

DATED 26<sup>th</sup> March 2008

(1) ROSSENDALE BOROUGH COUNCIL

(2) MANCHESTER LAND AND BUILDINGS LIMITED

(3) VIVO MODUS LIMITED

(4) NATIONAL WESTMINSTER BANK PLC

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**A G R E E M E N T**  
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under Section 106 of the Town and Country Planning Act 1990  
relating to land at Holmefield House Holcombe Road Helmshore Rossendale

Linda Fisher  
Head of Legal and Democratic Services  
P. O. Box 74,  
Kingfisher Business Centre,  
Futures Park,  
Bacup. OL13 0WU

THIS AGREEMENT is made the 26<sup>th</sup> day of March 2008

**BETWEEN**

- (1) **ROSSENDALE BOROUGH COUNCIL** of P. O. Box 74 Kingfisher Business Centre Futures Park Bacup Lancashire OL13 0WU ("the Council") of the First Part
- (2) **MANCHESTER LAND AND BUILDINGS LIMITED** (Company No. 4487358) of City House, 605 Oldham Road Failsworth Manchester M35 9AN ("the Owner") of the Second Part
- (3) **VIVO MODUS LIMITED** (Company No. 4500069) of The Edge Clowes Street Manchester M3 5NA ("the Developer") of the Third Part
- (4) **NATIONAL WESTMINSTER BANK PLC** (Company No. 929027) of 1 Exchange Flags Liverpool L2 3XN ("the Mortgagee") of the Fourth Part

**BACKGROUND**

1. The Council is the Local Planning Authority for the purposes of the 1990 Act for the area within which the Land is situate
2. The Owner is the registered proprietor under Title Number LA471360 of the freehold interest in the Land
3. The Mortgagee is the registered proprietor of a Charge dated 5<sup>th</sup> September 2003
4. The Developer has submitted to the Council the Application for the Development on the Land
5. The Council has resolved to grant planning permission for the Development in accordance with the Application subject to the completion of this Agreement without which planning permission would not be granted

6. For the purposes of determination by the Council of the Application the Developer and the Owner wish to enter into this planning obligation with the intention that if the Council approve the Application and grant planning permission for the Development the Council will then be able to enforce the obligations as obligations entered into pursuant to section 106 of the 1990 Act.

## **OPERATIVE PROVISIONS**

### **1. INTERPRETATION**

1.1 In this Agreement the following words and expressions have the following meaning

- |       |                           |  |
|-------|---------------------------|--|
| 1.1.1 | <b>“the 1980 Act”</b>     | the Highways Act 1980  |
| 1.1.2 | <b>“the 1990 Act”</b>     | the Town and Country Planning Act 1990 (as amended)  |
| 1.1.3 | <b>“Affordable Price”</b> | means the price the Affordable Units will be sold at provided the Owner obtains Housing Grant, being as follows :-<br><br>(a) in relation to the New Build Homebuy Housing the Affordable Price shall be the price set by the Valuer and shall reflect the RSL's compliance with Housing Corporation Target Rents for New Build Homebuy Intermediate Housing.<br><br>( b) in relation to the Affordable Rental Units the rent for the Social Rented Housing determined in accordance with the target rents being a weekly rent for each Affordable Unit which accords with |

the the Housing Corporation specified social rental levels for 1 and 2 bedroomed flats which at the date of this Agreement is outlined in the Fifth Schedule

- 1.1.4 **“the Affordable Units”** the affordable housing to be provided on the Land which shall be comprised as follows:
- (a) Social Rented Housing
    - 6 no 1 bed flats
    - 5 no 2 bed flats
  - (b) New Build Homebuy Housing
    - 2 no 3 bed houses
    - 2 no 1 bed flats
    - 3 no 2 bed flats
- the precise locations of which are to be agreed as part of the Reserved Matters Application ( “ the Affordable Housing “)
- 1.1.5 **“the Agreed Value”** the Affordable Price on the sale / rental / Intermediate tenure of each Affordable Unit (including the first and each and every subsequent disposal)
- 1.1.6 **“the Application”** the Application numbered 2006/17 for planning permission for the Development submitted by the Developer to the Council on the 7<sup>th</sup> November 2005
- 1.1.7 **“Bus Shelter** the sum of £22,584 as a contribution to the

	<b>Contribution</b>	provision of a bus shelter at an appropriate location to serve the Development to be paid as outlined in the Second Schedule
1.1.8	<b>“the Development”</b>	the Development of the Land with 1,110m <sup>2</sup> of industrial space, 2,432m <sup>2</sup> of office space, 53 apartments and houses as set out in the Application
1.1.9	<b>“Dwellings”</b>	the total of the Affordable Units and the Market Dwellings built on the Land
1.1.10	<b>“Disposal Costs”</b>	the price agreed between the Owner and the RSL
1.1.11	<b>“Housing Grant”</b>	means grant funds awarded by the Housing Corporation to support the provision of Affordable Housing
1.1.12	<b>“Helmshore”</b>	The area shown on Plan 2 attached
1.1.13	<b>“Housing Corporation”</b>	means the Housing Corporation or any successor body responsible for awarding Housing Grant
1.1.14	<b>“Implement Implementing and Implementation”</b>	carrying out a material operation as defined by section 56 of 1990 Act ( excluding any act of demolition remediation or site clearance )
1.1.15	<b>“Indexation”</b>	the amount which bears the same proportion to the relevant commuted sum as the amount by

which all the "All Items" Index of retail prices issued by the National Statistic Office or any successor Department for the month or date of payment exceeds the index figure of the said Index at the date of this Agreement

- 1.1.16 **"Intermediate Affordable Housing"** the meaning ascribed to it in Annex B of Planning Policy Statement 3: Housing
- 1.1.17 **"the Land"** all that piece or parcel of land being land and buildings on the north east side of Holcombe Road Helmshore shown for identification purposes only edged red on the attached Plan 1
- 1.1.18 **"Local Land Charges Register"** the register maintained by the Council relating to Local Land Charges
- 1.1.19 **"Main Residence"** a dwelling occupied by the same Persons for more than 6 months of every year
- 1.1.20 **"Market Dwellings"** the dwellings comprised in the Development other than the Affordable Units
- 1.1.21 **"New Build Homebuy"** a residential affordable unit where the equity is shared between the occupier and the RSL and the unit is acquired using the Shared Ownership Lease
- 1.1.22 **"Nominated Person"** a person who meets the criteria set out in the Fourth Schedule

- 1.1.23 **“Open Market Value”** the meaning ascribed to it in the Appraisal and Valuation Manual published by the Royal Institute of Chartered Surveyors
- 1.1.24 **“Planning Permission”** the outline planning permission to be granted pursuant to the Application in substantially the form annexed
- 1.1.25 **“Public Transport Contribution”** the contribution of one hundred and fifty thousand pounds (£150,000) to be paid to the Council to provide the Public Transport Facilities
- 1.1.26 **“Public Transport Facilities”** the public transport facilities to be provided by the Council
- 1.1.27 **“Recycled Capital Grants Fund”** The RSLs recycled Grants Fund operated in accordance with section REC 4 of the current edition of the Housing Corporations Funding Guide.
- 1.1.28 **“Reserved Matters Applications”** the application or applications for approval of reserved matters made pursuant to the Planning Permission
- 1.1.29 **“RSL”** Means Harvest Housing Group Ltd (“Harvest”) or such other body registered with the Housing Corporation and approved in writing by the Council
- 1.1.30 **“Shared Ownership Lease”** method of acquiring part ownership of the Affordable Housing by purchasing a share of the

freehold (or long leasehold) then paying rent set by the RSL on the non purchased share to a RSL (or other appropriate body to be agreed by the Council) where occupiers can purchase additional shares up to a level determined by agreement

- 1.1.31    **“Social                    Rented Housing”**    the meaning ascribed to it in Annex B of Planning Policy Statement 3: Housing
- 1.1.32    **“Stair casing”**    the exercise by any occupier pursuant to a Shared Ownership Lease have the right to acquire a greater interest in the Affordable Unit up to the Maximum Stair casing by paying a percentage of the then Open Market Value to the Housing Association after which the rent payable on the part retained by the RSL shall be reduced proportionately
- 1.1.33    **“Surplus sale proceeds”**    on a disposal of the Affordable Unit by the RSL on a shared ownership Lease the price paid for the share of the equity of the Affordable Unit sold to a Nominated Person shall not exceed the Affordable Price in the event that the sum exceeds the Affordable Price this shall be treated as Surplus sale proceeds and shall be retained in a ringfenced fund for future affordable housing



- provision within the borough
- 1.1.34 **“Tenancy Agreement”** means a tenancy agreement in relation to an Affordable Dwelling
- 1.1.35 **“Valuer”** has the same meaning as in the Housing Corporations model New Build Homebuy lease being an independent expert who is an associate or fellow of the Royal Institution of Chartered Surveyors agreed between the Landlord and the Leaseholder or in default of agreement appointed on the application of either Landlord or Leaseholder by or on behalf of the President of the Royal Institution of Chartered Surveyors
- 1.1.36 **“Working Day”** any day from Monday to Friday (inclusive) which is neither Christmas Day, nor Good Friday and not any statutory Bank Holiday.
- 1.1.37 **“Zone Agent”** means the Council's agreed Zone Agent which at the date of this Agreement is Plumlife

1.2 In this Agreement

1.2.1 the clause headings do not effect its interpretation

1.2.2 unless otherwise indicated references to clauses and Schedules are to clauses of and Schedules to this Agreement and references in a Schedule to a Part or paragraph are to a Part or paragraph of that Schedule

1.2.3 references to any statute or statutory provision include references to

1.2.3.1 that statute or statutory provision as from time to time amended extended re-enacted consolidated or replaced and

1.2.3.2 any orders regulations instruments or other subordinate legislation made under the statute or statutory provision whether before or after the date of this Agreement.

1.2.4 references to the Land include any part of it

1.2.5 references to any party in this Agreement include the successors in title of that party. In addition references to the Council include any successor local planning authority exercising planning powers under the 1990 Act

1.2.6 "including" means "including without limitation"

1.2.7 any covenant by the Owner (or the Mortgagee) not to do any thing or act includes a covenant not to permit or allow the doing of that act or thing

1.2.8 where two or more people form a party of this Agreement the obligations they undertake may be enforced against them all jointly or against each of them individually and

1.2.9 if any provision is held to be illegal, invalid or unenforceable the legality validity and enforceability of the remainder of the Agreement remains unaffected

1.3 This Agreement is made pursuant to section 106 of the 1990 Act to the intent that it shall bind all interest in the Land into whosoever hands the same may come and the Owner and its successors in title and assigns and all persons claiming under or through it

1.4 The parties to this Agreement do not intend that any other terms will be enforceable by virtue of the Contracts (Rights or Third Parties) Act 1999 by any person not a party to it

## **2. EFFECT OF THIS AGREEMENT**

2.1 This Agreement is made pursuant to section 106 of the 1990 Act. To the extent that they fall within the terms of section 106 of the 1990 Act the obligations contained in this Agreement are planning obligations for the purposes of section 106 of the 1990 Act and are enforceable by the Council

2.2 To the extent that any of the obligations contained in this Agreement are not planning obligations within the meaning of the 1990 Act they are entered into pursuant to the powers contained in section 111 Local Government Act 1972 section 2 Local Government Act 2000 and all other enabling powers

2.3 Nothing in this Agreement restricts or is intended to restrict the proper exercise at any time by the Council of any of its statutory powers functions or discretions in relation to the Land or otherwise

2.4 This Agreement will be registered as a local land charge by the Council

### 3. **COMMENCEMENT**

3.1 Except as otherwise mentioned in this Agreement this Agreement shall take effect when the Planning Permission is granted.

### 4. **OBLIGATIONS**

4.1 The Owner for itself and its successors in title and assigns hereby covenants with the Council that it will comply in all respects with the obligations on their behalf in the First, Second , Third Fourth fifth Sixth and Seventh Schedules

4.2 The Owner agrees with the Council to perform and comply with the obligations set out in relation to the Development.

4.3 The Council agrees with the Owner that it will issue the Planning Permission forthwith upon the completion of this Agreement.

4.4 Any notice consent or approval to be given pursuant to the terms of this Agreement by any party shall not be unreasonably withheld or delayed and the parties to this Agreement agree to act reasonably in carrying out their functions obligations and covenants as described in this Agreement.

4.5 Where any certificate to consent permission approval or satisfaction is required to be given under this Agreement such certificate consent permission approval or satisfaction shall be in writing and will not be unreasonably withheld or delayed

4.6 The Owner shall on the execution hereof pay to the Council its reasonable legal costs properly incurred in the preparation of this Agreement in the sum of £1,750 plus VAT.

4.7 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning

Permission) granted (whether or not on appeal) after the date of this Agreement.

- 4.8 No person will be liable for a breach of the terms of this Agreement occurring after the date on which they part with their interest in the Land or the part of the Land in respect of which such breach occurs but will remain liable for any breaches of this Agreement occurring before that date. Neither the reservation of any rights nor the inclusion of any covenants or restrictions over the Land in any transfer of the Land will constitute an interest for the purpose of this clause.
- 4.9 The Council will upon the written request of the Owner after the obligations on the part of the Owner contained herein have been fulfilled in relation to the Commuted sums obligations issue confirmation thereof and thereafter vacate or cancel the entry made in the Local Land Charges Register in relation to this Agreement or otherwise to record the fact that it has come to an end and no longer affect the Land.
- 4.10 The Owner shall serve notice on the Council of whether Housing Grant has been awarded as soon as reasonably practicable after receiving notification, and in the event that Housing Grant is not awarded to support the provision of Affordable Housing in accordance with the terms of this Agreement the Owner shall seek to agree with the Council alternative arrangements for the provision of Affordable Housing the Alternative Affordable Price and heads of terms of which are shown in the Seventh Schedule hereto such alternative arrangements recognising the Council's standard affordable housing provisions, pricing and mechanism and in the event that such alternative

arrangements cannot be agreed they shall be determined by the expert in accordance with clause 5 having regard to the Seventh Schedule.

**5. EXPERT**

- 5.1 Except as to matters of law and subject to the express provisions of this Agreement to the contrary any dispute or difference arising between the parties as to any of the provisions of this Agreement and/or their respective rights duties or obligations or as to any other matter or thing in anyway arising out of or in connection with the subject matter of this Agreement shall forthwith be referred by the parties or any of them for determination by an independent person ("the Expert") to be agreed upon between the parties and failing such agreement within ten (10) working days of any party calling upon the others to agree to the appointed on the application of the parties or any of them by the President for the time being of the Royal Institution of Chartered Surveyors or any successor institute ("the President")
- 5.2 The Expert shall act as an expert and make his determination within twenty (20) working days from the date of his appointment such determination to be made in writing giving full reasons therefore and shall be binding upon the parties.
- 5.3 If the Expert shall die delay or become unwilling or incapable of acting or if for any reason the President shall in his absolute discretion think fit he may in writing discharge the Expert and appoint another in his place.
- 5.4 It is hereby agreed and declared that
- 5.4.1 the Expert shall afford to the parties the opportunity to make representations in writing and consider any written representations made by or on behalf of the parties hereto which are received by him

within ten (10) working days after the parties have been afforded such an opportunity and each party shall be entitled to receive a copy of any such written representations made by or on behalf of the other parties and within five (5) working days of such receipt to make written counter representations.

5.4.2 the Expert shall be entitled to call for such independent expert advice on such matters as he shall think fit

5.4.3 the Expert shall have an unfettered discretion to determine the reference to him

5.4.4 the fees and expenses of the Expert including the costs of his appointment shall be borne equally between the parties unless the Expert shall direct otherwise and he shall have the power so to direct if he considers it is reasonable to do so having had regard to the conduct of the parties during the course of the dispute in question.

## 6. **TERMINATION OF THIS AGREEMENT**

6.1 This Agreement will come to an end if

6.1.1 the Planning Permission is quashed or revoked before Implementation so as to render this Agreement or any part of it irrelevant impracticable or unviable.

6.1.2 the Planning Permission expires before Implementation

6.2 Where the Agreement comes to an end under clause 6.1 the Council will upon the written request of the Owner issue confirmation thereof and thereafter vacate or cancel the entry made in the Local Land Charges Register in relation to this Agreement or otherwise to record the fact that it has come to an end and no longer affects the Land.

**7. MORTGAGEES CONSENT**

7.1 The Mortgagee consents to this Agreement being entered into with the intention that notwithstanding section 104 of the Law of Property Act 1925 its interest in the Land will be bound by the terms of this Agreement as if it had been executed and registered as a Local Land Charge before the execution of its charge.

7.2 Notwithstanding clause 7.1 the Mortgagee will not incur any liability for any breach of the obligations contained in this Agreement unless and until it becomes a Mortgagee in possession of the Land or appoints a Receiver or Administrative Receiver under its charge or exercises its power of sale.

**8. NOTICES**

8.1 Any notice demand or any other communications served by any party under this Agreement is to be delivered by hand or sent by first class post pre-paid or recorded delivery.

8.2 Any notice demand or any other communications is to be sent to the following address of the parties or to such address as one party may notify in writing to the others at any time as its address for service.

8.2.1 On the Council at the address set out above and addressed to the  
Executive Director of Regulatory Services

8.2.2 On the Owner to the Owners address referred to above

8.3 Unless the time of actual receipt is proved a notice demand or communications sent by the following means is to be treated as having been served.

8.3.1 If delivered by hand at the time of delivery

8.3.2 If sent by post on the second Working Day after posting or



8.3.3 If sent by recorded delivery at the time delivery was signed for

8.4 If a notice demand or any other communication is served after 4.00 p.m. on a Working Day or on a day that is not a Working Day it is to be treated as having been served on the next working day.

8.5 For the avoidance of doubt where proceedings have been issued in the Courts of England and Wales the provisions of the Civil Procedure Rules must be complied with in respect of the service of documents in connection with those proceedings.

## 9. **ENFORCEMENT**

9.1 This Agreement is to be governed and interpreted in accordance with the law of England and Wales.

9.2 The Courts of England are to have jurisdiction in relation to any disputes between the parties arising out or related to this Agreement. This clause operates for the benefit of the Council who retain the right to sue the Owner (or the Mortgagee) and enforce any judgment against the Owner (or the Mortgagee) in the Courts of any competent jurisdiction.

## 10. **LATE PAYMENT**

If any payment due under the provisions of this Agreement is not made on or before the date upon which it is due (the "Due Date") the party from whom it was due shall at the same time as making the payment to the other party pay at 3% above the base lending rate of the Bank of England as at the due date for the period starting with the Due Date and ending on the date on which payment of the sum on which interest is payable is made.

IN WITNESS whereof this document has been executed as a Deed by the respective parties hereto in the appropriate manner and with the intention of such document delivered on the part of each of them as a Deed on (but not before) the day and year first before written.

## FIRST SCHEDULE

### (Planning Obligations concerning Affordable Housing)

The Owner covenants as follows:-

- 1.1 To notify the Council in writing on the Implementation of the Development and such notice to be served on the Council within 7 days of Implementation of the Development.

#### **Construction and transfer of Affordable Units to the RSL**

- 1.2 To Build the Affordable Units in accordance with the Planning Permission and a specification to be submitted to and approved by the Council which shall be in accordance the Housing Corporations Scheme Development Standards dated April 2003 (as shall be updated or replaced from time to time)
- 1,3 to build not less than 25% of the total number of Dwellings approved pursuant to the Planning Permission as Affordable Units being those dwellings identified as such to the Council at the time of the Reserved Matters Application
- 1.4 The Owner confirms that as at the date of this Agreement the Open Market Value of each Affordable Unit and the Affordable Price for the Affordable Rental Units and the New Build Homebuy Housing payable by the Nominated Person of each Affordable Unit are as set out in the Fifth Schedule of this Agreement and that any adjustment to the Affordable Price for New Build Homebuy Housing shall be determined by the Valuer and any adjustment to the Affordable Price for the Affordable Rental Units shall be determined in accordance with Housing Corporation target rents

- 1.5 The Owner shall dispose immediately on the Approval of the Reserved Matters Application of all the Affordable Units to an RSL (or other housing body as agreed by the Council) at the Disposal Costs.
- 1.6 Not to dispose of more than 80% of the total number of dwellings on the Land built in accordance with the Planning Permission until the Affordable Units are substantially completed and each Affordable Unit has been transferred to a Nominated Person or an RSL at the Affordable Price calculated pursuant to interpretation definition 1.1.3 (a) (b) and (c ) respectively of this Schedule (subject however to paragraph 3.1 of this Schedule)
- 1.7 Give notice in writing to the Council as soon as reasonably practicable after the completion of the disposal of the Affordable Units to a RSL or a Nominated Person.
- 1.8 Any disposal of the Affordable Units pursuant to clause 1.5 of this Schedule shall be subject to the following terms
  - 1.8.1 the Owner shall inform the Council of the offer for sale ("Offer") to the RSL not less that 7 days after the offer letter being sent to the RSL
  - 1.8.2 a draft Contract and evidence of Title shall be submitted to the solicitors acting on behalf of the RSL within 28 days following the acceptance of the Owners Offer.
  - 1.8.3 the transfer of each Affordable Unit to the RSL shall so far as reasonably practicable be completed within 28 days of exchange of Contracts
  - 1.8.4 the transfers to the RSL shall contain the following provisions

- 1.8.4.1 the grant by the transferor to the transferee of all rights of access and passage of services and other rights reasonably necessary for the beneficial enjoyment of the Affordable Units
- 1.8.4.2 a reservation of all rights of access and passage of services and rights of entry reasonably necessary for the purposes of the development and future maintenance of the Affordable Units
- 1.8.4.3 a covenant not to use the Affordable Units other than for the purposes of housing as the occupier's sole or main residence
- 1.8.4.4 in relation to the New Build Homebuy Affordable Housing Units a covenant not to dispose of any unit other than at the Affordable Price and at the Agreed Value to Nominated Persons (as defined in the Interpretation Definitions at Clause 1.1) otherwise than by way of shared ownership equity share under the New Build Homebuy scheme
- 1.8.4.5 In relation to the units for Affordable Rent a covenant not to rent any of the units for Affordable Rent other than at the Affordable Price and at the Agreed Value to Nominated Persons (as defined in the Interpretation Definitions at Clause 1.1) such units to be always rental units

- 1.8.4.5 such covenants as the Owner may reasonably require for the maintenance of the Development completed pursuant to the Planning Permission and the preservation of the appearance thereof.
- 1.8.4.6 the covenant outlined in 3.3.4 below
- 1.8.4.7 a covenant that the RSL will manage the Affordable Units in accordance with the Housing Corporation standard terms and conditions for Shared Ownership Leases and rental schemes
- 1.8.4.8 a covenant not to dispose of the any of the Affordable Units other than in accordance with the terms of this Agreement

**Mechanism for dealing with Affordable Units once they have been transferred to the RSL**

**2 Affordable Rental Units**

- 2.1 The Affordable Rental Units shall be available for rent only and the weekly rent to be paid in relation to the occupation of each Affordable Unit shall not exceed the Affordable Price defined in definition 1.1.3 (b)
- 2.2 The Affordable Units shall only be occupied by Nominated Persons and members of their close family
- 2.3 The Affordable Units shall be occupied as the sole or main residence of the Nominated Person
- 2.4 The RSL shall on request provide written details to the Council to satisfy the Council that the requirements of this Agreement are being met.

### **3 New Build Home Buy Housing**

- 3.1 Not to dispose or sell any part or share of the equity of an Affordable Unit for a consideration which exceeds the Affordable Price PROVIDED THAT nothing in this Agreement shall prevent or restrict the right of a Nominated Person who has acquired a share of the ownership or part of the equity of an Affordable Unit subsequently to staircase under a Shared Ownership Lease.
- 3.2 Prior to the first and all subsequent Disposals of each Affordable Unit (or the acquisition of each and every additional equity share by a Nominated Person in accordance with Paragraph 3.3.8 below) the RSL shall notify the Council of the Valuer's assessment of the Affordable Price
- 3.3 The Disposal of each New Build Homebuy Unit shall be subject to the following provisions:
  - 3.3.1 a covenant providing that the Affordable Unit shall only be used for the purposes of New Build Homebuy unless the right to Staircase has been exercised
  - 3.3.2 a covenant providing that the Affordable Unit is occupied as the sole or main residence of the Nominated Person
  - 3.3.3 a covenant providing that the Affordable Unit shall only be occupied by a Nominated Person and members of their Close Family
  - 3.3.4 a covenant providing that the Affordable Unit shall not be offered to anyone other than a Nominated Person
  - 3.3.5 a covenant providing that the weekly rental on the non-purchased share of the Affordable Unit shall be rented at a rate that complies with the Housing Corporation's target rents for New Build Homebuy Housing.

- 3.3.6 a covenant that the nomination process set out in Paragraph 5 below shall be followed in relation to the Disposal of each Affordable Unit
- 3.3.7 an option to buy back clause in favour of the RSL in accordance with the Housing Corporation's Standard Lease
- 3.3.8 In the event that a Nominated Person exercises his right to acquire a further equity share in the Affordable Unit then the RSL shall retain Surplus Sale Proceeds from such acquisition (net of debt and costs) in a ring fenced fund to be utilised by the RSL for the provision of further affordable housing within the Council's administrative area

#### **4. Covenants applying to both Rental and New Build Homebuy Housing**

- 4.1 A covenant that there shall be 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 registered under title number LA 471360 and that the provisions of the First Schedules of the Planning Agreement dated 26<sup>th</sup> March 2008 and made between Manchester Land and Buildings Limited, Vivo Modus Limited, National Westminster Bank Plc and the Council have been complied with
- 4.2 the Owner shall at its own cost register the covenants restrictions and provisions referred to in Paragraphs 1 to 4 of the First Schedule above at the Land Registry and shall deliver to the Council an official copy of such title showing the registration of such covenants restrictions and provisions
- 4.3 The RSL shall on request provide written details to the Council to satisfy the Council that the requirements of this Agreement are being met
- 4.4 On the first and all subsequent rentals, intermediate tenancies the RSL will submit in writing to the Council the Valuer's assessment of the Affordable Price for the Affordable Units.



**5. Nomination Process**

5.1 The nomination process relating to the Disposal/ rental of any Affordable Unit shall be as follows:-

5.1.1 the RSL shall notify the Council in writing of the availability of an Affordable Unit providing details of the price at which the Affordable Unit is to be sold and the monthly rental payable on the Affordable Unit or in the case of rental only units the weekly rental figure

5.1.2 The RSL will provide details of the Affordable Unit to the Council's nominated Zone Agent who will identify Nominated Persons for the Affordable Unit in accordance with the Zone Agent's normal procedures

**SECOND SCHEDULE**  
**(Bus Shelter Contribution)**

The Owner covenants with the Council that on the Implementation of the Planning Permission to pay the Bus Shelter Contribution (subject to indexation)

## THIRD SCHEDULE

### (Provisions of the Public Transport Contribution)

The Owner covenants with the Council to pay the Public Transport Contribution subject to Indexation as follows:-

- 2.1.1 £50,000 on the Implementation of Development
- 2.1.2 £50,000 on the first anniversary of the Implementation of Development
- 2.1.3 £50,000 on the second anniversary of the Implementation of Development

**FOURTH SCHEDULE**  
**NOMINATED PERSONS**

Nominated Person shall be that person nominated by the Council, RSL or the Owner in order of priority

- (a) Firstly to a person or persons who is in the opinion of the Council RSL or Owner in need of Affordable Housing and
  - (i) who reside or have continually resided in Helmshore for at least 12 months preceding
    - (a) the offer period or
    - (b) the date of transfer of the Affordable Units to the RSL or
  - (ii) who have been at any time previously resided in Helmshore for at least 5 years or
  - (iii) who have had strong local connections with Helmshore by reason of employment or close family association (spouse, parent, brother, sister, child, grandparent or grandchild)
- (b) Secondly if no applicant qualifies under sub-paragraph (a) above within six months of a vacancy arising to a person or persons who in the opinion of the Council are in need of Affordable Housing and who
  - (i) reside or have continually resided within the Council's administrative area for at least 12 months preceding
    - (a) the offer period or
    - (b) the date of transfer of the Affordable Units to the RSL or
    - (c) If no applicant qualifies under sub-paragraph (c) above (within 8 months of a vacancy arising) to a person or persons who in the

opinion of the Council and the RSL are in need of Affordable Housing.

Provided always that in the case of an Affordable Unit to be occupied by way of a Tenancy Agreement the Nominated Person shall also be on the Council's housing requirement list or such equivalent list as may be maintained by another body approved by the Council.

## FIFTH SCHEDULE

**Table Showing the open market value, Affordable price and weekly rental of the Affordable Units as at the date of this Agreement**

### Shared Ownership Units

Dwelling Type	Open Market Value (Oct 07)	50% Equity Initial Purchase	Rent per week on Non-Equity @2.75%
1 Bed Flat	£106,000	£53,000	£28.03
2 Bed Flat	£132,500	£66,250	£35.03
3 Bed House	£175,000	£87,500	£46.27

### Affordable Rented Units

Dwelling Type	Open Market Value Oct 07)	Affordable Rent per week
1 Bed Flat ( X 6)	£106,000	£60.84
2 Bed Flat ( X 5)	£132,500	£69.45

This is based on the average rent levels in the social housing sector for this property type

## SIXTH SCHEDULE

### Council's Covenants

#### Repayment of contributions

- 1 The Council hereby covenants with the Owner to use all sums received from the Owner under the terms of this Deed for the purposes specified in this Deed for which they are to be paid or for such other purposes for the benefit of the Development as the Owner and the Council shall agree.
- 2 The Council covenants with the Owner that it will pay to the Owner such amount of any payment made by the Owner to the Council under this Deed which has not been expended in accordance with the provisions of this Deed within ten years of the date of receipt by the Council of such payment together with interest at the National Westminster Bank base rate from time to time for the period from the date of payment to the date of refund.
- 3 The Council shall 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 Deed.

## SEVENTH SCHEDULE

### Non availability of Housing Grant

Should Housing Grant not be obtained, the Owner and the Council will agree alternate affordable housing provision, the heads of terms of which are as follows:

#### 1. Transfer to RSL and Alternative Affordable Price:-

- 1.1 The same provisions outlined in the First Schedule regarding construction and transfer to the RSL shall apply, however the disposal costs to the RSL will be agreed with the Housing Corporation but shall not exceed 65% of the Open Market Value of the Affordable Units. The Council's standard provisions as regards non transfer of the Affordable Units to an RSL if the Owner has not been able to conclude an agreement with the RSL, shall also apply
- 1.2 The Owner will covenant not to dispose of more than 80% of the total number of dwellings on the Land built in accordance with the Planning Permission until the Affordable Units are substantially completed and each Affordable Unit has been transferred to a Nominated Person or an RSL at the Alternative Affordable Price calculated in accordance with clauses 2 and 5 of this Seventh Schedule

#### 2 Affordable Units -

The Affordable Units will be the same type, location and number as is specified in clause 1.1.4, and will be built to the same specification, save that the New Build Home Buy Housing will be replaced with the Council's standard shared ownership housing, and will be made available to Nominated Persons



at the Alternative Affordable Price in accordance with the Council's standard affordable housing mechanism and provision which will include the following:-

2.1 the shared ownership units will be made available to Nominated Persons at the Alternative Affordable Price by way of the buyer acquiring part ownership and paying rent on the non purchased share

2.2 (1)The Alternative Affordable Price for the shared ownership units will mean a sum not exceeding 65% of the Open Market Value of the Affordable Unit, for the purchase of the equity share, and the rental element on the non purchased share will be set at 2.75% and will be calculated in accordance with para 5 below

2.2 (2)In relation to the Affordable Rental Units the Alternative Affordable Price shall mean the rent for the Social Rented Housing determined in accordance with the target rents being a weekly rent for each Affordable Unit which accords with the Housing Corporation specified social rental levels for 1 and 2 bedroomed flats which at the date of this Agreement is outlined in para 5

AND the Owner confirms that the figures set out in para 5 below shall be used as an agreed baseline for the future assessment of the Open Market Value and the weekly rental of each Shared Ownership Unit

2.3 each Nominated Person shall initially acquire no more than a 50% equity share in the Affordable Unit, and will be able to staircase up to 75% (the remaining share being retained by the RSL)

2.4 the Nominated Person will be prevented from acquiring any additional equity within 1 calendar year from the date of acquisition and thereafter a Nominated Person can only acquire in tranches of 5 and 10% of the Alternative Affordable Price

2.5 the Affordable Rental and Shared Ownership Units shall only be occupied by Nominated Persons and shall remain as rental units and shared ownership units

2.6 such other clauses as the Council may require to effect its usual shared ownership and affordable rental housing mechanism and procedure.

### 3. Alteration

The Council shall have sole discretion to alter any of these agreed heads of terms when agreeing affordable housing provision should Housing Grant be unavailable

### 4. Referral to Expert:-

Should Housing Grant not be available, any other details for the provision of the affordable housing which cannot be agreed between the Owner and the Council will be referred to the Expert who shall have regard to these heads of terms

5. Table Showing the Open Market Value, the Alternative Affordable Price and weekly rental of the Affordable Units should Housing Grant not be available:-

#### Shared Ownership Units

Dwelling Type	Open Market Value (Oct 07)	50% Equity Initial Purchase	Rent per week on Non-Equity @2.75%
1 Bed Flat	£106,000	£34,450	£18.22
2 Bed Flat	£132,500	£43,063	£22.77
3 Bed House	£175,000	£56,875	£30.08

Calculation for above is as follows:

Initial Equity Purchase Price = OMV x 65% x 50%.

Rent per week on non-equity = Balance of discounted equity / 52 x 2.75%

Example: 1 Bed Flat

Initial Equity Purchase Price:  $106,000 \times 65\% \times 50\% = 34,450$

Rent per week:  $34,450 / 52 \times 2.75\% = 18.22$

#### Affordable Rented Units

Dwelling Type	Open Market Value Oct 07)	Affordable Rent per week
1 Bed Flat ( X 6)	£106,000	£60.84
2 Bed Flat ( X 5)	£132,500	£69.45

This is based on the average rent levels in the social housing sector for this property type

THE COMMON SEAL of **ROSSENDALE** )  
**BOROUGH COUNCIL** was affixed to this )  
Deed in the presence of )



Mayor  
[Redacted]

No. 114826  
REGISTRY

THE COMMON SEAL of **MANCHESTER** )  
**LAND AND BUILDINGS LIMITED** was )  
hereunto affixed in the presence of :- )

[Redacted]  
Director/Company Secretary

THE COMMON SEAL of **VIVO MODUS** )  
**LIMITED** was hereunto affixed in the )  
presence of :- )

[Redacted]  
Director/Company Secretary

THE COMMON SEAL of **NATIONAL** )  
**WESTMINSTER BANK PLC** was hereunto affixed )  
in the presence of :- )

I

Director/Company Secretary

and Delivered as deed  
and on behalf of  
National Westminster Bank PLC  
by authority of  
presence

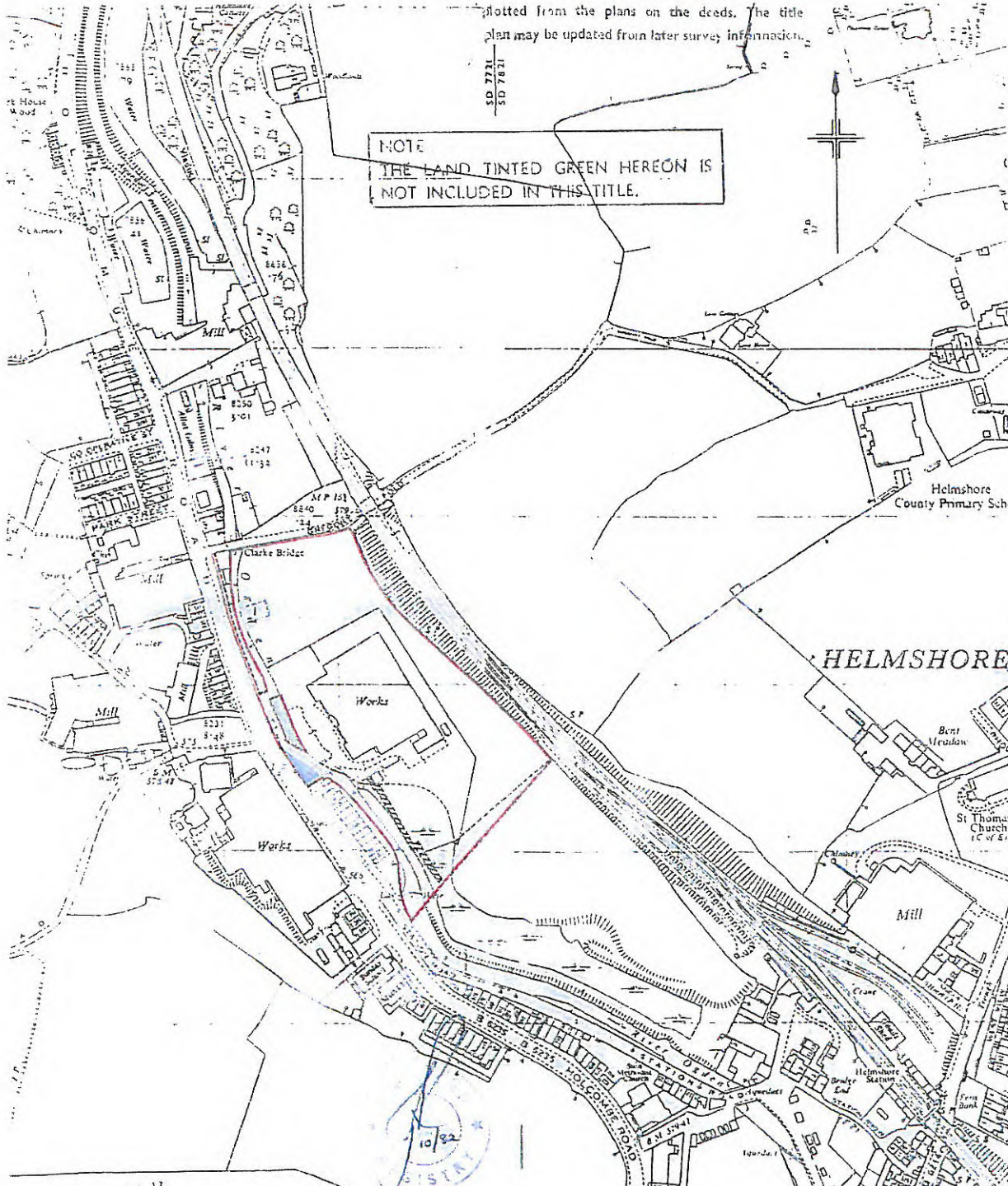
[Redacted]

Witness' Signature-Bank employee

H.M. LAND REGISTRY		TITLE NUMBER <b>LA471360</b>
ORDNANCE SURVEY PLAN REFERENCE	SD 7721	Scale 1/1250
COUNTY LANCASHIRE	ROSSENDALE DISTRICT	© Crown copyright

The boundaries shown by dotted lines have been plotted from the plans on the deeds. The title plan may be updated from later survey information.

NOTE  
THE LAND TINTED GREEN HEREON IS NOT INCLUDED IN THIS TITLE.



MAY 05

This title plan shows the general position of the boundaries: it does not show the exact line of the boundaries. Measurements scaled from this plan may not match measurements between the same points on the ground. For more information see Land Registry Public Guide 7 - Title Plans.  
 This official copy shows the state of the title plan on 31.03.2006 at 00.00. It may be subject to distortions in scale.  
 Under s.67 of the Land Registration Act 2002, this copy is admissible in evidence to the same extent as the original.  
 Issued on 3 November 2006  
 This title is dealt with by LANCASHIRE District Land Registry.  
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# Rossendale Borough Council

## Town and Country Planning Act 1990 Planning Permission

PLA10358

**Applicants Name :** Modus Homes

**Notice Recipient :** Clare Rowles  
(Applicant/Agent) Matthews & Goodman  
196 Deansgate  
Manchester  
M3 3WF

DRAFT

### Part 1 - Particulars of Application

**Date Received :** 23/01/2006

**Application No :** 2006/017

**Proposed works :** Application for outline permission for Residential, Industrial, and Commercial development

**Location :** LAND OFF HOLCOMBE ROAD HELMSHORE ROSSENDALE BB4 4NB

**Grid Reference :** (E)37785890(N)42122480

### Part 2 - Particulars of Decision

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

- 1 Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of two years from the date of this permission.  
**Reason for this condition :** Required by Section 51 of the Planning and Compulsory Purchase Act 2004
- 2 The development hereby permitted shall be begun either before the expiration of three years from the date of this permission, or before the expiration of one year from the date of approval of the last of the reserved matters to be approved, whichever is the later.  
**Reason for this condition :** Required by Section 51 of the Planning and Compulsory Purchase Act 2004
- 3 Approval of the details of scale, external and landscaping of the site (hereinafter called "the reserved matters") shall be obtained from the Local Planning Authority in writing before any development is commenced.  
**Reason for this condition :** The application is in outline only and not accompanied by detailed plans.

- 4 None of the residential units hereby permitted (other than Affordable Housing) shall be commenced prior to commencement of one of the industrial or commercial units hereby permitted and none of the residential units (other than Affordable Housing) shall be occupied prior to substantial completion of one of the industrial or commercial units hereby permitted. Likewise, not more than 15 of the residential units hereby permitted (other than Affordable Housing) shall be commenced prior to commencement of two of the industrial or commercial units hereby permitted and not more than 15 of the residential units (other than Affordable Housing) shall be occupied prior to substantial completion of two of the industrial or commercial units hereby permitted.

**Reason for this condition :** To ensure that the proposed development proceeds as a mixed use regeneration project, to accord with the exceptions to Policy 12 of the adopted Joint Lancashire Structure Plan.

- 5 The first reserved matters application shall be accompanied by a contaminated land Phase I report to assess the actual/potential contamination risks at the site shall be submitted to, and approved in writing by, the Local Planning Authority (LPA). Should the Phase 1 report recommend that a Phase II investigation is required, a Phase II investigation shall be carried out and the results submitted to, and approved in writing by, the LPA.

Should the Phase II investigations indicate that remediation is necessary, then a Remediation Statement shall be submitted to, and approved in writing by, the LPA. The remedial scheme in the approved Remediation Statement shall then be carried out in accordance with approved details.

Should remediation be required, a Site Completion Report detailing the conclusions and actions taken at each stage of the works including validation works shall be submitted to, and approved in writing by the LPA prior to the first use or occupation of that part of the development hereby approved.

**Reason for this condition :** To ensure the site is suitable for its end use and the wider environment and does not create undue risks to site users or neighbours during the course of the development, to accord with Policy E7 of the adopted Rossendale District Local Plan.

- 6 Before the development hereby permitted is first commenced full details of existing and proposed ground levels and proposed building slab levels (all relative to ground levels adjoining the site) shall have been submitted to and approved in writing by the Local Planning Authority, notwithstanding any such detail shown on previously submitted plan(s). The development shall only be carried out in conformity with the approved details.

**Reason for this condition :** To mitigate the risk of flooding, to accord with the advice of the Environment Agency and the criteria of Policy DC1 of the adopted Rossendale District Local Plan.

- 7 No development shall take place until details of the proposed foul and surface water drainage arrangements have been submitted to and approved by the Local Planning Authority in writing. No part of the development shall be occupied until the approved drainage arrangements have been fully implemented in respect of that element of the proposal.

**Reason for this condition :** To secure proper drainage and to prevent flooding, in accordance with the criteria of Policy DC1 of the adopted Rossendale District Local Plan.

- 8 The first reserved matters application shall be accompanied by documentation to substantiate that the existing bridge-structure can provide a carriageway of not less than 7.3m in width to a standard adoptable by Lancashire County Council(Highways), and the manner in which pedestrian access to each side of the said carriageway is to be provided to a standard adoptable by Lancashire County Council(Highways), unless an alternative means of access has otherwise first agreed in writing by the Local Planning Authority. No part of the development hereby permitted shall be occupied or used until its means of access has been constructed in accordance with the approved scheme.

**Reason for this condition :** To ensure the provision of adequate access arrangements and secure a sustainable form of development, in accordance with PPG13, Policy 1 of the adopted Joint Lancashire Structure Plan and the criteria of Policy DC1 of the adopted Rossendale District Local Plan.

- 9 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995, or any Order revoking or re-enacting the Order, there shall not at any time in connection with the development hereby permitted, be erected or planted, or allowed to remain, upon the land hereinafter defined, any building, wall, fence, hedge, tree, shrub or other device which will obstruct the view above a plane 1 metre above the crown level of the adjoining highway. The piece of land affected by this condition shall be that part of the site in front of a line drawn from a point 4.5 metres measured along the centre line of the site access from the carriageway of Holcombe Road to a point measured 70m in a northerly direction along the nearer edge of the carriageway of Holcombe Road from the intersection of the centre line of the site access.

**Reason for this condition :** In the interests of Highway safety and to accord with PPG13, Policy 1 of the adopted Joint Lancashire Structure Plan and the criteria of Policy DC1 of the adopted Rossendale District Local Plan.

- 10 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995, or any Order revoking or re-enacting the Order, there shall not at any time in connection with the development hereby permitted, be erected or planted, or allowed to remain, upon the land hereinafter defined, any building, wall, fence, hedge, tree, shrub or other device which will obstruct the view above a plane 1 metre above the crown level of the adjoining highway. The piece of land affected by this condition shall be that part of the site in front of a line drawn from a point 3 metres measured along the centre line of the site access from the carriageway of Holcombe Road to a point along the nearer edge of the carriageway of Holcombe Road marked by an X on the Location Plan.

**Reason for this condition :** In the interests of Highway safety and to accord with PPG13, Policy 1 of the adopted Joint Lancashire Structure Plan and the criteria of Policy DC1 of the adopted Rossendale District Local Plan.

- 11 Notwithstanding the details shown on the submitted drawing, the development shall not be commenced until a scheme has been submitted to and approved in writing by the Local Planning Authority in respect of the surfacing, draining and marking out of all areas to be used for the parking and manoeuvring of vehicles. The submitted scheme shall provide a level of car parking which does not exceed the level indicated in the approved Lancashire County Council Parking Standards (including appropriate levels of provision for mobility-impaired, motorcycle/cycle parking in secure/covered facilities). The approved scheme shall be implemented prior to first use of the building they are to serve (or as otherwise agreed in writing by the Local Planning Authority), and the facilities thereby provided shall be kept available for use as such thereafter.



**Reason for this condition :** To ensure the provision of adequate off-street parking and secure a sustainable form of development, in accordance with PPG13, Policy 1 & Policy 7 of the adopted Joint Lancashire Structure Plan and the criteria of Policy DC1 of the adopted Rossendale District Local Plan.

- 12 No development shall take place until a scheme of landscaping/boundary treatments has been submitted to and approved in writing by the Local Planning Authority, notwithstanding any such detail which may have previously been submitted. The submitted scheme shall provide details : of planting to be retained and of the types and numbers of trees and shrubs to be planted, their distribution on site, those areas to be seeded, paved or hard landscaped; and detail any changes of ground level or landform.

**Reason for this condition :** In the interests of the amenity of the area, in accordance with the criteria of Policy DC1 of the adopted Rossendale District Local Plan .

- 13 All hard-surfaced areas/walls/fences forming part of the approved scheme of landscaping/boundary treatment shall be completed prior to occupation of the nearest building, unless otherwise agreed in writing with the Local Planning Authority. All new planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following substantial completion of the building. Any trees or plants in the approved scheme of landscaping which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.

**Reason for this condition :** In the interests of the amenity of the area, in accordance with the criteria of Policy DC1 of the adopted Rossendale District Local Plan.

- 14 Before development is commenced, and throughout the construction period, temporary protective fencing (of a type first agreed in writing with the Local Planning Authority) shall be erected along the edge of the landscaped buffer to bound Ogden River and around other trees to be retained.

**Reason for this condition :** In the interests of the amenity of the area, in accordance with the criteria of Policy DC1 of the adopted Rossendale District Local Plan.

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

**Reason for this condition :** For the avoidance of doubt and to accord with the criteria of Policy DC1 of the adopted Rossendale District Local Plan.

### Summary of Reasons for Approval

- 1 The Council considers that the circumstances exist to warrant permitting the proposed residential development as an exception to Policy 12 of the adopted Joint Lancashire Structure Plan by reason of the employment development and the affordable housing that is also proposed.

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

**Local Plan**

- DC1 Development Criteria
- DC3 Public Open Space
- DC4 Materials
- DS1 Urban Boundary
- E4 Tree Preservation
- E7 Contaminated Land

**Note:** This consent requires the construction, improvement or alteration of an access to the public highway. Under the Highways Act 1980 Section 184 the County Council as Highway Authority must specify the works to be carried out. Only the Highway Authority or a contractor approved by the Highway Authority can carry out these works and therefore before any access works can start you must contact the District Highway Office, 1 Grange Street, Rawtenstall, BB4 7RT (Tel. 01706-232160) and quote the planning application number.

The Developers attention is drawn to the Environment Agency letters of 17/5/06 and 22/5/06, copies of which are appended.

The Developers attention is drawn to the S.106 legal agreement relating to this application.

**Date:**

Development Control  
One Stop Shop  
Town Centre Offices  
Lord Street, Rawtenstall  
Rossendale BB4 7LZ

Neil Birtles  
Senior Planning Officer

### Notes

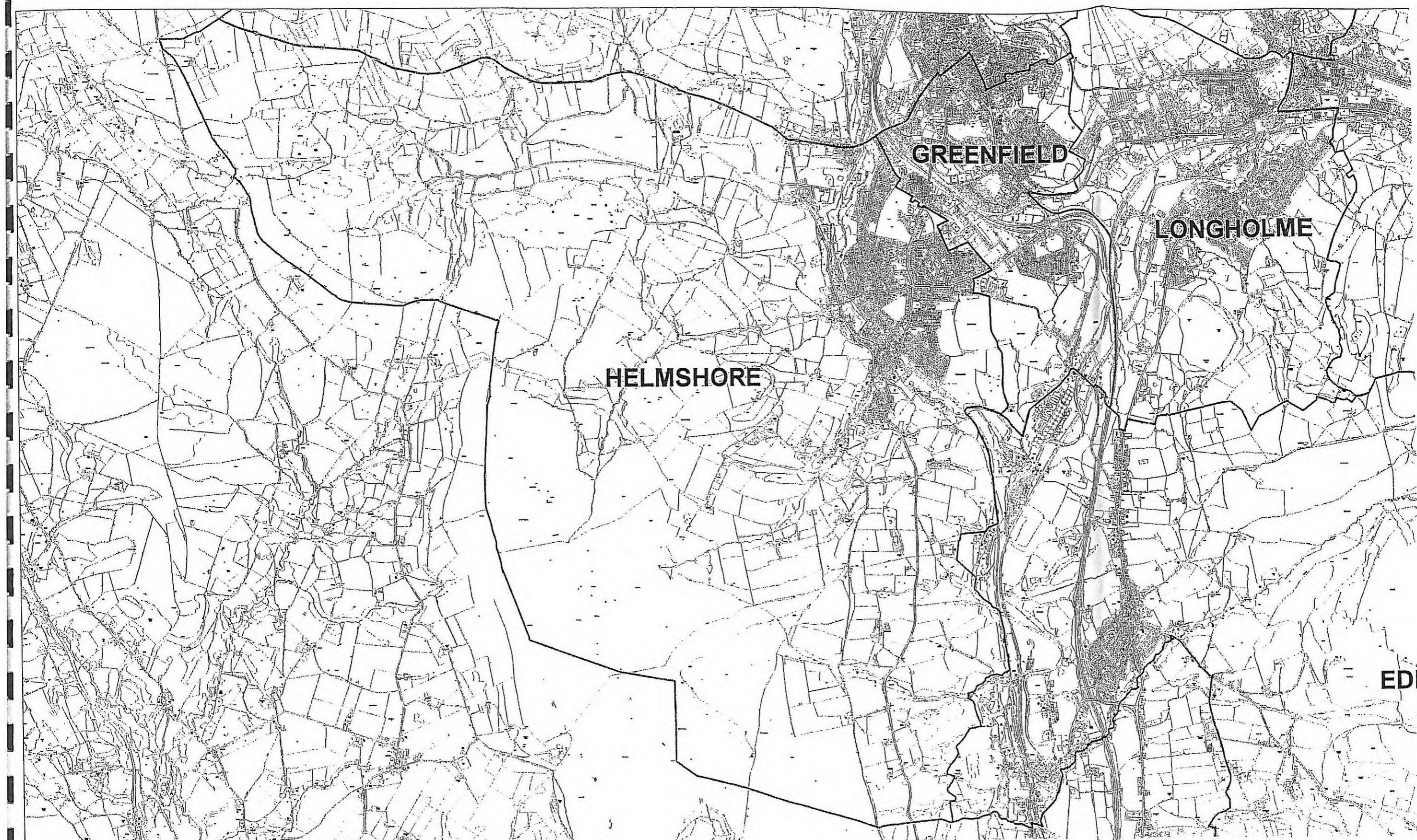
N.B. This permission refers only to that required under the Town and Country Planning Act 1990 and does not include any consent or approval under any other enactment, byelaw, order, regulation or Act. This consent does not constitute Listed Building Consent.

#### **A) Appeals to the Secretary of State**

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

#### **B) Purchase Notices**

If either the Local Planning Authority or the Secretary of State refuses permission to develop land or grants it subject to conditions, the owner may claim that he can neither put the land to a reasonably beneficial use in its existing state nor can he render the land capable of a reasonably beneficial use by the carrying out of any development which has been or would be permitted. In these circumstances, the owner may serve a purchase notice on the Council in whose area the land is situated. This notice will require the Council to purchase his interest in the land in accordance with the provisions of Part VI of the Town and Country Planning Act 1990.



**GREENFIELD**

**LONGHOLME**

**HELMSHORE**

**EDI**

