

Rossendale Borough Council

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

TO: BRIAN SHEASBY
KEITH BELL
PHIL SEDDON
VINCENT HINDLEY – PLEASE REGISTER AS A LOCAL LAND CHARGE

FROM: LINDA FISHER

LEGAL FILE NO: Z.12/245

The following has been completed:

Planning Ref: APP/2005/519

Proposal: Retention/conversion of mill and buildings to create 19 apartments and
erection of 20 dwellings

Completion Date (as on Deed) 19th January 2007 – Unilateral Undertaking

Parties Hurstwood Development Limited

Terms _____

Receipt of money 7 days prior to implementation of development

Request for payments _____

Details Prior to completion of 37 houses fence off lodge and recreation area for use
by public/picnic site/fishing maintained by owner

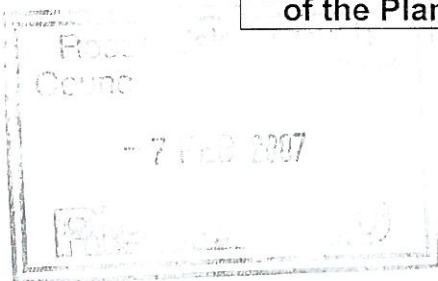
Others _____

Commuted Sum £39,000 – Dial a Ride Service Amount _____

£12,314 – Improvement to Community Hall, Cowpe

£4,000 – Speed cameras

*** 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/2005/519

Site Details

Date Legal Agreement signed

19th January 2007

Confirmation that planning permission can be issued and legal agreement checked

Name: Linda Fisher

Date: 29th January 2007

Signature: 

Dated this 19th day of January 2007

(1) HURSTWOOD DEVELOPMENTS LIMITED

Unilateral Undertaking

Pursuant to Section 106 of the
Town and Country Planning Act 1990
relating to land known as
Kearns Mill, Cowpe Road, Cowpe, Waterfoot, Rosendale

THIS DEED OF UNILATERAL UNDERTAKING IS GIVEN on the 19th day of
January 2007

THIS DEED OF UNILATERAL UNDERTAKING IS UNDERTAKEN BY:

HURSTWOOD DEVELOPMENTS LIMITED (Company registration number
1147083 of Link 665 Business Centre, A56, Rossendale, Lancashire, BB4 5HU
(hereinafter called "the Owner")

WHEREAS

- 1.1 The Owner is registered at HM Land Registry as the freehold proprietor of the Land described in the first Schedule under Title Number **LA958613**.
- 1.2 Rossendale Borough Council ("the Council") is the Local Planning Authority for the purposes of this Deed for the area within which the Property is situated and by whom the obligations contained in this Deed are enforceable.
- 1.3 The Owner has applied to the Council for permission under Council reference 2005/519 to develop part of the Land in the manner and for the uses set out in the Planning Application and in the plans specifications and particulars deposited with the Council and forming part of the Planning Application more particularly set out in the Second Schedule.
- 1.4 The Council is minded to grant planning permission for the Development in accordance with the Planning Application subject to the making of this Undertaking without which planning permission for the Development would not be granted.
- 1.5 The Owner is willing to enter into this undertaking in order that in the event that the Council grants the Planning Permission the obligations of the Owner

as set out in this Undertaking shall be secured as planning obligations for the purposes of Section 106 of the Act.

- 1.6 The Owner has agreed that seven days before implementing the Planning Permission it will pay all Commuted Sums to the Council in accordance with this Undertaking

NOW THIS DEED WITNESSETH as follows:-

1. **IN THIS DEED** (including the Recitals) where the context so requires or admits the following expressions shall have the following meanings:-

- | | |
|----------------------------------|--|
| 1.1.1 "the Act" | The Town and Country Planning Act 1990 as amended by Section 12 of the Planning and Compensation Act 1991 |
| 1.1.2 "the Planning Application" | An application numbered 2005/519 for planning permission for the Development submitted by the Owner to the Council |
| 1.1.3 "the Commuted Sums" | the sum of £39,000 to be expended on the provision of a Dial- a-Ride bus service for the residents of Cowpe Village. The sum of £15,000 to be expended on signage and line marking to Cowpe Road. The sum of £12,314 to be expended on the improvement of the Community Hall at Cowpe. The sum of £4,000 to be expended on the provision of a portable activated speed camera and associated traffic calming measures on Cowpe Road. |

- 1.1.4 "the Development" Planning Application reference 2005/519 for part demolition of Kearns Mill, retention and conversion of other mill buildings to create 19 apartments and erection of 20 dwellings at Kearns Mill, Cowpe Road, Cowpe, Waterfoot, Rossendale.
- 1.1.5 "implement" Carry(ing) out a material operation as defined in
 "implementing" Section 56 of the Act
- 1.1.6 "the Land" All that land described in the First Schedule and shown for identification purposes only edged red on the attached plan
- 1.1.7 "the Planning Permission" Planning permission for the Development reference in the form of the annexed draft
- 1.2. The expressions "the Council" and "the Owner" shall include their respective successors in title and assigns
- 1.3 Words importing the singular number only shall include the plural number and vice versa and words importing any particular gender shall include masculine feminine and neuter genders
- 1.4 References in this agreement to any clause or sub-clause or Appendix without further designation shall be a reference to the clause or sub-clause of or Appendix to the Agreement so numbered
2. **THIS UNDERTAKING** is made in pursuance of Section 106 of the Act to the intent that it shall bind all interests in the Land into whosoever hands the same may come and the Owner and his successors in title and assigns and all persons claiming under or through them

3. IT IS HEREBY AGREED AND DECLARED as follows:-

- 3.1 the covenants in this Agreement are planning obligations for the purposes of Section 106 of the Act and are enforceable by the Council
- 3.2 without prejudice to liability for any subsisting breach of covenant prior to parting with such interest no party shall be liable for breach of a covenant contained in this Agreement after having parted with its interest in the Land or in the part in respect of which such breach occurs.
- 3.3 all notices served pursuant to this Agreement shall be in writing and shall be deemed duly served if delivered or sent by the recorded delivery service in the following manner:-
 - 3.3.1 in the case of a notice to be served on the Council addressed to its Chief Executive at the above address
 - 3.3.2 in the case of a notice to be served on the Owner to the Owner at the above address
- 3.4 if the Planning Permission is not granted or if it is revoked or the Planning Permission expires because it is not implemented this Agreement shall be annulled and of no effect and the Council shall immediately remove from its local register of local land charges any entry relating to this Agreement
- 3.5 unless expressly stated nothing in this Agreement will create any rights pursuant to the Contracts (Rights of Third Parties) Act 1999 in favour of any person other than the parties hereto

3.6 If the Planning Permission shall expire before the Development is commenced as defined above or shall at any time be revoked this Agreement shall forthwith determine and cease to have effect.

3.7 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Property in accordance with a planning permission (other than one relating to the Development as specified in the Planning Application) granted (whether or not on appeal) after the date of this Agreement.

3.8 This Agreement is a local land charge and shall be registered as such.

4. THE OWNER for itself and its successors in title and assigns hereby covenants with the Council as follows:-

4.1 To comply with the covenants contained within the second schedule

4.2 to give notice in writing to the Council not less than seven days before implementing the Planning Permission and upon giving the said notice to pay the Commuted Sums increased with inflation in accordance with Clause 4.4 of this Agreement

4.3 in the event of late payment of the Commuted Sums interest will be paid on any sum outstanding at a rate of 3% per annum above the base rate of the National Westminster Bank Plc and accrue from the date payment should have been made to the Council to the date of payment thereof to the Council

4.4 the Commuted Sums shall be uplifted by the amount which bears the same proportion to the Commuted Sums as the amount by which the all items Figure of the Index of Retail Prices published by the Department

for Employment or any successor Ministry or Department for the month at the date of payment exceeds the Index Figure of the said Index at the date of this Agreement

4.5 the Owner shall on the execution hereof pay to the Council its reasonable legal costs in the sum of £200 properly incurred in the preparation of this Agreement

5. **DISPUTE RESOLUTION**

Except as to matters of law and subject to the express provisions of this Agreement to the contrary any dispute or difference arising between the parties as to any of the provisions of this Agreement and/or their respective rights duties or obligations or as to any other matter or thing in any way arising out of or in connection with the subject matter of this Agreement shall forthwith be referred by the parties or any of them for determination by an independent person ("the Expert") to be agreed upon between the parties and failing such agreement within ten (10) Working Days of any party calling upon the others to agree to be appointed on the application of the parties or any of them by the President for the time being of The Royal Institution of Chartered Surveyors or any successor Institute ("the President")

The Expert shall act as an expert and make his determination within twenty (20) Working Days from the date of his appointment such determination to be made in writing giving full reasons therefore and shall be binding upon the parties

If the Expert shall die delay or become unwilling or incapable of acting or if for any reason the President shall in his absolute discretion think fit he may in

writing discharge the Expert and appoint another in his place

It is hereby agreed and declared that:-

- (a) the Expert shall afford to the parties the opportunity to make representations in writing and consider any written representations made by or on behalf of the parties hereto which are received by him within ten (10) Working Days after the parties have been afforded such an opportunity and each party shall be entitled to receive a copy of any such written representations made by or on behalf of the other parties and within five (5) Working Days of such receipt to make written counter-representations
- (b) the Expert shall be entitled to call for such independent expert advice on such matters as he shall think fit
- (c) the Expert shall have an unfettered discretion to determine the reference to him
- (d) the fees and expenses of the Expert including the cost of his appointment shall be borne equally between the parties (and if any party shall pay the Expert's fees and expenses it shall be entitled to recover one half from the other) unless the Expert shall direct otherwise and he shall have power so to direct if he considers it reasonable to do so having had regard to the conduct of the parties during the course of the dispute in question

FIRST SCHEDULE

Kearns Mill (also known as Cowpe Mills) Cowpe Road, Cowpe, Waterfoot, Rossendale, Lancashire, BB4 7EH, shown edged red on the attached plan and forming part of Title Number LA958613.

SECOND SCHEDULE

The Owner's Obligations

- A. The Owner covenants with the Council that seven days prior to commencement of the Development the Owner shall pay to the Council:-
1. the sum of £39,000 to be expended on the provision of A Dial-a-Ride bus service for the residents of Cowpe village; and
 2. the sum of £15,000 to be expended on signage and line markings to Cowpe Road; and
 3. the sum of £12,314 to be expended on the improvement of the Community Hall at Cowpe; and
 4. the sum of £4,000 to be expended on the provision of a portable activated speed camera and associated traffic calming measure on Cowpe Road
- B. The Owner covenants with the Council that prior to the completion of no more than 37 houses within the Development the Owner shall fence off the "Lodge and Recreation Area" which is situated on the Property and shown hatched blue on the Plan A and thereafter the Lodge and Recreation Area shall be open to the public at all reasonable times but subject to such statutory restrictions and requirements as apply from time to time to areas used for such purposes (unless otherwise agreed in writing by the Council) at no cost as a picnic site and for recreational use by the public the lodge to be available to the public for fishing at no cost.



LA958613

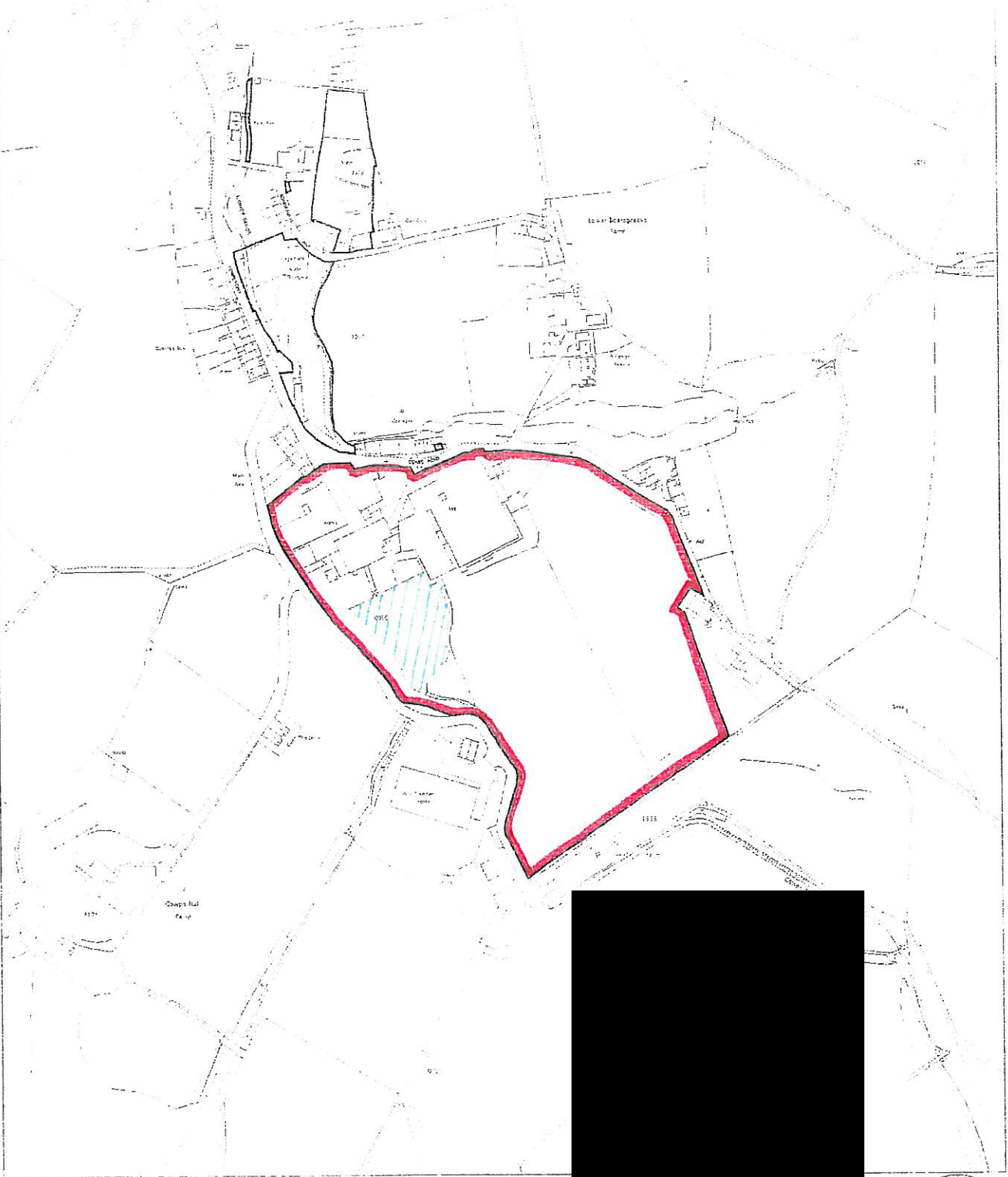
LANCASHIRE - ROSSENDALE



ORDNANCE SURVEY MAP REFERENCE SD3420NW

SCALE 1:2500

PLAN A

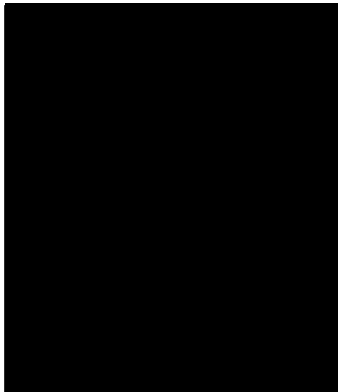


This title is dealt with by Land Registry, Lancashire Office.

This is a print of the view of the title plan claimed from HM Land Registry showing the state of the title plan on 16/02/2004. It may not be to the scale shown on the title plan.

C. The Lodge and Recreation Area shall at all times be maintained by the Owner
IN WITNESS whereof this document has been executed as a Deed by the respective
parties hereto in the appropriate manner with the intention of such document being
Delivered on the part of each of them a Deed on (but not before) the day and year first
before written

EXECUTED AS A DEED BY)
HURSTWOOD DEVELOPMENTS LIMITED)
acting by:-)



Director/Company Secretary

~~Director/Company Secretary~~