Upon commencement of the Development in accordance with the Permission, the Council may utilise the Traffic Commuted Sum and the Waste Bin Commuted Sum for the purpose for which the monies have been paid as defined
- 3.5 If the Permission ceases for any reason before commencement of the Development, or if Permission shall be granted subsequently and implemented with the consent of the Council for proposals incompatible with the Development or the terms of this Agreement, or by agreement between the parties, the Council shall repay the Waste Bin Commuted Sum to the Developer
- 3.6 Any residue of the Traffic Commuted Sum and the Waste Bin Commuted Sum will be repaid after a period of five (5) years if the provisions provided for in this Agreement have not been implemented by the Council by then

4 DURATION

- 4.1 This Agreement shall cease to have effect, in so far only as it has not already been complied with, if the Permission is quashed, revoked or otherwise withdrawn or, without the consent of the Developer, it is modified by any statutory procedure or expires before the commencement of Development
- 4.2 Nothing in this Agreement shall prevent compliance with any obligation pursuant to it before that obligation comes into effect under this clause 4 and no such early compliance shall amount to a waiver of the effect of this clause 4
- 4.3 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 Permission) granted (whether or not on appeal) after the date of this Agreement

5 NON-ENFORCEMENT

The obligations contained in this Agreement shall not be binding upon or enforceable against:

- 5.1 any statutory undertaker or other person who acquires any part of the Site or any interest in it for the purposes of the supply of electricity, gas, water,

drainage telecommunication services or public transport services

- 5.2 the Developer after he has disposed of his interest in the Site, or in the event of a disposal of part, in the part disposed of, other than disposal of an interest in the nature of an easement or the benefit of a restriction or similar, but not so as to release the Developer from any antecedent breach, non-performance or non-observance of his obligations
- 5.3 owner-occupiers or tenants of Units constructed pursuant to the Permission nor against those deriving title from such owner-occupiers or tenants
- 5.4 any mortgagee of the Developer or any receiver appointed by such a mortgagee, or any person deriving title through such a mortgagee or receiver

6 NOTICES

- 6.1 Any notice or other written communication to be served upon a Party or given by one Party to any other under the terms of this Agreement shall be deemed to have been validly served or given if delivered by hand or sent by recorded delivery post to the Party upon whom it is to be served or to whom it is to be given or as otherwise notified for the purpose by notice in writing
- 6.2 The address for any notice or other written communication shall be within the United Kingdom
- 6.3 A notice or communication shall be served or given:
 - 6.3.1 on the Developer at its registered office from time to or such other address as shall be notified in writing to the Council; and
 - 6.3.2 on the Council at the address noted in this Agreement or such other address as shall be notified in writing to the Developer from time to time
- 6.4 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

7 LOCAL LAND CHARGE

- 7.1 This Agreement shall be registered as a local land charge by the Council, and the Council shall immediately after the date of this Agreement register it as such
- 7.2 Following the performance and satisfaction of all the obligations contained in this Agreement, the Council shall immediately effect the cancellation of all entries made in the Register of Local Land Charges in respect of this

Agreement

8 JURISDICTION AND LEGAL EFFECT

- 8.1 This Agreement shall be governed by and interpreted in accordance with the law of England and Wales
- 8.2 In so far as any clause or clauses of this Agreement are found (for whatever reason) to be invalid, illegal or unenforceable, that invalidity, illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Agreement
- 8.3 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
- 8.4 The provisions of this Agreement (other than this clause 8.4 which shall be effective in any event) shall be of no effect until this Agreement has been dated

9 DISPUTES

- 9.1 In the event of any dispute or difference arising between the parties to this Agreement in respect of any matter contained in this Agreement such dispute or difference shall be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional
- 9.2 body chiefly relevant in England with such matters as may be in dispute and such person shall act as an expert whose decision shall be final and binding on the parties in the absence of manifest error and any costs shall be payable by the parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the parties in equal shares
- 9.3 In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to Clause 9.1 or as to the appropriateness of the professional body then such question may be referred by either part to the president for the time being of the Law Society for him to appoint a solicitor to determine the dispute such solicitor acting as an expert and his decision shall be final and binding on all parties in the absence of manifest error and his costs shall be payable by the parties to the dispute in such proportion as he shall

determine and failing such determination shall be borne by the parties in equal shares

9.4 Any expert howsoever appointed shall be subject to the express requirement that a decision was reached and communicated to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty-eight working days after the conclusion of any hearing that takes place or twenty-eight working days after he has received any file or written representation

9.5 The expert shall be required to give notice to each of the said parties requiring them to submit to him within ten working days of notification of his appointment written submissions and supporting material and the other party will be entitled to make a counter written submission within a further ten working days

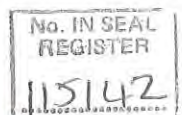
10 THIRD PARTY RIGHTS

The Contracts (Rights of Third Parties) Act 1999 does not apply to this Agreement and this Agreement does not create any right enforceable by any person not a party to it

11 CHARITABLE STATEMENT

The Site is to be held by Green Vale Homes Limited an exempt charity

IN WITNESS whereof the parties have executed this planning obligation by Agreement as a deed on the date first written above.



**THE COMMON SEAL of
ROSSENDALE BOROUGH COUNCIL**

was hereunto affixed in the presence of:-



Authorised Officer



EXECUTED as a DEED by affixing
THE COMMON SEAL of
GREEN VALE HOMES LIMITED

in the presence of

Authorised signatory

Authorised signatory/secretary

