

Dated 28 July 2023

ROSSENDALE BOROUGH COUNCIL

And

DARIUSH MAHDAVI-ARDESTANI

.....  
A PLANNING OBLIGATION BY AGREEMENT

SECTION 106 TOWN AND COUNTRY PLANNING ACT 1990

relating to land at Laneside Cottages, Todmorden Old Road, Bacup, Lancashire

Rosendale Borough Council  
The Business Centre  
Futures Park  
Bacup  
OL13 0BB

THIS AGREEMENT is made the 28 day of July 2023

BETWEEN

(1) ROSSENDALE BOROUGH COUNCIL of Futures Park, Bacup. OL13 0BB ("the Council")

(3) DARIUSH MAHDAVI-ARDESTANI of [REDACTED]  
[REDACTED] ("the Owner")

## 1. Recitals

- 1.1 The Council is the local planning authority for the purposes of the Act for the area within which the Site is located.
- 1.2 The Developer has applied to the Council pursuant to the Act for permission to develop the Site under outline application reference 2020/0008 and enters into this Agreement with the intention that it is bound by the obligations contained herein.
- 1.3 The Owner is the freehold owner of the Site which is registered at the Land Registry under title number LA603341 with title absolute.
- 1.4 The covenants, restrictions and requirements imposed upon the Owner under this Agreement create planning obligations pursuant to Section 106 of the Act and Owner is the person against whom such obligations are enforceable in respect of the Site.
- 1.5 The Owner has agreed to enter into this Agreement so as to create planning obligations in favour of the Council pursuant to Section 106 of the Act and to be bound and to observe and perform the covenants hereinafter contained.

## 2. Definitions and Interpretation

### 2.1

"the Act"	means the Town & Country Planning Act 1990 (as amended) or any statute amending or modifying repealing or re-enacting the same for the time being in force.
"Affordable Housing"	affordable housing meeting the definition in Annex 2 of the National Planning Policy Framework (or any successor policy or legislation in respect of affordable housing) for Occupation by households in Housing Need and who meet the Approved Person criteria as per the Sixth Schedule
"the Affordable Housing Mix"	means the mix of Affordable Housing Units determined pursuant to the Reserved Matters Consent and which are all to be used as Affordable Rented Units

“Affordable Housing Provider (AHP)”	means a Registered Provider, registered social landlord or a housing association or similar organisation registered in accordance with section 80 of the Housing and Regeneration Act 2008 or if such bodies cease to exist or are superseded the equivalent body whose main objectives include the provision of Affordable Housing and to whom the Affordable Housing Units may be transferred as approved by the Council in writing (such approval not to be unreasonably withheld or delayed.)
“Affordable Housing Units”	means 10% of the total Dwellings on the Development (rounded up and comprising of a total of 3 Dwellings) to be constructed on the Site and which are all to be used for Affordable Housing in accordance with the Affordable Housing Mix and the Fifth and Sixth Schedules and pursuant to the Planning Permission or as may otherwise be agreed in writing with the Council and the term “Affordable Housing Unit” shall be construed accordingly.
“Affordable Housing Scheme”	The scheme for the provision of Affordable Housing referred to at paragraph 2 of Part 1 of the Fifth Schedule.
“Affordable Housing Overage Contribution”	the sums (if any) calculated and payable in accordance with the Ninth Schedule being the amount of Sales Revenue generated over the Sale Rate Hurdle for each Dwelling in the Development (being the total of the sums in the final column of the schedule at Appendix 1) which may be pooled to a specific project or scheme as reasonably identified by the Council at the time of payment (if any)
“Affordable Rented Housing”	Affordable Housing let to eligible households by an Affordable Housing Provider at a rent equal to or less than 80% of the market value for rent in the area inclusive of any service charge or equivalent (being the rent which that Dwelling would secure in the open market as between a willing lessor and a willing lessee acting at arm’s length)
“Affordable Rented Units”	the Affordable Housing Units to be provided as Affordable Rented Housing
“the Application”	means the application for outline planning permission numbered 2020/0008 for the development of the Site for up to 29 Dwellings and all associated works
“Approved Person”	means a person who meets the criteria set out in the Sixth Schedule
“Biodiversity Contribution”	means the sum of £3,890 towards enhancing biodiversity outside of the Development and within Stacksteads Country Park
“the Borough”	means the Borough of Rossendale
“Commence”	means the carrying out of a material operation as defined by section 56 (4) of the Act (excluding for the purposes of this Agreement and for no other purpose any Preparatory Operation) in accordance with the Planning Permission and the expressions “Commencement” shall have a corresponding meaning.

“Commencement Date”	means the date of the Commencement of the Development authorised by the Planning Permission.
“Contributions”	means the Public Open Space Contribution and the Biodiversity Contribution
“Development”	means the development proposed in the Application and described at the Second Schedule.
“Dwelling”	means a residential dwelling (including a house, apartment, bungalow or maisonette) to be constructed on the Site as authorised in accordance with the Planning Permission and “Dwellings” shall be construed accordingly.
“Housing Authority”	means Rossendale Borough Council
“Housing Need”	means living in unsuitable housing conditions and/or being unable to afford suitable housing within the Borough at open market prices.
“Interest”	means interest at the rate of 4 per cent above the base lending rate of the Bank of England from time to time unless where otherwise expressly stated herein.
“Market Value Notice”	means the notice to the Council giving the Open Market Value of the proposed Affordable Units
“Net Sales Proceeds”	means the amount received by the Owner in respect of the sale of the relevant Affordable Housing Unit on the open market (or, if higher, the Market Value of such Dwelling on the assumption that the requirement to use the Dwelling as an Affordable Housing Unit does not apply) less the reasonable cost of construction of such Dwelling
“Occupation”	means to occupy or permit or suffer to be occupied for the purposes permitted by the Planning Permission but does not include occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and “Occupy” and “Occupied” shall be construed accordingly.
“Open Market Value”	has the meaning ascribed to it in the Appraisal and Valuation Manual published by the Royal Institution of Chartered Surveyors.
“Plan”	means the Plan annexed hereto in the First Schedule
“Planning Permission”	means the outline planning permission (as may be amended or varied from time to time) granted in accordance with the Application in the form of and subject to the conditions set out in the draft in the Third Schedule or any Reserved Matters Consent granted pursuant to any Qualifying Application.

“Public Open Space Contribution”	means the sum of £1,366 (one thousand, three hundred and sixty six pounds) per Dwelling for the funding of enhancements of Stubblee Park, Bacup
“Preparatory Operation”	means a material operation as specified in Section 56(4) of the Act provided that the term “material operation” in Section 56(4) shall not for the purposes of this Agreement include operations in connection with site clearance, demolition, ground stabilisation, archaeological investigation, investigation for the purpose of assessing contamination, removal of contamination, diversion and laying of Services, earthworks and the erection of means of enclosure for the purposes of site security and/or display of notices or advertisements, exploratory boreholes and any dug works, matters and operations to enable any of the foregoing to take place.
“Protected Tenant”	Any tenant or owner (or its successors) who either: a) has exercised the right to acquire the dwelling of which he is a tenant pursuant to the Housing and Regeneration Act 2008 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular rented Affordable Housing Unit; or any successor in title thereto and their respective mortgagees and chargees; or b) has exercised any statutory right to buy the dwelling of which he is a tenant pursuant to Part V of the Housing Act 1985 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular rented Affordable Housing Unit or any successor in title thereto and their respective mortgagees and chargees;
“Qualifying Application”	means any application for reserved matters approval in relation to the Planning Permission and/or any subsequent applications for planning permission made under section 73 of the Act and/or in accordance with article 18 of the Town and Country Planning (Development Management Procedure) (England) Order 2010 in respect of the Development
“Recycling”	means recycling by the Affordable Housing Provider by procuring further Affordable Housing within the Borough of a type and in a location and tenure to be agreed between the Housing Authority and the Affordable Housing Provider (both to act reasonably)
“Recycling Percentage”	Means 100% of the Rented Net Sale Proceeds
“Registered Provider”	means any registered provider of social housing as defined under the Housing and Regeneration Act 2008 with the Regulator of Social Housing and has not been removed from the Register
“Rented Housing”	Affordable Rented Housing
“Rented Net Sale Proceeds”	means the net consideration received by an Affordable Housing Provider on the sale of an Affordable Rented Unit (as referred to in paragraph 10 of Part 2B of the Fifth Schedule) based on the value of the relevant Dwelling after the deduction of all reasonable costs and expenses of an Affordable

	Housing Provider for such sale being its administrative costs, valuation costs, loan costs and legal costs and fees and any taxation liability arising.
"Reserved Matters Consent"	Means a reserved matters approval in relation to the Planning Permission
"RPIX"	means the Retail Prices Index excluding Mortgage Interest Payments (RPIX) published by the Office for National Statistics each month and if such index ceases to exist such other similar index as the Council shall specify to the Owner In writing.
"Sale Rate Hurdle"	means £177.67 per square foot subject to increase in accordance with paragraph 6 of the Ninth Schedule.
"Sales Revenue"	means the aggregate amount of sales proceeds arising out of the transfer, lease or other assurance of the Dwellings on the Development following completion of construction of such Dwellings and as evidenced by the price set out in each transfer, lease or other assurance of the relevant Dwelling as the sales price for the relevant Dwelling
"Services"	means all the media and apparatus for the supply and removal of water, sewerage, gas and electricity.
"Site"	Means that part of the land in title number LA603341 and against which this Agreement may be enforced which is shown for edged red on the Plan and as more particularly described in the First Schedule.
"Tenancy"	is an assured or assured shorthold tenancy where the Affordable Housing Unit is occupied by the individual household as their only or principle home by way of a tenancy agreement.
"Working Day"	means any day on which the clearing banks in the City of London are (or would be but for strike, lockout, or other stoppage affecting such banks generally) open during banking hours Monday to Friday (inclusive) excluding national holidays and the period 24 December - 1 January inclusive and excluding Saturdays, Sundays and bank holidays.

2.2 The expressions "the Council" and "the Owner" shall where the context admits includes their successors in title and assigns (and in the case of the Council the successor to its statutory functions) and those deriving title under each of them.

2.3 Words importing one gender shall be construed as including any gender and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.

2.4 Words importing the singular shall be construed as importing the plural and vice versa.

2.5 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.

- 2.6 The clause and the paragraph headings in the body of this Agreement and in the Schedules do not form part of this Agreement and shall not be taken into account in its construction or interpretation.
- 2.7 Reference made to any clause paragraph or schedule or recital context is a reference to a clause paragraph or schedule or recital in this Agreement.
- 2.8 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.

### **3. Legal Effect**

- 3.1 This Agreement is a planning obligation and is made pursuant to Section 106 of the Act and the obligations contained in this Agreement are planning obligations enforceable by the Council for the purposes of that section insofar as they fall within the terms of sub-section 106(1) and with the intention that they bind the interests held by those persons in the Site and their respective successors and assigns.
- 3.2 Insofar as any of the covenants contained in this Agreement are not planning obligations within the meaning of the Act they are entered into pursuant to the powers contained in Section 111 of the Local Government Act 1972, Section 2 of the Local Government Act 2000 and Section 1 of the Localism Act 2011 and all other enabling powers with the intention that the obligations contained herein are planning obligations for the purposes of the provisions in respect of the Site which may be enforced by the Council against the Owner.
- 3.3 The parties agree that the requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) relating to planning obligations and all other relevant regulations thereunder are satisfied.

### **4. Commencement**

- 4.1 This Agreement is conditional upon the grant of the Planning Permission and shall not take effect until the Commencement Date
- 4.2 Save for the provisions of clause 7.5 (No liability) and clause 7.9 (no fetter) and 7.12 (Land Charges registration) and 7.1 (third parties) and 8 (Disputes) and 9 (Legal Costs) and 7.3 (Notices) and 10 (Notices of Change in Ownership) and Paragraph 1 of the Fourth Schedule (Owner's Covenants) which shall come into effect immediately upon completion of this Agreement.

### **5. The Covenants of the Owner**

- 5.1 The Owner hereby covenants so as to bind its interest in the Site with the Council to perform the obligations on its part specified in the Fourth, Fifth, Sixth, Seventh and Ninth Schedules.

### **6. The Covenants of the Council**

- 6.1 The Council hereby covenants with the Owner to perform the obligations on its part specified in the Fifth Schedule and the Eighth Schedule.

### **7. Agreements and Declarations**

It is hereby agreed and declared as follows:

- 7.1 Save as provided in respect of the successors in title to the Site or any successor to the relevant statutory functions of the Council this Agreement shall not be enforceable by any third party pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 7.2 This Agreement is governed by and interpreted in accordance with the Law of England and the parties submit to the non-exclusive jurisdiction of the Courts of England.
- 7.3 Any notice or other written communication to be served by one party upon any other pursuant to the terms of this Agreement shall be deemed to have been validly served if delivered by hand or sent by pre-paid first class or recorded delivery post to the party to be served at its address herein specified or such other address as may from time to time be notified for this purpose by notice served under this Agreement and any such notice or other written communication to be given by the Council shall be deemed valid and effectual if on its face value it is signed on behalf of the Council by an officer or duly authorised signatory thereof.
- 7.4 Where any certificate, consent, permission, nomination or other approval is to be given by any party or any person on behalf of any party hereto under this Agreement the decision of the same shall not be unreasonably be delayed or withheld and if refused written reasons for the refusal shall be provided and any such certificate, consent, permission, nomination or other approval shall be given on behalf of the Council by the Head of Planning;
- 7.5 No person shall be liable for breach of a covenant contained in this Agreement after it shall have parted with all interest in the Site or that part of the Site in respect of which such breach occurred but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest.
- 7.6 Save in respect of the obligations in the Fifth and Sixth Schedules this Agreement shall not be enforceable against owner-occupiers or tenants of any Dwelling constructed pursuant to the Planning Permission, their lenders or against those deriving title therefrom.
- 7.7 The obligations contained in this Deed shall not be enforceable against any Protected Tenant.
- 7.8 This Agreement shall not be enforceable against:
- 7.8.1 any statutory undertaker or other person who acquires any part of the Site for electricity sub-stations gas governor stations or pumping stations or an interest in it for the purposes of the supply of electricity, gas, water, drainage, telecommunication services or public transport services;
- 7.8.2 the relevant highway authority to whom any part of the Site is disposed of for the purposes of adoption of any roads and/or footpaths and or/cycle ways to be constructed on the Site.
- 7.9 Nothing in this Agreement restricts or is intended to restrict the exercise at any time by the Council of any of their statutory functions or discretions, rights, powers, duties or obligations in relation to any part of the Site or otherwise.



- 7.10 If the Planning Permission shall expire before the Commencement Date or shall at any time be quashed, revoked, otherwise withdrawn or it is, without the consent of the Owner, modified by any statutory procedure the provisions of this Agreement shall forthwith determine and cease to have effect (insofar only as they have not already been complied with) and any Local Land Charge registered pursuant to clause 7.12 shall be cancelled as soon as reasonably practicable.
- 7.11 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 Planning Permission) granted (whether or not on appeal) after the date of this Agreement.
- 7.12 This Agreement shall upon completion be registered by the Council as a Local Land Charge.
- 7.13 If any sum due under this Agreement shall remain unpaid after the same has become due (without prejudice to any other right of the parties to this Agreement) interest shall be paid thereon by the defaulting party to the other party from the date the sum becomes due to the date of actual receipt of the payment by the receiving party.
- 7.14 Obligations entered into by any party which comprises of more than one person shall be deemed to be joint and several.
- 7.15 Subject to the provisions of clause 7.5 – 7.8 hereof, this Agreement is binding on successors in titles and assigns.
- 7.16 No waiver (whether express 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 said terms or conditions or from acting upon any subsequent breach or default.
- 7.17 If any provision in this Agreement shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions shall not in any way be deemed thereby to be affected or impaired.
- 7.18 Nothing in this Agreement shall be construed as granting planning permission or any other approval consent or permission required from the Council in exercise of any other statutory function.
- 7.19 In the event that a Qualifying Application or any application is made pursuant to Section 73 of the Act for an amendment to the Planning Permission and planning permission is granted in respect of such application references to the Planning Permission in this Agreement shall be to the new planning permission granted pursuant to the Qualifying Application/Section 73 of the Act as well and this Agreement shall apply to and remain in full force in respect of that new planning permission (and the original Planning Permission) without the need for a further agreement to be entered into pursuant to Section 106 of the Act

## **8. Disputes**

- 8.1 Unless and to the extent not specified otherwise in this Agreement any dispute (save for any disputes as to matters of law) shall be referred at any appropriate time by any party hereto to a person having appropriate professional qualifications and experience in such matters

("the Expert") appointed jointly by the parties or in default of agreement within 10 Working Days after either party has given to the other a written request requiring the appointment of the expert by the President for the time being of the Royal Institution of Chartered Surveyors or the President of such other professional body as shall be relevant for the nature of the dispute in question (as appropriate) (or on his behalf) on the application of either party and such reference shall be deemed to be submission to arbitration within the meaning of the Arbitration Act 1996 or any statutory modification or re-enactment thereof for the time being in force.

- 8.2 The Expert shall have at least 10 years post qualification experience in the area of the dispute in question.
- 8.3 The Expert shall act as an expert and not as an arbitrator and the decision of the Expert shall be final and binding upon the parties (except where there is a manifest error and/or on a matter of law) and the following provisions shall apply to the Expert.
- 8.4 The charges and expenses of the Expert shall be borne between the parties in such proportions as the Expert may direct.
- 8.5 The Expert shall give each of the parties an opportunity to make representations to him before making his decision which he shall make available to the other parties on request.
- 8.6 The Expert shall be entitled to obtain opinions from others if he so wishes.
- 8.7 The Expert shall make his decision on valuation matters within the range of any representations made by the parties.
- 8.8 The Expert shall comply with any time limits or other directions agreed by the parties on or before his appointment.
- 8.9 If the Expert is unable or unwilling to accept his appointment or to carry out his functions then either party may apply for a replacement to be appointed in his place and this procedure may be repeated as often as necessary.
- 8.10 The decision of the Expert must be given in writing setting out the reasons behind such decision.
- 8.11 If the parties fail to agree as to the nature of the difference or question then a decision as to the nature of such difference or question shall be referred to a solicitor of at least ten (10) years post qualification experience in the same manner and the same terms as set out in clauses 8.1 to 8.1 inclusive who shall determine which type of professional should be appointed in relation to such matter.
- 8.12 The provisions of this clause shall not affect the ability of the Council to apply for and be granted any of the following: declaratory relief, injunction, specific performance, payment of any sum, damages, any other means of enforcing this Deed and consequential and interim orders and relief.

## 9. Legal Costs

The Developer agrees to pay to the Council on the date hereof the sum of £2500 (two thousand five hundred pounds) as a contribution towards the reasonable legal costs incurred by the Council in the negotiation preparation and execution of this Deed.

**10. Notice of Change in Ownership**

10.1 The Owner agrees with the Council that until all obligations under this Deed have been discharged to give the Council notice of any change in ownership of any of their legal interests in the Site and the creation of any new legal interests by them on the Site within 15 Working Days of the occurrence of such change or creation and such notice shall give details of the transferee's full name and registered office (if a company) or usual address together with the area of the Site or relevant unit of occupation by reference to a plan.

**11. Indexation**

11.1 Any sums referred to in the Fourth Schedule and/or the Seventh Schedule shall be increased by an amount equivalent to the increase in the RPIX from the date hereof until the date on which such sum is payable.

**12. VAT**

12.1 All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.

**13. Delivery**

The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

**14. No Restriction on Further Development**

Nothing in this Agreement will be construed as prohibiting or limiting any right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted by the Council before or after the date of this Agreement.

**15. Counterparts**

This Agreement may be executed in any number of counterparts, each of which is an original and all of which together evidence the same agreement.

**16. Duty to act in good faith**

The Parties agree with one another to act reasonably and in good faith in the fulfilment of the objectives of this Agreement.

IN WITNESS whereof the parties hereto have executed this Deed on the day and year first before written.

## **THE FIRST SCHEDULE**

### **Part 1**

#### **THE SITE**

The registered freehold land at Laneside Cottages, Todmorden Old Road, Bacup, Lancashire being part of the land registered at the Land Registry under Title Number LA603341 which is shown edged red on the Plan

**THE FIRST SCHEDULE**

**Part 2**

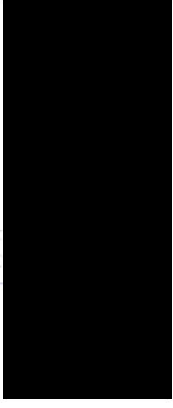
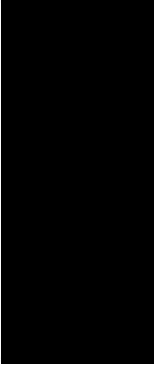
**THE PLAN**

This scheme is subject to Town Planning and all other necessary consents. Dimensions, areas and levels where given are only approximate and subject to site survey. All dimensions are to be checked on site. All feasibility studies are subject to full site survey.

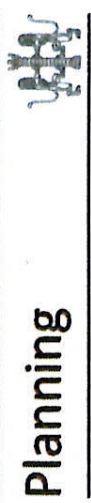
This drawing is to be read in conjunction with all relevant consultants and/or specialist drawings/documents and any discrepancies or variations are to be notified to the architect in writing before the affected work commences. All queries relating to design or technical elements are to be referred to the architect in writing.

The workmanship and materials of all trades and building operations shall comply with the recommendations of British Standard (BS)6000 parts 1-16 inclusive and with Approved Documents to support Regulation 7 1999 edition (incorporating 2000 amendments) of the Building Regulations 2010. All design and construction is to be in accordance with the Construction (Design and Management) Regulations 2007.

Rev	Date	Description	By



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Client  
**Darius Mahdavi**

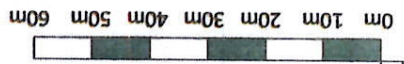
Project  
**Land at Green Farm  
 Bacup  
 Lancashire**

Drawing Title  
**Location Plan**

Drawn	Date	Checked	Scale
GT	3 July 2018		1:1250

Job No	Drawing No	Revision	Note
2018-18	SK01		DO NOT SCALE



Scale @ 1:1250



**THE SECOND SCHEDULE**  
**DESCRIPTION OF THE DEVELOPMENT**

Outline planning permission for the construction (including access and landscaping) of 29 no. dwellings with all other associated works at Laneside Cottages, Todmorden Old Road, Bacup, Lancashire.

Application No: 2022/0008

**THE THIRD SCHEDULE  
DRAFT PLANNING PERMISSION**



## GRANT OF OUTLINE PLANNING PERMISSION WITH SECTION 106 AGREEMENT

Town and Country Planning Act 1990

<b>Name and Address of Applicant:</b> Mr Darius Mahdavi [REDACTED] [REDACTED] [REDACTED]	<b>Name and Address of Agent:</b> Mr Colin Eades Keynes House Tilehouse Street Hitchin SG5 2DW United Kingdom
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### Part 1 – Particulars of Application:

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**Date Received:** 23rd March 2020

**Application Number:** 2020/0008

**Proposed Works:** Outline Application (including access and landscaping): Construction of 29 no. new dwellings with associated works.

**Location:** Land Adjacent Laneside Cottages Todmorden Old Road Bacup Lancashire

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### Part 2 – Compliance with Conditions:

It is **YOUR** responsibility to comply with planning conditions. The Council's Planning Enforcement Team is responsible for investigating alleged breaches of planning control. This includes ensuring that all relevant conditions have been complied with. Effective enforcement is important to:

- Tackle breaches of planning control which would otherwise have unacceptable impact on the amenity of the area
- maintain the integrity of the decision-making process;
- help ensure that public acceptance of the decision-making process is maintained.

Whilst the majority of developers/homeowners do comply with the requirements of planning permissions, there are a number who do not. Where any planning conditions are breached, the Council can take formal enforcement action without further notice. Enforcement action could include such measures as requiring remedial works, cessation of use, or complete demolition and can cause the developer/homeowner unnecessary expense, delay and frustration. **In some cases, failure to comply with planning conditions can lead to the loss of the planning permission.**

### **Part 3 - Particulars of Decision**

The Rossendale Borough Council hereby gives notice in pursuance of the provisions of the Town and Country Planning Act that **PERMISSION HAS BEEN GRANTED** for the carrying out of the development in Part 1 hereof in accordance with the application and plans submitted, a Section 106 Agreement and the following condition(s)

#### **CONDITIONS:**

1. An application for approval of the reserved matters (namely the layout, scale, and appearance of the development) must be made to the Council before the expiration of three years from the date of this permission and the development hereby permitted must be begun two years from the date of approval of the last of the reserved matters to be approved.

Reason: This condition is required to be imposed by the provisions of Section 92 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. The outline planning permission hereby approved relates to the erection of up to twenty nine residential units which shall be carried out in accordance with the following plans and documents unless otherwise required by the conditions below:

- Application form received on 9th January 2020.
- Site Location Plan (drawing number LOCATION PLAN 298-18-SK01) received on 9th January 2020.
- Landscape Statement (ref: e/pj/0751) received on 9th January 2020.
- Arboricultural Report Statement (ref: CW/9742-AS) received on 9th January 2020.
- Flood Risk Assessment received on 12th November 2021.

Reason: To ensure the development complies with the approved plans and submitted details.

3. As part of any reserved matters application where layout is applied for, the applicant shall submit for the approval of the Local Planning Authority the results (in the form of a report) of a scheme of intrusive site investigation which is adequate to properly assess the ground conditions and the potential risks posed to the development by past shallow coal mining activity. The report shall include a scheme of proposals (and a timetable) for any necessary remedial works to adequately mitigate identified risks. The development shall thereafter be implemented in accordance with the approved details.

Reason: To safeguard against hazards associated with coal mining legacy issues.

4. Either prior to the commencement of the development or as part of the first reserved matters application full details of the re-instatement of any stone walls and also the alignment, height and appearance of all fences and walls and gates to be erected (notwithstanding any such detail shown on the submitted plans) shall be submitted to and approved in writing by the Local Planning Authority.

Notwithstanding the above there shall be 1.8m boundary treatments between the rear gardens of each individual dwelling, and natural stone walling and native hedgerow planting shall be used around the perimeter of the site.

No dwelling shall be occupied until all fences, walls and other boundary treatments shown in the approved details to bound its plot have been erected in conformity with the approved details. Other fences, walls and other boundary treatments shown in the approved details shall have been erected in conformity with the approved details prior to substantial completion of the development.

Reason: The required details are not provided as part of this outline application and are required at an early stage in order to ensure a visually satisfactory form of development and to provide reasonable standards of privacy to residents.

5. Either prior to the commencement of the development or as part of the first reserved matters application full details of the following (including samples) shall be submitted to the Local Planning Authority for its approval. No development shall take place until such approval has been given in writing by the Local Planning Authority:
  - a) All external facing and roofing materials to the proposed dwellings
  - b) All hard ground surfacing materials.

The development thereafter shall be constructed utilising the approved materials.

Reason: The application is in outline only and is not accompanied by detailed plans, and to ensure that the development is appropriate in terms of visual amenity and to ensure that it responds to the local context of the site.

6. Notwithstanding the details shown on the submitted plans the new dwellings shall be no greater than 2.5 storeys in height.

Reason: To ensure that the development is appropriate in terms of visual amenity and to protect neighbour amenity.

7. Any construction works associated with the development hereby approved shall not take place except between the hours of 8.00 am and 6:00 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: In the interests of neighbour amenity.

8. No development shall take place until a scheme for the construction of the site access and the off-site highway works has been submitted to and approved in writing by the Local Planning Authority and the necessary agreement entered into with the Highway Authority.

No part of the development shall be occupied until all of the works have been carried out in accordance with the approved details.

Reason: In the interests of highway safety.

9. No development shall take place until details of the proposed arrangements for future management and maintenance of the proposed streets within the development have been submitted to and approved by the Local Planning Authority. The streets shall thereafter be maintained in accordance with the approved management and maintenance details until such time as a legal agreement has been entered into with the Local Highway Authority or a private management and maintenance company has been established.

Reason: In order to ensure proper management and maintenance of the streets within the development.

10. No development shall take place until full engineering, drainage, street lighting and constructional details to adoptable standards (Lancashire County Council specification) of the internal estate roads, pedestrian and cycle routes and the emergency access route have been submitted to and approved in writing by the Local Planning Authority. The development shall, thereafter, be constructed in accordance with the approved details.

Prior to first occupation of any of the dwellings hereby approved the estate roads shall be completed to at least base course level and in accordance with the agreed details.

Reason: In the interests of highway safety.

11. No development shall take place until full details of highway, pedestrian, cycle, drainage, landscape and ecological connectivity to the adjoining site to the east, forming the remainder of housing allocation H36 in the Adopted Rossendale Local Plan have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter, be constructed in accordance with the approved details.

Reason: In order to achieve a satisfactory standard of comprehensive development.

12. No development shall take place until full details of the stopping up of the existing turning head adjacent to numbers 2,3 and 4 in Moor View have been submitted to and approved in writing by the Local Planning Authority. The development shall, thereafter, be constructed in accordance with the approved details.

No dwelling hereby permitted, shall be occupied until the formal stopping up procedure has been commenced under section 247 of the Town and Country Planning Act.

Reason: In the interests of highway safety.

13. No development shall take place until a Construction Method Statement has been submitted to and approved in writing by the Local Planning Authority. The approved statement shall be adhered to throughout the construction period. It shall provide for:

- The parking of vehicles of site operatives and visitors;
- The loading and unloading of plant and materials;
- The storage of plant and material used in the construction of the development;
- The erection and maintenance of security hoarding;
- HGV delivery times and routeing to/from the site;
- Contact details for the site manager.

Reason: In the interests of highway safety.

14. Before the access is used for vehicular purposes, that part of the access extending from the highway boundary for a minimum distance of 10m into the site shall be appropriately paved in tarmacadam, concrete, or block paviments.

Reason: To prevent loose surface material from being carried on to the public highway thus causing a potential source of danger to other road users.

15. The new access between the site and Moor View shall be constructed in accordance with the Lancashire County Council Specification for Construction of Estate Roads to at least base course level before any development takes place within the site.

Reason: To ensure that satisfactory access is provided to the site before the development hereby permitted becomes operative.

16. For the full period of construction, facilities shall be available on site for the cleaning of the wheels of vehicles leaving the site and such equipment shall be used as necessary to prevent mud and stones being carried onto the highway. The roads adjacent to the site shall be mechanically swept as required during the full construction period. The details of the wheel washing facilities shall be submitted to and approved in writing by the Local Planning Authority, prior to the commencement of the development.

Reason: To prevent stones and mud being carried onto the public highway to the detriment of road safety.

17. No development shall take place until tree protection fencing has been erected to BS 5837 (2012) and they shall be maintained in situ for the duration of the works.

Reason: To protect trees to be retained on site.

18. All of the recommendations contained within the approved Arboricultural Statement Report including the Arboricultural Method Statement shall be implemented prior to any other development works taking place on site.

Reason: In order to protect trees being retained on site.

19. Notwithstanding the submitted details, no development shall take place until the precise details of the landscaping scheme and a landscape management/maintenance programme have been submitted to and approved in writing by the Local Planning Authority. These details shall include species mix and an implementation programme. The landscape proposals shall be implemented fully in the first planting and seeding seasons following the occupation of any buildings or the completion of the development, whichever is the earlier. Any trees or plants which within a period of 10 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.

Reason: In the interests of achieving a satisfactory standard of development.

20. Prior to the commencement of development, a detailed plan showing all the proposed service runs on the site which must avoid all tree root protection areas shall be submitted to and approved in writing by the Local Planning Authority.

Reason: In order to protect trees being retained on site.

21. As part of the first reserved matters application, further information (in the form of a report compiled by a qualified ecologist) shall be submitted in relation to measures to minimise the risks to any amphibians present in close proximity to the site. The submitted report shall be informed through either or both of the following:

- a) Further field survey work such as traditional survey;
- b) A detailed reasonable avoidance measures method statement

Reason: In the interests of protecting biodiversity.

22. No development shall take place until full details of any proposed exterior lighting on the development has been submitted to and approved in writing by the Local Planning Authority. The lighting scheme shall be designed in such a way as to minimise any negative impacts on nocturnal wildlife. The development shall thereafter be implemented in accordance with the approved details and retained to the satisfaction of the Local Planning Authority.

Reason: In the interests of protecting biodiversity.

23. No vegetation clearance shall take place on the site in the bird nesting season (March to August inclusive) unless a survey has been undertaken by a qualified ecologist immediately prior to clearance and has confirmed that no nesting birds are present. The results of the survey shall be submitted to and approved in writing by the Local Planning Authority prior to any such clearance works taking place.

Reason: In the interests of protecting biodiversity.

24. Prior to the commencement of development a Phase 2 Site Investigation report shall be submitted to and approved in writing by the Local Planning Authority. The investigation shall address the nature, degree and distribution of land contamination on site and shall include an identification and assessment of the risk to receptors focusing primarily on risks to human health, groundwater and the wider environment.

Should unacceptable risks be identified the applicant shall also submit a contaminated land remediation strategy for the approval of the Local Planning Authority prior to commencement of development. No development shall take place until the submitted scheme is approved in writing by the Local Planning Authority.

The development shall thereafter be carried out in full accordance with the duly approved remediation strategy or such varied remediation strategy as may be agreed in writing with the Local Planning Authority.

Reason: In the interests of mitigating hazards associated with land contamination, and preventing pollution.

25. Pursuant to condition 24 and prior to first occupation of any of the dwellings, a verification report, which validates that all remedial works undertaken on site were completed in accordance with those agreed with the Local Planning Authority, shall be submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of mitigating hazards associated with land contamination, and preventing pollution.

26. The development permitted by this planning permission shall be carried out in accordance with the principles set out within the flood risk assessment (04/11/2021, Ref 74553.01R1, GeoSmart).

The measures shall be fully implemented prior to first occupation of any dwelling and in accordance with the timing / phasing arrangements embodied within the scheme, or within any other period as may subsequently be agreed, in writing, by the Local Planning Authority.

Reason: To ensure satisfactory sustainable drainage facilities are provided to serve the site in accordance with the Paragraphs 166 and 168 of the National Planning Policy Framework, Planning Practice Guidance and Defra Technical Standards for Sustainable Drainage Systems.

27. No development shall commence in any phase until a detailed, final surface water sustainable drainage strategy for the site has been submitted to, and approved in writing by, the Local Planning Authority.

The detailed sustainable drainage strategy shall be based upon the site-specific flood risk assessment submitted and sustainable drainage principles and requirements set out in the National Planning Policy Framework, Planning Practice Guidance and Defra Technical Standards for Sustainable Drainage Systems and no surface water shall be allowed to discharge to the public foul sewer(s), directly or indirectly.

Those details shall include, as a minimum:

- a) Sustainable drainage calculations for peak flow control and volume control (1 in 1, 1 in 30 and 1 in 100 + 40% climate change), with allowance for urban creep.
- b) Final sustainable drainage plans appropriately labelled to include, as a minimum:
  - i. Plan identifying areas contributing to the drainage network, including surface water flows from outside the curtilage as necessary;
  - ii. Sustainable drainage system layout showing all pipe and structure references, dimensions, design levels;
  - iii. Details of all sustainable drainage components, including landscape drawings showing topography and slope gradient as appropriate;
  - iv. Flood water exceedance routes in accordance with Defra Technical Standards for Sustainable Drainage Systems;
  - v. Finished Floor Levels (FFL) in AOD with adjacent ground levels for all sides of each plot to confirm minimum 150mm+ difference for FFL;
  - vi. Details of proposals to collect and mitigate surface water runoff from the development boundary;
  - vii. Measures taken to manage the quality of the surface water runoff to prevent pollution, protects groundwater and surface waters, and delivers suitably clean water to sustainable drainage components;
- c) Evidence of an assessment of the site conditions to include site investigation and test results to confirm infiltrations rates and groundwater levels in accordance with industry guidance.

The sustainable drainage strategy shall be implemented in accordance with the approved details.

Reason: To ensure satisfactory sustainable drainage facilities are provided to serve the site in accordance with the Paragraphs 166 and 168 of the National Planning Policy Framework, Planning Practice Guidance and Defra Technical Standards for Sustainable Drainage Systems

28. No development shall commence until details of how surface water and pollution prevention will be managed during each construction phase have been submitted to and approved in writing by the local planning authority.

Those details shall include for each phase, as a minimum:

- a) Measures taken to ensure surface water flows are retained on-site during construction phase(s) and, if surface water flows are to be discharged they are done so at a restricted rate to be agreed with the Lancashire County Council LLFA.
- b) Measures taken to prevent siltation and pollutants from the site into any receiving groundwater and/or surface waters, including watercourses, with reference to published guidance.

The development shall be constructed in accordance with the approved details.

Reason: To ensure the development is served by satisfactory arrangements for the disposal of surface water during each construction phase(s) so it does not pose an undue flood risk on site or elsewhere; and to ensure that any pollution arising from the development as a result of the construction works does not adversely impact on existing or proposed ecological or geomorphic condition of water bodies.

29. No development shall commence until details of an appropriate management and maintenance plan for the sustainable drainage system for the lifetime of the development have been submitted to and approved in writing by the Local Planning Authority. The submitted details, as a minimum, shall include:
- a) The arrangements for adoption by an appropriate public body or statutory undertaker, management and maintenance by a Residents' Management Company.
  - b) Arrangements concerning appropriate funding mechanisms for its on-going maintenance of all elements of the sustainable drainage system (including mechanical components) and will include elements such as:
    - On-going inspections relating to performance and asset condition assessments.
    - Operation costs for regular maintenance, remedial works and irregular maintenance caused by less sustainable limited life assets or any other arrangements to secure the operation of the surface water drainage scheme throughout its lifetime.
  - c) Means of access for maintenance and easements where applicable.

The plan shall be implemented in accordance with the approved details prior to first occupation of any of the approved dwellings, or completion of the development, whichever is the sooner.

Thereafter the sustainable drainage system shall be managed and maintained in accordance with the approved details.

Reason: To ensure that appropriate and sufficient funding and maintenance mechanisms are put in place for the lifetime of the development, to reduce the flood risk to the development as a result of inadequate maintenance, and to identify the responsible organisation/body/company/undertaker for the sustainable drainage system.

30. No building on any phase (or within an agreed implementation schedule) of the development hereby permitted shall be occupied until a Verification Report and Operation and Maintenance Plan for the lifetime of the development, pertaining to the surface water drainage system and prepared by a suitably competent person, has been submitted to and approved by the Local Planning Authority. The Verification Report must demonstrate that the sustainable drainage system has been constructed as per the agreed scheme (or detail any minor variations), and contain information and evidence (including photographs) of details and locations (including national grid reference) of inlets, outlets and control structures; landscape plans; full as built drawings; information pertinent to the installation of those items identified on the critical drainage assets drawing; and, the submission of a final 'operation and maintenance manual' for the sustainable drainage scheme as constructed. Details of appropriate operational, maintenance and access requirements for each sustainable drainage component are to be provided, with reference to published guidance, through an appropriate Operation and Maintenance Plan for the lifetime of the development as constructed. This shall include arrangements for adoption by an appropriate public body or statutory undertaker, and/or management and maintenance by a Management Company and any means of access for maintenance and easements, where applicable. Thereafter the drainage system shall be retained, managed and maintained in accordance with the approved details.

Reason: To ensure that flood risks from development to the future users of the land and neighbouring land are minimised, together with those risks to controlled waters, property and ecological systems, and to ensure that the development as constructed is compliant with and subsequently maintained pursuant to the requirements of Paragraph 168 of the National Planning Policy Framework.



31. Foul and surface water shall be drained on separate systems.

Reason: To secure proper drainage and to manage the risk of flooding and pollution.

32. The development shall not begin until a scheme for the management and maintenance of public open space on the site has been submitted to and approved in writing by the Local Planning Authority.

Reason: In order to secure the necessary provision for the management and maintenance of public open space.

33. Piling or any other foundation designs using penetrative methods shall not take place other than with the express written consent of the Local Planning Authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to groundwater. The development shall be carried out in accordance with the approved details.

Reason: For the future protection of the Water Environment from risks arising from land contamination.

#### **INFORMATIVES:**

1. The Local Planning Authority has an Adopted Local Plan (adopted in December 2021) and a series of Supplementary Planning Documents, which can be viewed at:

[https://www.rossendale.gov.uk/info/210148/local\\_plan/10629/](https://www.rossendale.gov.uk/info/210148/local_plan/10629/)

The Council operates a pre-application planning advice service. All applicants are encouraged to engage with the Local Planning Authority at the pre-application stage. In this case the applicant did not engage in pre-application discussions.

The Local Planning Authority has considered the application and where necessary considered either the imposition of planning conditions and/or sought reasonable amendments to the application in order to deliver a sustainable form of development in accordance with the National Planning Policy Framework and the local planning policy context.

2. The grant of planning permission will require the applicant to enter into a Legal Agreement with the County Council as Highway Authority. The applicant should be advised to contact Lancashire County Council, Highway Development Control email - [developeras@lancashire.gov.uk](mailto:developeras@lancashire.gov.uk) in the first instance to ascertain the details of such an agreement and the information to be provided.

3. The alterations to the existing highway as part of the new works may require changes to the existing street lighting at the expense of the client/developer.

4. During the period of construction, should contamination be found on site that has not been previously identified, no further works shall be undertaken in the affected area. Prior to further works being carried out in the affected area, the contamination shall be reported to the Local Planning Authority within a maximum of 5 days from the discovery, a further contaminated land assessment shall be carried out, appropriate mitigation identified and agreed in writing by the Local Planning Authority. The development shall be undertaken in accordance with the agreed mitigation scheme.

The applicant is advised that they have a duty to adhere to the regulations of Part 2A of the Environmental Protection Act 1990, the National Planning Policy Framework 2018 and the current Building Control Regulations with regards to contaminated land. The responsibility to ensure the safe development of land affected by contamination rests primarily with the developer.

5. If at any time any protected species are found or are suspected of being present on the site and adversely affected by the development, work should cease immediately and the Local Planning Authority or an ecologist should be contacted immediately.

Date:

Signed: *Mike Atherton*

Mike Atherton  
Head of Planning and Building Control

Please note that this notice does not relieve the applicant from the need to ensure compliance with the appropriate provisions of the Building Act 1984 and the Building Regulations 2000.

IT IS IMPORTANT THAT YOU SHOULD READ THE NOTES ACCOMPANYING THIS NOTICE

**GUIDANCE NOTES FOR APPLICANTS  
WHERE AN APPLICATION HAS BEEN APPROVED**

**1. APPLICATIONS FOR PLANNING PERMISSION, APPROVAL OF RESERVED MATTERS, LISTED BUILDING CONSENT OR CONSERVATION AREA CONSENT.**

If you object to the Local Planning Authority's decision to grant permission, approval or consent subject to conditions, you may appeal to the Secretary of State for the Environment under Section 78 of the Town and Country Planning Act 1990 within 12 weeks of the date of this notice. With regard to granted applications concerning listed buildings in a conservation area, you may appeal under Section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and Regulation 8 of the Planning (Listed Buildings and Conservation Areas) Regulations 1990.

Please make your appeal using a form from The Planning Inspectorate, Customer Support Unit, Room 3/15 Eagle Wing, Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN (Tel. 0117 372 6372) [www.planning-inspectorate.gov.uk](http://www.planning-inspectorate.gov.uk). The Secretary of State may allow a longer period for you to give notice of appeal, but will normally only do so if there are special circumstances that excuse the delay in giving notice of appeal. The Secretary of State need not consider an appeal if it appears that the Local Planning Authority could have granted permission for the proposed development only subject to the conditions it imposed, bearing in mind the statutory requirements, the development order, and any directions given under the order. In practice, the Secretary of State does not refuse to consider appeals solely because the Local Planning Authority made its decision on the grounds of a direction that he or she had given.

It may be that planning permission, conservation area consent or listed building consent is granted subject to conditions, whether by the Local Planning Authority or by the Secretary of State for the Environment; but you, as the landowner, claim that the land is no longer fit for reasonably beneficial use in its existing state and you cannot make it fit for such use by carrying out the permitted development. If so, you may serve a purchase notice on Rossendale Borough Council requiring the Council to buy your interest in the land. You can do this under the Town and Country Planning Act 1990 or Section 32 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and Regulation 9 of the Planning (Listed Buildings and Conservation Areas) Regulations 1990 in respect of listed buildings and buildings in conservation areas.

You may claim compensation against the Local Planning Authority if the Secretary of State has refused or granted permission subject to conditions, either on appeal or when the application was referred to her or him.

Compensation is payable in the circumstances set out in:

(a) Section 114 and Part II of Schedule 3 of the Town and Country Planning Act 1990; or (b) Section 27 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and Regulation 9 of the Planning (Listed Buildings and Conservation Areas) Regulations 1990 in respect of listed buildings.

**2. ADDITIONAL NOTES ON LISTED BUILDING CONSENT**

- 1 If you wish to modify the development referred to in your application or to vary it in any way, you must make another application.
- 2 This notice refers only to the grant of listed building consent and does not entitle you to assume that the City Council has granted its consent for all purposes:

- (a) If you have applied for planning permission under Section 57(1) of the Town and Country Planning Act 1990, we will send you a separate notice of decision;
  - (b) We will send you a separate notice about plans you have submitted under the Building Regulations 2000;
  - (c) If the development for which listed building consent has been granted includes putting up a building for which you have to submit plans under the Building Regulations 2000, you should not do any work connected with erecting that building until you have satisfied yourself that you have complied with Section 219 of the Highways Act 1980 or that they do not apply to this building.
- 3 Even if you have gained listed building consent, you must comply with any restrictive covenants that affect the land referred to in the application.

### **3. APPLICATION FOR CONSENT TO DISPLAY ADVERTISEMENTS**

If the applicant is aggrieved by the decision of the Local Planning Authority to grant consent, subject to conditions, he or she may appeal to the Secretary of State for the Environment in accordance with Regulation 17 and Part 3 of Schedule 4 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 within eight weeks of the receipt of this notice. (Appeals must be made on a form which obtainable from The Planning Inspectorate, Customer Support Unit, Room 3/15 Eagle Wing, Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN (Tel. 0117 372 6372) [www.planning-inspectorate.gov.uk](http://www.planning-inspectorate.gov.uk)).

## **IMPORTANT**

### **Compliance with Planning Conditions**

The Council's Planning Enforcement Team is responsible for monitoring the implementation of planning permissions. This includes ensuring that all relevant conditions have been complied with. Effective enforcement is important to:

- tackle breaches of planning control which would otherwise have unacceptable impact on the amenity of the area;
- maintain the integrity of the decision-making process;
- help ensure that public acceptance of the decision-making process is maintained.

Whilst the majority of developers/homeowners do comply with the requirements of planning permissions, there are a number who do not. Where any planning conditions are breached, the Council can take formal enforcement action without further notice. Enforcement action could include such measures as requiring remedial works, cessation of use, or complete demolition and can cause the developer/homeowner unnecessary expense, delay and frustration.

**It is important that you read and understand the eight points below to avoid any potential breaches of planning control:**

- 1) Please take some time to read through the conditions attached to the planning permission and their particular requirements.
- 2) All planning conditions and timeframes for their submission/implementation must be complied with in full, unless a subsequent application or appeal is made to vary or remove those conditions and is subsequently approved.
- 3) Applications to vary conditions attached to a planning permission can take up to 8 weeks to determine (13 weeks if relating to a major planning application). Appeals normally take much longer.

- 4) Applications for approval of details reserved by planning condition (more commonly referred to as condition discharge applications) can take approximately 8 weeks to determine.
- 5) Applicants should ensure that they submit any applications or appeals in good time, well in advance of any anticipated or scheduled start date for commencement of the development.
- 6) If any amendments are sought to the permission, either prior to commencement of development or during the development, the developer should contact the Planning Department at their earliest opportunity to establish what form of application will be required. Work should not continue until any amendments are approved in writing by the Local Planning Authority.
- 7) Fees are normally payable for applications for approval of details reserved by planning condition (condition discharge applications). The relevant application forms, associated fees and details of how to apply can be found on the Planning Portal: [www.planningportal.gov.uk](http://www.planningportal.gov.uk)
- 8) Should you have any queries relating to any part of the Planning Process the Council's Duty Planning Officer is available Mondays, Wednesdays and Fridays between the hours of 0900-1200 and can be contacted during those times on 01706 217 777 (Option 4).

Mike Atherton  
Head of Planning and Building Control

## **THE FOURTH SCHEDULE**

### **Owner's Covenants**

#### **1. The Owner covenants with the Council as follows:**

The Owner shall give notice in writing to the Head of Planning at the Council of their intention to commence the Development fourteen (14) calendar days prior to Commencement of the Development and shall give notice in writing of the date of Occupation of the 1<sup>st</sup>, 5<sup>th</sup> and 7<sup>th</sup> Dwelling on Site fourteen (14) calendar days prior to such Occupation arising.

#### **2. Payment of the contributions**

2.1 The Owner will pay the Biodiversity Contribution to the Council on Occupation of the 5<sup>th</sup> Dwelling on the Development

2.2 The Owner will pay the Public Open Space Contribution to the Council on Occupation of the 7<sup>th</sup> Dwelling on the Development

2.3 The Contributions shall be subject to Indexation in accordance with clause 11.

2.4 The Owner shall not cause or allow more than 5 Dwellings on the Development to be Occupied until the Biodiversity Contribution has been paid in accordance with paragraph 2.1 above.

2.5 The Owner shall not cause or allow more than 7 Dwellings on the Development to be Occupied until the Public Open Space Contribution has been paid in accordance with paragraph 2.2 above.

**THE FIFTH SCHEDULE  
AFFORDABLE HOUSING**

The Owner hereby covenants with the Council as follows:

**Part 1**

1. Following grant of the Reserved Matters Consent and prior to Commencement of Development to notify the Council in writing of the proposed Commencement of Development.
2. Prior to Commencement of the Development the Owner shall submit to the Council for approval the Affordable Housing Scheme comprising the Affordable Housing Mix. The scheme must include a plan or plans showing the plot number, location, plot boundaries and layout and including a programme and timetable for the provision of Affordable Housing Units and the Market Value Notice.
3. The Council will advise within 28 days of receipt of each of the Market Value Notice whether it approves the valuations and the Affordable Housing Scheme (as applicable), such approval not to be reasonably withheld or delayed.
4. Following approval of the Affordable Housing Scheme referred to at paragraph 2, the Owner shall lay out and deliver the Affordable Housing in full compliance with the approved Affordable Housing Scheme.
5. The Owner covenants with the Council not to Commence Development of any part of the Site unless a notice pursuant to paragraph 1 above has been served on the Council and the scheme referred to in paragraph 2 has been approved and the valuations have been approved in accordance with paragraph 3.

**Part 2**

**A. Construction of the Affordable Housing Units**

1. To construct and provide the Affordable Housing Units in accordance with the Affordable Housing Scheme and the Affordable Housing Mix and as more particularly set out in this Agreement.
2. The Affordable Housing Units shall be used solely for the purpose of providing Affordable Housing. The Affordable Housing Units must only be Occupied by:
  - 2.1 Approved Persons (as the sole residence of such Approved Persons and their households);  
and
  - 2.2 by a person (and their household) being in Housing Need.
3. The Owner shall serve notice on the Council within fifteen (15) Working Days after the completion of construction of each of the Affordable Housing Units.

**Part B Transfer of the Affordable Housing Units**

1. The Owner shall use all reasonable endeavours to enter into a contract to dispose of a freehold interest in all the Affordable Housing Units to one Affordable Housing Provider unless otherwise agreed in writing with the Council. The Owner shall use reasonable endeavours to agree with the Council the identity of the Affordable Housing Provider to which the Affordable Housing Units are to be transferred and the Council shall respond to any request for such agreement within twenty one (21) Working Days.

2. The agreement to dispose of any of the Affordable Housing Units to the Affordable Housing Provider must impose (inter alia) the following or equivalent terms:

- 2.1 a restrictive covenant by the Affordable Housing Provider (for the benefit of the Owner and the Council) not to use the Affordable Housing Units other than for Occupation by Approved Persons for residential purposes for those in Housing Need and in accordance with the terms of this Agreement (which may be subject to the exclusions at clause 7.5 – 7.8 hereof); and

- 2.2 that the transfer of the Affordable Housing Units to the Affordable Housing Provider be free from any ground rent or encumbrances save for any existing encumbrances and such rights reservations and covenants as are necessary to enable the Owner to develop the Site in accordance with the Planning Permission and shall grant to the relevant Affordable Housing Provider such rights and covenants as are necessary to enable it to provide and beneficially use and enjoy the Affordable Housing Units; and

- 2.3 the Owner shall not require the relevant Affordable Housing Provider to meet any of the Owner's legal or other conveyancing costs.

3. The Owner shall provide confirmation to the Council that an agreement for the transfer of the Affordable Housing Units to an Affordable Housing Provider has been entered into within ten (10) Working Days of it being entered into.

4. Subject to compliance with paragraph 1 above, in the event the Owner has either:

- 4.1 not been able to identify an Affordable Housing Provider which is acceptable to the Council in accordance with this Schedule and which is ready willing and able to exchange unconditional contracts on commercially acceptable terms to the Owner for the purchase of all of the Affordable Housing Units; or

- 4.2 has identified an acceptable Affordable Housing Provider which was ready willing and able to exchange unconditional contracts for the purchase of all of the Affordable Housing Units but such Affordable Housing Provider withdraw(s) from the transaction or otherwise indicates that it is unlikely that it is able or willing to purchase all of the Affordable Housing Units (including where contracts have been exchanged but not completed due to the default of the Affordable Housing Provider)

in either case within six (6) months of the date of this Agreement then the provisions of the following paragraph shall apply.

- 5 Where the preceding paragraph applies, the Owner may at any time following the 6-month period referred to notify the Council that they have not exchanged contracts with an Affordable Housing Provider for the disposal of all of the Affordable Housing Units and the Council shall then use reasonable endeavours to identify a suitable Affordable Housing Provider which is ready able and willing to exchange contracts for the purchase of all of the Affordable Housing Units (or such as remain unsold) and the provisions of the following paragraph shall apply.

- 6 In the event that either:



- 6.1 the Council have not been able to identify an Affordable Housing Provider which is ready willing and able to exchange unconditional contracts for the purchase of all of the Affordable Housing Units from the Owner; or
- 6.2 the Council had identified an Affordable Housing Provider which is ready and willing and able to exchange unconditional contracts for the purchase of all of the Affordable Housing Units from the Owner but such Affordable Housing Provider withdraw(s) from the transaction or otherwise indicates that it is unlikely that it is able or willing to purchase all of the Affordable Housing Units (including where contracts have been exchanged but not completed due to the default of the Affordable Housing Provider)

in either case within six (6) months of the date upon which the Owner notified the Council under paragraph 5 then the provisions of the following paragraph shall apply.

- 7 Subject to the Owner providing written evidence to the Council of Affordable Housing Provider engagement and reasons why the transfer to the Affordable Housing Provider have not moved forward, then the Council and the Owner (both acting reasonably) shall seek to agree an appropriate alternative scheme for providing Affordable Housing for Occupation by Approved Persons in Housing Need or as appropriate payment of a commuted sum for the provision of alternative Affordable Housing within the administrative area of the Council.
- 8 Where the Owner and the Council are not able to reach agreement in accordance with paragraph 7 above within one month of the Owner submitting such evidence, the Owner shall be entitled to dispose of the Affordable Housing Unit as an Market Unit, free from the restrictions within this Agreement, subject to payment of 55% of the Net Sales Proceeds for the Affordable Rented Properties to the Council as a commuted sum (subject to the Council having first agreed the Net Sales Proceeds figure with the Owner for the relevant Dwelling prior to such disposal) within 5 Working Days of legal completion, for the provision of alternative Affordable Housing within the administrative area of the Council

9 The Rented Units shall:

- 9.1 be marketed and made available by the Affordable Housing Provider as Affordable Rented Housing (as appropriate and as determined by the Affordable Housing Scheme);
- 9.2 be let on a Tenancy as Affordable Rented Housing;
- 9.3 be let by the Affordable Housing Provider to Approved Persons;
- 9.4 remain as Affordable Housing and let in accordance with this paragraph 9 in perpetuity (subject to paragraph 10 below);
- 9.5 be let via B-with-us or any subsequent Choice Based Lettings partnership that the Council is a member of from time to time.

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- 10.1 As soon as reasonably possible following any disposal of an Affordable Rented Unit to either:
  - a) someone who has exercised the right to acquire the dwelling of which he is a tenant pursuant to the Housing and Regeneration Act 2008 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular rented Affordable Housing Unit or

b) someone who has exercised any statutory right to buy the dwelling of which he is a tenant pursuant to Part V of the Housing Act 1985 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular rented Affordable Housing Unit

the Affordable Housing Provider shall calculate the Rented Net Sale Proceeds for the relevant Affordable Rented Unit and the Recycling Percentage on such sale and shall pay into a designated reserve fund held by the Affordable Housing Provider any Recycling Percentage received in respect of such sale.

10.2 The Recycling Percentage may only be used by the Affordable Housing Provider for Recycling.

10.3 On any transfer of any Affordable Rented Unit(s) by one Affordable Housing Provider to another Affordable Housing Provider the outgoing Affordable Housing Provider shall (to the extent not spent or already allocated for spending on Recycling) transfer the balance of the Recycling Percentage attributable to such Affordable Rented Units to the incoming Affordable Housing Provider and pursuant to this deed the incoming Affordable Housing Provider shall meet the obligations contained in this Schedule in so far as these relate to Recycling of the Recycling Percentage received by it on a sale referred to at paragraphs (a) or (b) of paragraph 10.1 (whether this relates to those sums transferred to it by the outgoing Affordable Housing Provider or received on sale after its date of acquisition).

10.4 In the event that the whole or any part of any Recycling Percentage has not been spent or allocated for spending on Recycling within five (5) years from the date of receipt by the Affordable Housing Provider, the monies or balance shall forthwith be released from any obligations pursuant to this Deed and be available for application by the Affordable Housing Provider in any manner which it considers appropriate, so long it has used reasonable (but commercially prudent) endeavours to secure further Affordable Housing in the Borough.

10.5 The Affordable Housing Provider shall maintain records in respect of each of the Affordable Rented Unit(s) containing the price paid for the Affordable Rented Unit and details of the sale and specifically the Rented Net Sale Proceeds and the Recycling Percentage calculations together with details of any Recycling undertaken and the aggregate Recycling Percentage held by the Affordable Housing Provider in respect of any Affordable Rented Units that have been sold in its designated reserve fund and upon request must allow the Council to inspect those records and provide any relevant information in writing.

10.6 The Affordable Housing Provider shall report to the Council on an annual basis on each sale made pursuant to paragraph 10.1 together with the information referred to at paragraph 10.5 and shall provide any further information that the Council requests in respect of compliance with this paragraph 10.

**THE SIXTH SCHEDULE**  
**ELIGIBILITY FOR THE AFFORDABLE RENTED UNITS**

1. An Approved Person should meet the following Eligibility Criteria for the Affordable Rented Units:
  - 1.1 applicants must be deemed to be in Housing Need;
  - 1.2 applicants must have a local connection with the area in which they are seeking to live;
  - 1.3 applicants must be able to demonstrate a housing need for a property type.
2. For the avoidance of doubt local connection means (not in order of priority):
  - 2.1 applicants who have previously had their only or principal home in the Borough for at least 6 out of the last 12 months or 3 out of the last 5 years; or
  - 2.2 applicants who for a period of at least 12 months prior to the proposed Occupation of an Affordable Housing Unit had their principal place of work within the Borough ; or
  - 2.3 applicants who have had, immediately prior to the proposed Occupation of an Affordable Housing Unit one or more of their parents children or siblings living within the Borough for a continuous period of at least five years.
3. For the avoidance of doubt applicants will be assessed on their current housing need.
4. For the avoidance of doubt the Affordable Rented Units must be the applicants sole or principal home.
5. Provided Always that notwithstanding the above the Council and Affordable Housing Provider may agree between themselves any amendment to the Eligibility Criteria where the Council shall deem it reasonable to do so and provided further that after such amendments are applied the applicant is able to demonstrate a housing need for a property type.
6. Upon allocation of the Affordable Rented Units for first lets and all subsequent lets the Affordable Housing Provider will confirm the details of each successful applicant detailing the criteria by which they qualify and the property address allocated to them and send this information to the Council.

## THE SEVENTH SCHEDULE

### ADDITIONAL REQUIREMENTS

The Owner covenants with the Council that:

1. it shall pay to the Council the following monitoring fees:
  - (a) a Contribution monitoring fee in the sum of 1% of the Public Open Space Contribution at the same time as payment of the Public Open Space Contribution
  - (b) a Contribution monitoring fee in the sum of £38.90 being 1% of the Biodiversity Contribution at the same time as payment of the Biodiversity Contribution
  - (c) an Affordable Housing monitoring fee in the sum of £1,000 on the date of Occupation of the first in time of the Affordable Housing Units
  - (d) a monitoring fee of £1,000 in respect of the monitoring of the Affordable Housing Overage Contribution on the date of Occupation of the 5<sup>th</sup> Dwelling on the Development.

## THE EIGHTH SCHEDULE

### The Council's Covenants

#### Contributions

1. To use all Contributions received from the Owner under the terms of this Agreement for the purposes referred to in the relevant definition and for no other purpose.
2. The Council covenants with the Owner that it will refund any Contributions to the person who paid the relevant Contribution to the extent that such Contribution has not been expended in accordance with the provisions in this Agreement (and money shall be deemed to have been expended if the Council has properly entered into a contract for the expenditure of the money for the purpose for which it is paid which is reasonably likely to result in the fulfilment of that purpose) within ten years of the date of receipt by the Council of such sum.
3. When requested in writing the Council shall provide written confirmation of the discharge of obligations to the Council contained in this Agreement once the Council is satisfied (acting reasonably) that such obligations have been performed.

## THE NINTH SCHEDULE

### AFFORDABLE HOUSING OVERAGE CONTRIBUTION

The Owner covenants with the Council to observe and perform the following obligations:-

1. Within 14 days of the legal completion of the sale (which for the purposes of this Schedule means the sale of a freehold or leasehold interest in a Dwelling) of the final Dwelling on the Development the Owner shall submit to the Council details of the Sales Revenue for each Dwelling sold such details to be provided by the Owner in a schedule in the form set out at Appendix 1.
2. Within 14 Working Days of receipt of the details provided in accordance with paragraph 1 of this Schedule the Council shall calculate the Affordable Housing Overage Contribution (if any, using the methodology set out in the worked example in Appendix 1) for the Development and serve written notice on the Seller of the amount payable by the Seller (and subject always to any adjustment to the Sales Revenue pursuant to paragraph 5 below).
3. The Seller shall submit with the information set out at paragraph 1 certified copies of the relevant transfer/lease or assurance for the sale of each Dwelling sold on the Development.
4. The Affordable Housing Overage Contribution shall be paid by the Seller within 28 days of receipt of the notice served by the Council in accordance with paragraph 2 of this Schedule or (if later) from the date of which any dispute between the parties about the amount payable is resolved.
5. In the event that, in the Council's reasonable opinion, any Dwelling(s) are sold or leased by the Seller for the purposes of or with the effect of avoiding or reducing the payment of the Affordable Housing Overage Contribution or a Dwelling is first Occupied without a sale, lease or other assurance having been completed, the Sales Revenue of the relevant Dwellings shall be deemed to be the price which the Dwelling, following completion of its construction and on initial Occupation would fetch if the freehold to it was sold on the open market by a willing seller to a willing buyer, as determined by the Council acting reasonably.
6. In the event that legal completion of the sale or lease of any Dwelling on the Development (or its first Occupation) has not occurred within 18 months of the date hereof (and subject always to paragraph 5) the Sale Rate Hurdle shall be adjusted by:
  - (a) indexing the fixed cost of £111.68 per square foot (the Base Cost) (set out in the financial viability appraisal submitted to the Council by the Developer for the cost of construction of the Dwelling) by the BCIS general building cost index between the date hereof and the date 18 months from the date hereof (or any similar replacement index as may be determined by the Council); and
  - (b) in the event of an increase adding such figure to the Sale Rate Hurdle (as may have previously been reviewed); and
  - (c) in the event of a decrease there shall be no change to the Sale Rate Hurdlewith such indexation being applied on the 18 month anniversary of the date hereof and every 12 months thereafter (and for the avoidance of doubt following the first review, the

figure to be used as the Base Cost for any subsequent review shall be the Base Cost as indexed and calculated for the immediately preceding review and the indexation figure to be used shall be the change to the relevant index between the two review dates) .

## Appendix 1

### Affordable Housing Contribution Schedule

[ ] Dwellings	Sale Area* of Dwelling on a per square foot basis	Sales Revenue achieved	Sales Revenue achieved per square foot (calculated by dividing the Sales Revenue by the Sale Area)	Revenue generated above the Sale Rate Hurdle (previous column less Sales Rate Hurdle)	Revenue generated above the Sale Rate Hurdle being the Affordable Housing Overage Contribution (previous column multiplied by Sale Area)
Worked example for illustrative purposes only	400 square foot	£100,000	$\frac{£100,000}{400} = £250$	£250 - £177.67 = £72.33	$£72.33 \times 400$ = £28,932
1					
2					
3					

\*The Sale Area is the gross internal area



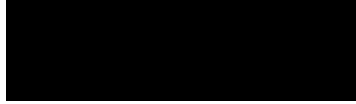
IN WITNESS whereof the Council, the Owner, the Developer have executed this Agreement as a Deed the date and year first before written.

EXECUTED AS A DEED by the

ROSSENDALE BOROUGH COUNCIL

By affixing its common seal in the

Presence of:



CLARE BIRTWISTLE  
MONITORING OFFICER



Signed as a deed  
(but not delivered until the date hereof) by

Dariush Mahdavi-Ardestani

.....

In the presence of:

Witness Signature:

Name of Witness:

..... BASQUIER Bernard .....

Address:

.....  
  
.....