

DATED the 28th day of November 2011

(1) ROSSENDALE BOROUGH COUNCIL

(2) ORAMA MILL INVESTMENT LLP

(3) PERSIMMON HOMES LIMITED

PLANNING AGREEMENT

Under Section 106 of the Town and Country Planning Act 1990
in respect of land at Orama Mill, Whitworth, Rossendale

Legal Services
Rossendale Borough Council
The Business Centre
Futures Park
Bacup
OL13 0BB

THIS AGREEMENT is made the 28th day of November Two thousand and Eleven

BETWEEN:

- (1) **ROSSENDALE BOROUGH COUNCIL** of The Business Centre Futures Park Bacup Lancashire OL13 0BB ("the Council"); and
- (2) **ORAMA MILL INVESTMENT LLP** whose LLP registration number is OC331401 and whose registered office address is Stanmore House 64-68 Blackburn Street Radcliffe Manchester M26 7JS ("the Mortgagee"); and
- (3) **PERSIMMON HOMES LIMITED** whose company registration number is 04108747 and whose registered office address is Persimmon House Fulford York YO19 4FE ("the Owner").

1. DEFINITIONS.

In this Deed the following words and phrases shall where the context so admits having the following meanings:

- 1.1 **"the Act"** means the Town and Country Planning Act 1990 (as amended)
- 1.2 **"Affordable Price"** means a sum not exceeding 70% of the Open Market Value of the Affordable Unit.
- 1.3 **"Affordable Units"** means the affordable housing to be provided on the Site which shall comprise of not less than 12 dwellings being a mix of 8no two bedroomed dwellings and 4no three bedroomed/five person dwellings and reference to **"Affordable Unit"** shall be construed accordingly
- 1.4 **"the Application"** means the application for planning permission for the demolition of existing works and erection of 85 dwellings on the Site (reference number 2010/667)

- 1.5 **“Close Family Association”** and **“Close Family”** both mean a spouse, parent, brother, sister, child, grandparent or grandchild who is resident in the relevant area and who has been resident there for a minimum of five continuous years
- 1.6 **“Commence”** means the carrying out of a material operation as defined by section 56(4) of the Act (**Save That** the term *“material operation”* shall not include operations in connection with any work of or associated with demolition remediation site clearance environmental investigation site and soil surveys erection of contractors work compound erection of site office erection of fencing to site boundary laying of any service media) on the Site in accordance with the Planning Permission and reference to **“Commencement”** and **“Commencement of the Development”** shall be construed accordingly
- 1.7 **“the Development”** means the residential development of the Site in accordance with the Planning Permission
- 1.8 **“Dwelling”** means a dwelling house built in accordance with the Planning Permission
- 1.9 **“Employment”** means that a person is permanently employed or has accepted in writing a firm offer of permanent employment or is in fulltime self employment within the relevant area
- 1.10 **“Facit & Shawforth”** means the area of Facit and Shawforth shown on Plan 2 attached.
- 1.11 **“Greensclough”** means the area of Greensclough shown on Plan 4 attached
- 1.12 **“Healey and Whitworth”** means the area of Healey and Whitworth shown on Plan 3 attached

- 1.13 **"Index Linked"** means such increase or decrease to sums payable to the Council (under this Agreement) on an annual basis or pro rata per diem from the date of this Agreement until such time that payment of any sum in this Agreement is made such index linking to be equivalent to any inflationary increase or decrease in such sums in proportion to the increase or decrease taking as the measure of inflation the Retail Price Index 1.12
- 1.14 **"Interest Rate"** means the base lending rate for the time being of the Bank of England compounded annually
- 1.15 **"Irwell"** means the area of Irwell shown edged in red on Plan 5 attached
- 1.16 **"Main Residence"** means a dwelling occupied by the same person for more than six months of every year.
- 1.17 **"Occupation"** means occupation for the purposes permitted by the Planning Permission but not including occupation by persons engaged in construction fitting out and decoration
- 1.18 **"Open Market Value"** means the market value of the relevant Affordable Unit assessed in accordance with the Appraisal and Valuation Manual of the Royal Institute of Chartered Surveyors (the Red Book) current for the time being to be agreed in writing between the Owner and the Council prior to the offer of the Affordable Unit to a Qualifying Person
- 1.19 **"Open Market Units"** means the dwellings comprised in the developments other than the Affordable Units and reference to **"Open Market Unit"** shall be construed accordingly
- 1.20 **"Planning Permission"** means a planning permission to be granted pursuant to the Application (reference number 2010/667)

- 1.21 **“the Public Open Space Contribution”** means the sum of £116,110 (one hundred and sixteen thousand and one hundred and ten pounds) such sum to be Index Linked and to be expended towards the provision, modernisation or maintenance of local recreational/play facilities, nature conservation facilities or pedestrian/cycle links in the vicinity of the Site to be paid as outlined in the First Schedule
- 1.22 **“Qualifying Criteria”** means the criteria contained the Third Schedule of this Agreement which a person must meet to qualify for an Affordable Unit
- 1.23 **“Qualifying Person”** means a person(s) who meets the Qualifying Criteria
- 1.24 **“Retail Price Index”** means the All Items Retail Price Index published by the Office for National Statistics contained in the Monthly Digest of Statistics (or contained in any official publication substituted therefore) or such other index as may from time to time be published in substitution therefore
- 1.25 **“Site”** means all that land located at Orama Mill and Cowm Parkway South and to the north and north west side of Hall Street in Whitworth, Rossendale, Lancashire which is currently registered at H. M. Land Registry under title numbers LAN87718, LA626970, LAN33425 and LAN65588 and for identification purposes only is shown edged red on Plan 1 attached
- 1.26 **“Stacksteads”** means the area of Stacksteads shown on Plan 6 attached
- 1.27 **“Statutory Undertaker”** means any company corporation board or authority at the date of this Agreement authorised by statute to carry on an undertaking for the supply of telephone and television communications electricity gas water or drainage and any authorised successor to any such undertaking

1.28 **“the Transport Contribution”** means the sum of £96,200 (ninety six thousand and two hundred pounds) such sum to be Index Linked and expended on the provision of off-site highway improvement, a Traffic Regulation Order and provision/improvement of bus facilities/services in the vicinity of the Site to be paid as outlined in the First Schedule

1.29 **“the Youth and Community Facility Contribution”** means the sum of £30,000 (thirty thousand pounds) such sum to be Index Linked and expended towards the cost of the provision and enhancement of facilities, programmes and services for young people and the wider community in the areas of Healey and Whitworth and Facit and Shawforth to be paid as outlined in the First Schedule

2. **RECITALS**

2.1 The Council is the Local Planning Authority for the purposes of the Act for the area within which the Site is situated

2.2 The Owner is the registered freehold owner of the Site and has submitted to the Council the Application for the Development of the Site

2.3 The Mortgagee is the registered proprietor of a Charge in respect of the Site dated *25th November* 2011

2.5 The Council has decided to grant the Planning Permission subject to the making of this Agreement without which the Planning Permission would not have been granted

2.6 The Owner by entering into this Agreement does so to create planning obligations in favour of the Council pursuant to Section 106 of the Act and agrees to be bound by and observe and perform the covenants agreements

conditions and stipulations hereinafter contained on the terms of this Agreement

3. OPERATIVE PROVISIONS

3.1 This Agreement is entered into pursuant to Section 106 of the Act and all other powers so enabling 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

3.2 Save for the provisions of Clause 3.16, the provisions of this Agreement shall only come into effect on the Commencement of the Development

3.3 No person shall be liable for any breach of the covenants conditions or restrictions contained in this Agreement after he 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)

3.4 The covenants on the part of the Owner contained in this Agreement shall not be enforceable against: -

3.4.1 purchasers' lessees or mortgagees of individual Open Market Units; or

3.4.2 a Statutory Undertaker which has an interest in any part of the Site for the purposes of its undertaking

3.5 The covenants on the part of the Owner contained in paragraphs 1 and 2 of the First Schedule shall not be enforceable against purchasers' lessees or mortgagees of individual Affordable Units

3.6 This Agreement shall cease to have effect if:-

- 3.6.1 the Planning Permission shall be quashed revoked or otherwise withdrawn or modified (without the consent of the Owner)
- 3.6.2 the Planning Permission shall expire prior to the Commencement of the Development
- 3.6.3 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
- 3.7 This Agreement is a local land charge and shall be registered as such
- 3.8 It is not intended that any person(s) who (but for the provisions of the Contract (Rights of Third Parties) Act 1999) would not acquire any interest hereunder should do so by virtue of such Act
- 3.9 The Owner hereby covenants with the Council to perform the obligations specified in the First Schedule of this Agreement
- 3.10 The Council hereby covenants with the Owner to perform the obligations specified in the Second Schedule of this Agreement
- 3.11 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
- 3.12 Any notice demand or any other communications served upon the Council under this Agreement is to be delivered by first class post recorded delivery and is to be sent to the Council's address set out above and addressed to the Director of Business and shall be treated as being served at the time the delivery was signed for

- 3.13 Any dispute between the parties as to any matter the subject of this Agreement shall be referred to an appropriate independent expert (who shall either be agreed between the parties or failing agreement appointed on the application of any of the parties by the President for the time being of the Royal Institution of Chartered Surveyors (or any person acting with his authority)) and the decision of the expert shall be final and binding (save in case of manifest error) and his costs shall be borne as he shall direct
- 3.14 If any sum due under this Agreement shall remain unpaid after the same has become due interest shall be paid thereon from the date the sum becomes due to the date of payment at the rate 3% above the Interest Rate
- 3.15 In this Agreement the expressions "the Owner" and "the Council" shall include their respective successors in title and assigns
- 3.16 The Owner shall pay the Council's reasonable legal fees incurred in relation to this Agreement on the date of this Agreement
- 3.17 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
- 3.18 Notwithstanding the terms contained herein the parties hereto agree that the Mortgagee shall only be liable for any breach of any provisions of this Agreement during such periods (if any) as the Mortgagee is a mortgagee in possession of the Site **PROVIDED ALWAYS** that the successors in title to the Mortgagee in possession shall become fully liable for any breach of this Agreement and **FOR THE AVOIDANCE OF DOUBT** any successor of a legal charge or security shall also benefit from the provisions of this Clause.

3.19 Notwithstanding the terms contained herein the parties hereto agree that a mortgagee of an Affordable Unit shall prior to seeking to dispose of the Affordable Unit pursuant to any default under the terms of its mortgage or charge give not less than three months' prior notice to the Council of its intention to dispose and:

- (a) In the event that the Council responds within three months from receipt of the notice indicating that arrangements for the transfer of the Affordable Units can be made in such a way as to safeguard them as Affordable Housing then the mortgagee shall co-operate with such arrangement and use its reasonable endeavours to secure such transfer.
- (b) If the Council does not serve its response to the notice served under paragraph (a) above within three months then the mortgagee shall be entitled to dispose free of the restrictions set out in the First Schedule.

FIRST SCHEDULE

Owner's obligations

1. Commencement

- 1.1 To notify the Council in writing of the Commencement of the Development and such notice shall be served on the Council within 7 days of the Commencement of the Development

2. Contributions

- 2.1 To pay to the Council the Youth and Community Facility Contribution and the Public and Open Space Contribution and the Transport Contribution (all as Index Linked) as follows:-
 - 2.1.1 £85,000 to be paid on Commencement of the Development
 - 2.1.2 £78,500 to be paid on Occupation of the 40th Dwelling on the Site
 - 2.1.3 £78,810 to be paid on Occupation of the 65th Dwelling on the Site

3. Affordable Housing

- 3.1 To build the Affordable Units in accordance with the Planning Permission
- 3.2 Not to let or offer for sale more than 50% of the Open Market Units until the Affordable Units have been completed unless otherwise agreed in writing by the Council
- 3.3 On completion of the construction of the Affordable Unit to dispose of the Affordable Units at a price not exceeding the Affordable Price to a Qualifying Person and the sale shall contain the following covenants:-
 - 3.3.1 that the Affordable Unit is occupied as the sole or main residence of the Qualifying Person
 - 3.3.2 that the Affordable Unit cannot be offered for rent or for shared equity ownership

3.3.3 that the Affordable Units shall not be disposed of otherwise than at the Affordable Price to a Qualifying Person

3.3.4 no disposition of the registered estate other than by charge by the proprietor of the registered estate is to be registered without a certificate signed by the solicitor or conveyancer to the proprietor for the time being of the estate that the provisions of the First Schedule of the Planning Agreement dated the 28th day of November 2011 and made between Rossendale Borough Council and Orama Mill Investments Limited and Persimmon Homes Limited ~~and Clydesdale Bank Plc~~ have been complied with.

3.4 The Owner shall at its own cost apply to register as a Restriction the covenant referred to in Paragraph 3.3.4 above at H.M. Land Registry as soon as reasonably practicable and shall deliver to the Council an official copy of such title showing the registration of such covenants

3.5 Prior to disposal of an Affordable Unit the Owner shall submit in writing to the Council the Owner's assessment of the Affordable Price of the Affordable Unit and no disposal of the Affordable Unit shall take place without the receipt in writing of the Council's approval of the Affordable Price PROVIDED ALWAYS that if within 6 weeks of receipt of the Owner's written assessment of the Affordable Price of the Affordable Unit the Council has been unable to approve the assessment then either party shall be entitled to refer the matter to an independent expert in accordance with Clause 3.10 of this Agreement and this Clause shall apply to the first and all subsequent disposals of Affordable Units

3.6 Prior to disposal of an Affordable Unit the Owner shall submit in writing to the Council evidence that the intended purchaser qualifies as a Qualifying Person and no disposal of the Affordable Unit shall take place without the receipt in writing of the Council's approval of the Qualifying Person PROVIDED ALWAYS that if within 6 weeks of receipt of the evidence the Council has been unable to approve the Qualifying Person then either party shall be entitled to refer the matter to an independent expert in accordance with Clause 3.13 of this Agreement and this Clause shall apply to the first and all subsequent disposals of Affordable Units

SECOND SCHEDULE

Council's obligations

1. To issue a receipt on request for each instalment of the Youth and Community Facility Contribution the Public Open Space Contribution and Transport Contribution.
2. Upon receipt to place the sums referred to in paragraph 1 of this Schedule in an interest bearing account or in separate accounts as the Council shall in its discretion decide.
3. To use the Youth and Community Facility Contribution for the purpose set out in Clause 1.29 of this Agreement and for no other purpose.
4. To use the Public Open Space Contribution for the purpose set out in Clause 1.21 of this Agreement and no other purpose.
5. To use the Transport Contribution for the purpose set out in Clause 1.28 of this Agreement and for no other purpose.
6. To pay to the Owner such amount of any payment made by the Owner to the Council under this Agreement which has not been expended in accordance with the provisions of this Agreement within five years of the date of receipt by the Council of such payment together with interest at the Interest Rate from the date of payment to the date of repayment.
7. To provide to the Owner such evidence as the Owner shall reasonably require in order to confirm the expenditure of the sums paid by the Owner under this agreement.
8. Upon the written request of the Owner at any time after the obligations of the Owner under this Agreement have been fulfilled issue written confirmation

THIRD SCHEDULE

Qualifying Criteria

1. First preference shall be given to persons who in the opinion of the Council are in need of affordable housing and
 - a. who have lived in Facit and Shawforth and/or Healey and Whitworth for at least 12 months; or
 - b. who have strong connections with Facit and Shawforth and/or Healey and Whitworth either by Employment or Close Family Association

2. If no person qualifies under paragraph 1 above, second preference shall be given to persons who in the opinion of the Council are in need of affordable housing and
 - a. who have lived in Greensclough and/or Irwell and/or Stacksteads for at least 12 months; or
 - b. who have strong connections with Greensclough and/or Irwell and/or Stacksteads either by Employment or Close Family Association

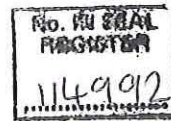
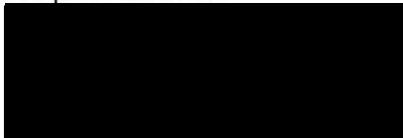
3. If no person qualifies under paragraph 2 above, third preference shall be given to persons who in the opinion of the Council are in need of affordable housing and who
 - a. have lived in the Council's administrative area for at least 12 months; or
 - b. who have strong connections with the Council's administrative area either by Employment or Close Family Association

4. Before Qualifying Persons as described in category 3 above shall be come eligible for occupation, the Affordable Unit shall have been marketed for sale subject to the above categories 1 and 2 above for a period of at least twelve weeks evidence of which shall be provided to the Council

IN WITNESS WHEREOF the parties hereto have duly executed this document as their Deed in the presence of the persons mentioned below the day and year first above written

EXECUTED as a DEED (but not delivered)
until the date inserted hereof) by affixing)
THE COMMON SEAL of)
ROSSENDALE BOROUGH COUNCIL)

in the presence of: -)



Authorised Signatory

EXECUTED as a DEED (but not delivered)
Until the date inserted hereof) by)
ORAMA MILL INVESTMENTS LLP)

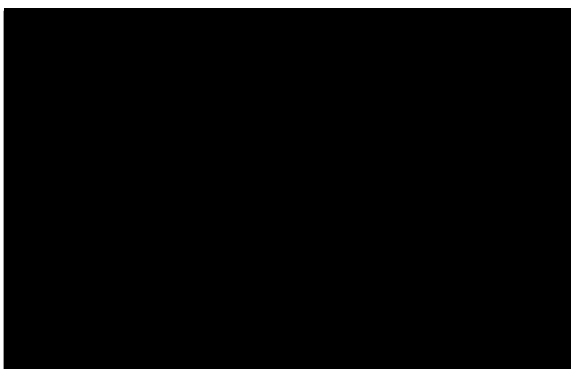
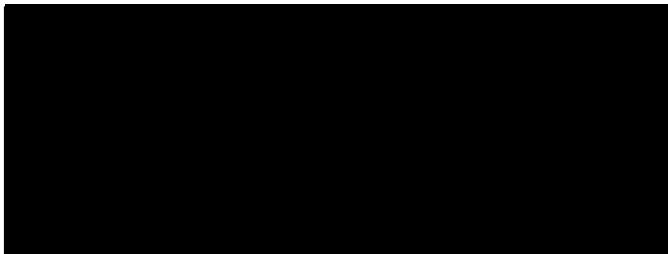
~~in the presence of:~~ acting by)
2 members)



EXECUTED AS A DEED by)

PERSIMMON HOMES LIMITED)

acting by its Attorney



in the presence of: -

WITNESS SIGNATURE



WITNESS NAME



WITNESS ADDRESS



WITNESS



PLAN 1



ORAMA MILLS

W M I T O S T I

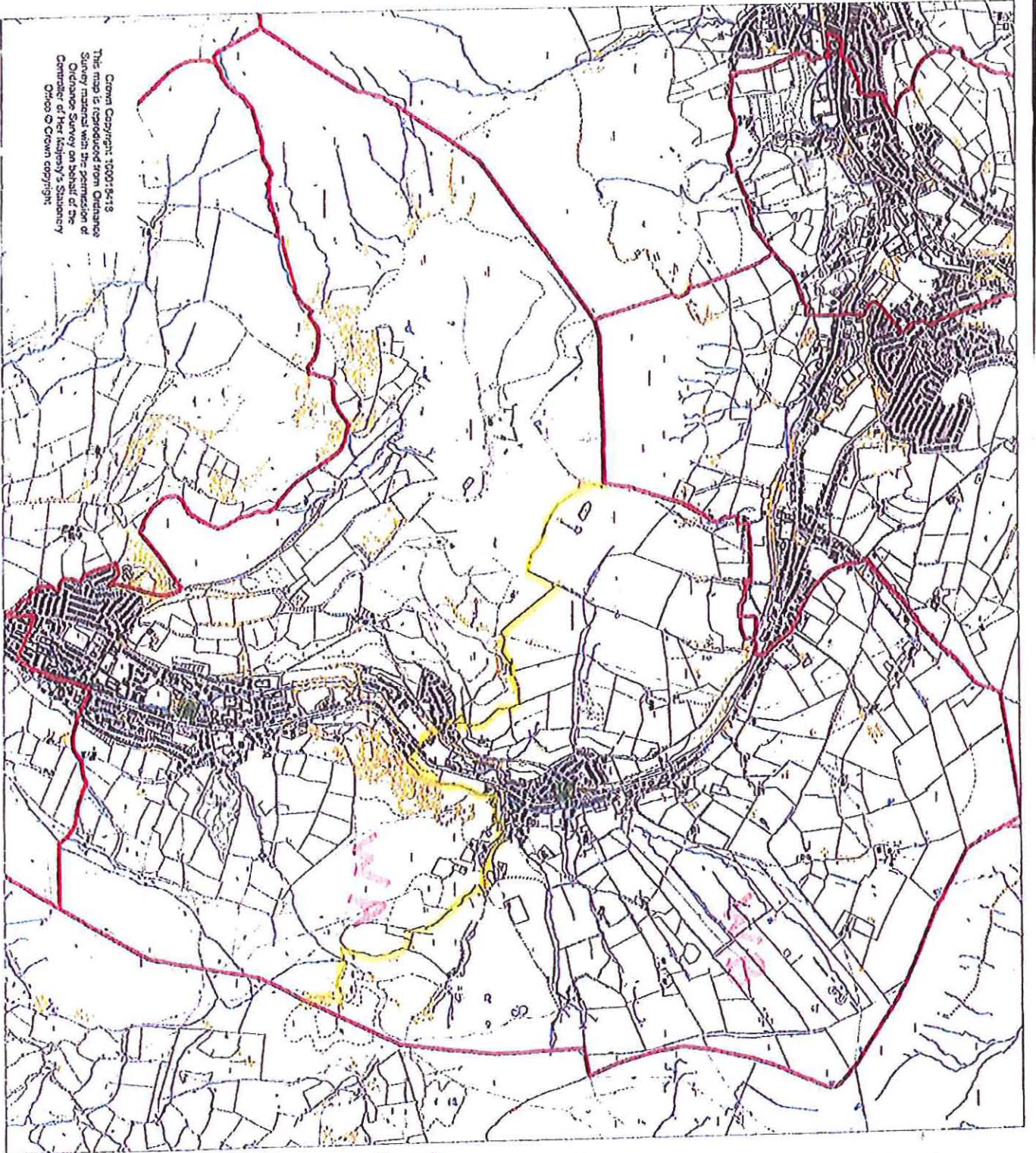
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GENERAL INFORMATION		
Project Name	ORAMA MILLS	
Client	W M I T O S T I	
Site No	100020449	
Scale	1:1000	
Date	10/11/2010	
DRAWING INFORMATION		
Drawn by	W M I T O S T I	
Checked by	W M I T O S T I	
Approved by	W M I T O S T I	
REVISIONS		
No	Description	Date
1	Issue for tender	10/11/2010

100020449

PLAN 2

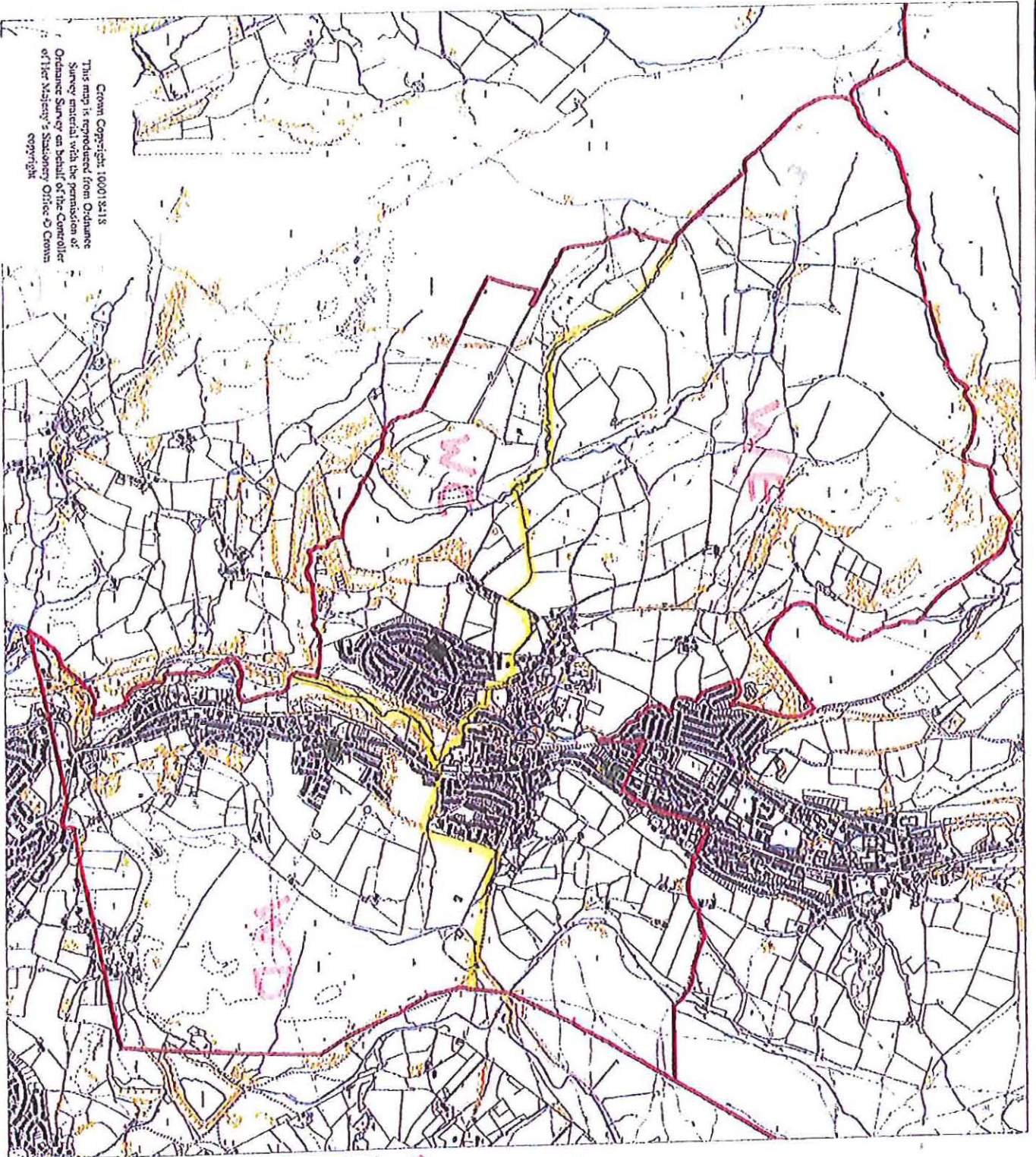


Fact +
Shawforth
Ward

WA
Whitworth Civic
Hall

WB
Shawforth Methodist

PLAN 3



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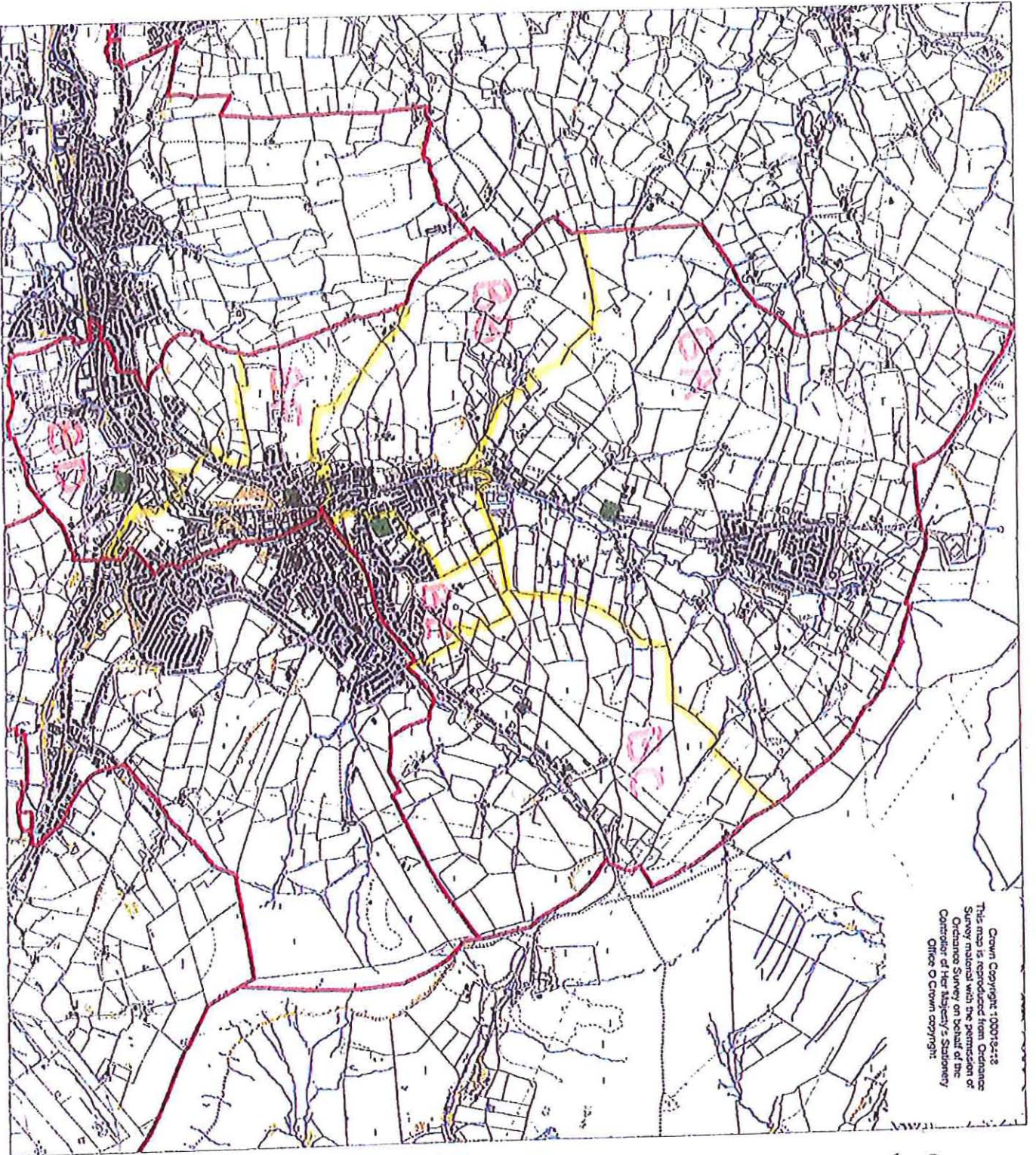
Healey +
Wetherill
Ward

MC
33 Thorburn Drive

MD
Tonciffa Primary
School

ME
Wetherill Library

PLAN 4

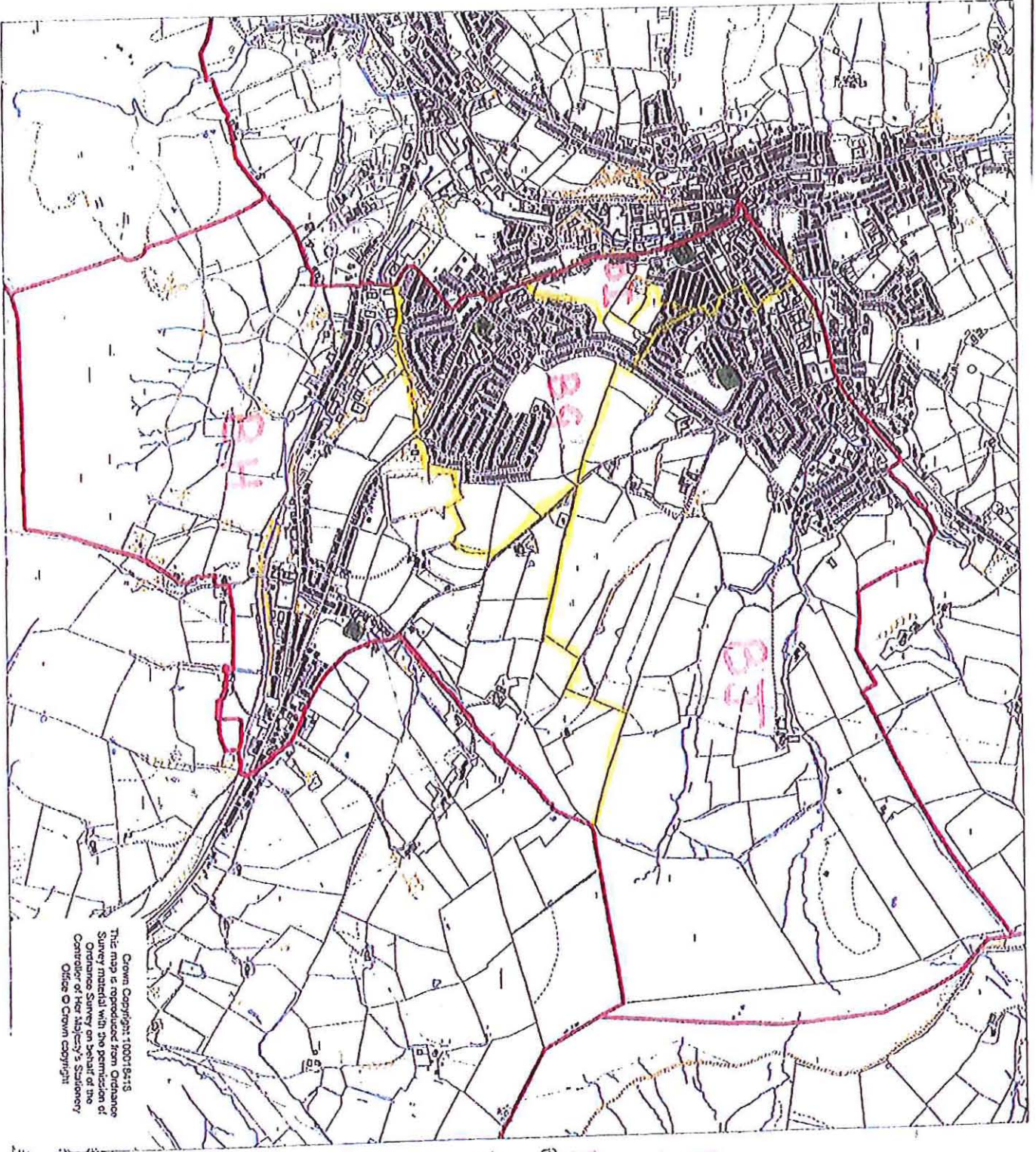


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Greenough
 Ward

- A A Northern School
- B B Backup Cricket Club
- C C Backup Cricket Club
- D D St Saviour's Church
- E E Backup Cricket Club
- F F Trinity Baptist Church

PLAN 5



Irwell
Ward

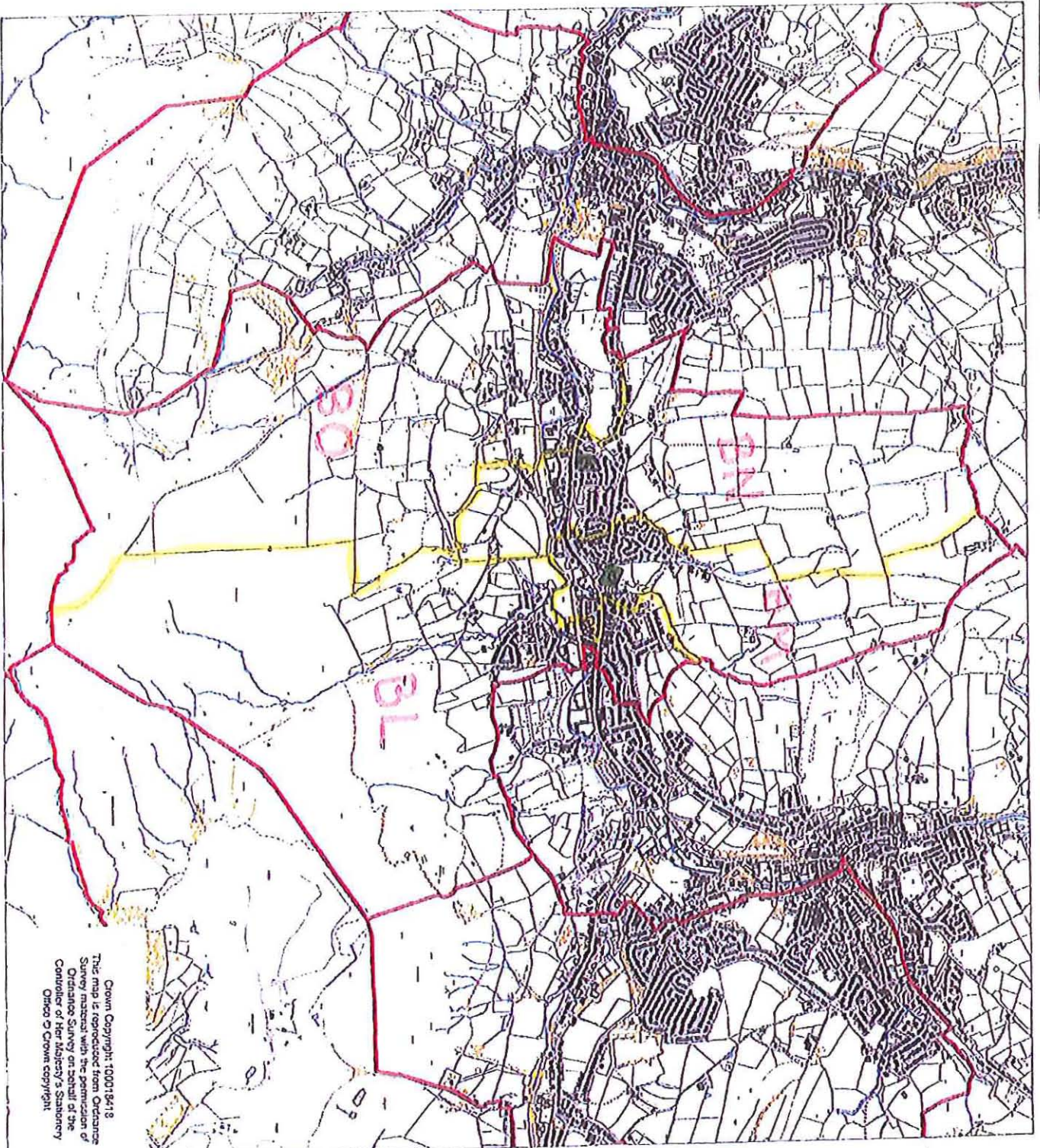
B G
Fire Station

B H
Birtanna CE School

B I
Maden Centre

B J
Bacop Family
Centre

PLAN 6



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- Stacksteads
Ward
- BL**
Stacksteads CE
School
- BN**
Stacksteads
Methodist
Church
- BO**
Stacksteads
Methodist
Church