

15TH NOVEMBER
DATED SEPTEMBER 2013

(1) **ROSSENDALE BOROUGH COUNCIL**

(2) **BERKSHIRE HOMES (NORTHERN) LIMITED**

A G R E E M E N T

under Section 106 Town and Country Planning Act 1990
relating to land opposite 449-457 Bacup Road, Hareholme,
Rawtenstall, Rossendale BB4 7JJ
(Planning reference 2013/0041)

Stuart Sugarman
Director of Business
The Business Centre,
Futures Park,
Bacup
OL13 0BB

Ref CLB/Z12/Berkshire

THIS AGREEMENT is made on the 15th NOVEMBER day of September 2013

BETWEEN:

(1) **ROSSENDALE BOROUGH COUNCIL** of The Business Centre, Futures Park, Bacup OL13 0BB ("the Council") and

(2) **BERKSHIRE HOMES (NORTHERN) LIMITED (Company Number 0797911)** whose registered office is at Suite 1A, Link 665 Business Centre, Todd Hall Road, Haslingden, Rossendale, Lancashire BB4 5HU ("the Owner")

BACKGROUND

- (A) For the purposes of the 1990 Act, the Council is the local planning authority for the area within which the Site is located and the person who is entitled to enforce the obligations contained in this Agreement
- (B) The County Council is the Highway Authority for the area in which the Site is located
- (C) The Owner is the owner of the whole of the freehold Site registered at H. M. Land Registry with title absolute under title number LA967066 free from encumbrances which would prevent the Owner entering into this Agreement.
- (D) The parties have agreed to enter into this Agreement with the intention that the obligations contained in this Agreement may be enforced by the Council against the Owner and its successors in title
- (E) The Owner has by application reference 2013/0041 ("the Planning Application") applied to the Council for permission to develop the Site in the manner and for the uses set out in the Planning Application and in the plans specifications and particulars deposited with the Council and forming part of the Planning

Application more particularly set out in the Second Schedule ("the Development")

- (F) The Council has decided to grant planning permission for the Development in accordance with the Planning Application subject to the making of this Agreement without which planning permission for the Development would not have been granted.

OPERATIVE PROVISIONS

1. INTERPRETATION

- 1.1 In this Agreement, the following words and expressions have the following meanings:

"1990 Act"	the Town and Country Planning Act 1990 as amended by Section 12 of the Planning and Compensation Act 1991
"Additional Contribution"	the sum to be paid to the Council to be expended on Affordable Housing provision in Rawtenstall or Waterfoot as may be due to the Council by virtue of Schedule 3 of this Agreement
" Application"	an application for full planning permission for the development of the Site made by the Owners carrying the reference 2013/0041
"CIL Charging Schedule"	a document produced in accordance with

	Part II of the Community Infrastructure Levy Regulations 2010 setting out rates to be charged for development for the purposes of funding infrastructure
“Commencement Date”	the date on which the Development commences by the carrying out on the Site pursuant to the Permission of a material operation as specified in section 56(4) of the 1990 Act
“Development”	the development of the Site in accordance with the Permission and described in the Second Schedule
“Highways Commuted Sum”	a non-refundable financial contribution of £1500.00 to the Council to fund the Traffic Regulation Order to restrict parking and waiting of vehicles on highways in the vicinity of the Site by the County Council
“Open Space Commuted Sum”	the sum of £23220.00 to be paid to the Council to be expended on Play Space/Open Space provision in the vicinity of the site and/or provision/improvement of access thereto by pedestrians/cyclists

“Permission” the planning permission which may be granted in pursuance of the Planning Application being in the form set out at Annexure 3 to this Agreement

“Plan” The plan attached to this Agreement at Annexure 1

“Site” the land known as land opposite 449-457 Bacup, Hareholme, Rossendale, Lancashire BB4 7JJ described in the First Schedule

2. **NOW THIS DEED** is made in pursuance of Section 106 of the Town and Country Planning Act 1990 and is a planning obligation for the purposes of that section to the intent that it shall bind all interests in the Site into whosoever hands the same may come and the Owner and his successors in title and assigns and all persons claiming under or through them:-
 - 2.1 The Owner covenants with the Council to comply with the obligations specified in the Third Schedule
 - 2.2 The Council covenant to issue the Permission within 14 days of the date of this Agreement
 - 2.3 It is agreed and declared as follows:-
 - 2.4 The expressions "the Council" and "the Owner" shall include their successors in title and assigns
 - 2.5 Words importing the singular number only shall include the plural number and

vice versa and words importing any particular gender shall include masculine feminine and neuter genders

- 2.6 This Agreement is a local land charge and shall be registered as such
- 2.7 The Owner agrees to pay the Council's reasonable legal fees in the sum of £1000.00 relating to the preparation of the Agreement
- 2.8 All notices served pursuant to this Agreement shall be in writing and shall be deemed duly served if delivered or sent by the recorded delivery service in the following manner:-
- 2.8.1 in the case of a notice to be served on the Council addressed to its Chief Executive at the above address
- 2.8.2 in the case of a notice to be served on the Owner to the Owner at the above address
- 2.9 If the Permission is not granted or if it is revoked or the Permission expires because it is not implemented this Agreement shall be annulled and of no effect and the Council shall immediately remove from its local register of local land charges any entry relating to this Agreement
- 2.10 Unless expressly stated nothing in this Agreement will create any rights pursuant to the Contracts (Rights of Third Parties) Act 1999 in favour of any person other than the parties hereto
3. Except as to matters of law and subject to the express provisions of this Agreement to the contrary any dispute or difference arising between the parties as to any of the provisions of this Agreement and/or their respective rights duties or obligations or as to any other matter or thing in any way arising out of or in

connection with the subject matter of this Agreement shall forthwith be referred by the parties or any of them for determination by an independent person ("the Expert") to be agreed upon between the parties and failing such agreement within ten (10) Working Days of any party calling upon the others to agree to be appointed on the application of the parties or any of them by the President for the time being of The Royal Institution of Chartered Surveyors or any successor Institute ("the President")

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

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

It is hereby agreed and declared that:-

- (a) the Expert shall afford to the parties the opportunity to make representations in writing and consider any written representations made by or on behalf of the parties hereto which are received by him within ten (10) Working Days after the parties have been afforded such an opportunity and each party shall be entitled to receive a copy of any such written representations made by or on behalf of the other parties and within five (5) Working Days of such receipt to make written counter-representations

- (b) the Expert shall be entitled to call for such independent expert advice on such matters as he shall think fit
- (c) the Expert shall have an unfettered discretion to determine the reference to him
- (d) the fees and expenses of the Expert including the cost of his appointment shall be borne equally between the parties (and if any party shall pay the Expert's fees and expenses it shall be entitled to recover one half from the other) unless the Expert shall direct otherwise and he shall have power so to direct if he considers it reasonable to do so having had regard to the conduct of the parties during the course of the dispute in question

4. If after the date of this Agreement a CIL Charging Schedule takes effect which is applicable to the Development or any part of it the parties of this Deed:-

4.1 acknowledge that the obligations under this Deed may require modification to the extent necessary to ensure that when combined with the impact of the Community Infrastructure Levy the obligations in this Deed are financially and practically no less advantageous and not more onerous to the Owner than at the time of this Deed;

and

4.2 will take all necessary steps to complete and document such review as soon as reasonably practicable in a form reasonably acceptable to the requirements of all parties.

5. No person shall be liable for any breach of the covenants restrictions or obligations contained in this Deed occurring after he has parted with his interest in the Land or the part of the Land in respect of which such breach occurs but without prejudice to

any right of action or remedy that the Council might have in respect of any prior breach of any such covenant. Neither the reservation of any rights or the inclusion of covenants or restrictions over the Land in any transfer of the Land will constitute an interest for the purpose of this clause.

6. the obligations in this Deed will not be enforceable against:-
- 6.1 the purchasers of an individual dwelling erected on the Site pursuant to the Permission;
- 6.2 a statutory undertaker after the transfer of the statutory apparatus and any land upon or in which the statutory apparatus is situated by the Owner to that statutory undertaker.

FIRST SCHEDULE

All that plot of land shown edged red on the Plan annexed hereto which is situate opposite 449-457 Bacup Road, Hareholme, Rawtenstall, Rossendale Lancashire BB4 7JJ and registered at HM Land Registry under title number LA967066

SECOND SCHEDULE

The Development of the Site comprising of the erection of 17 houses.

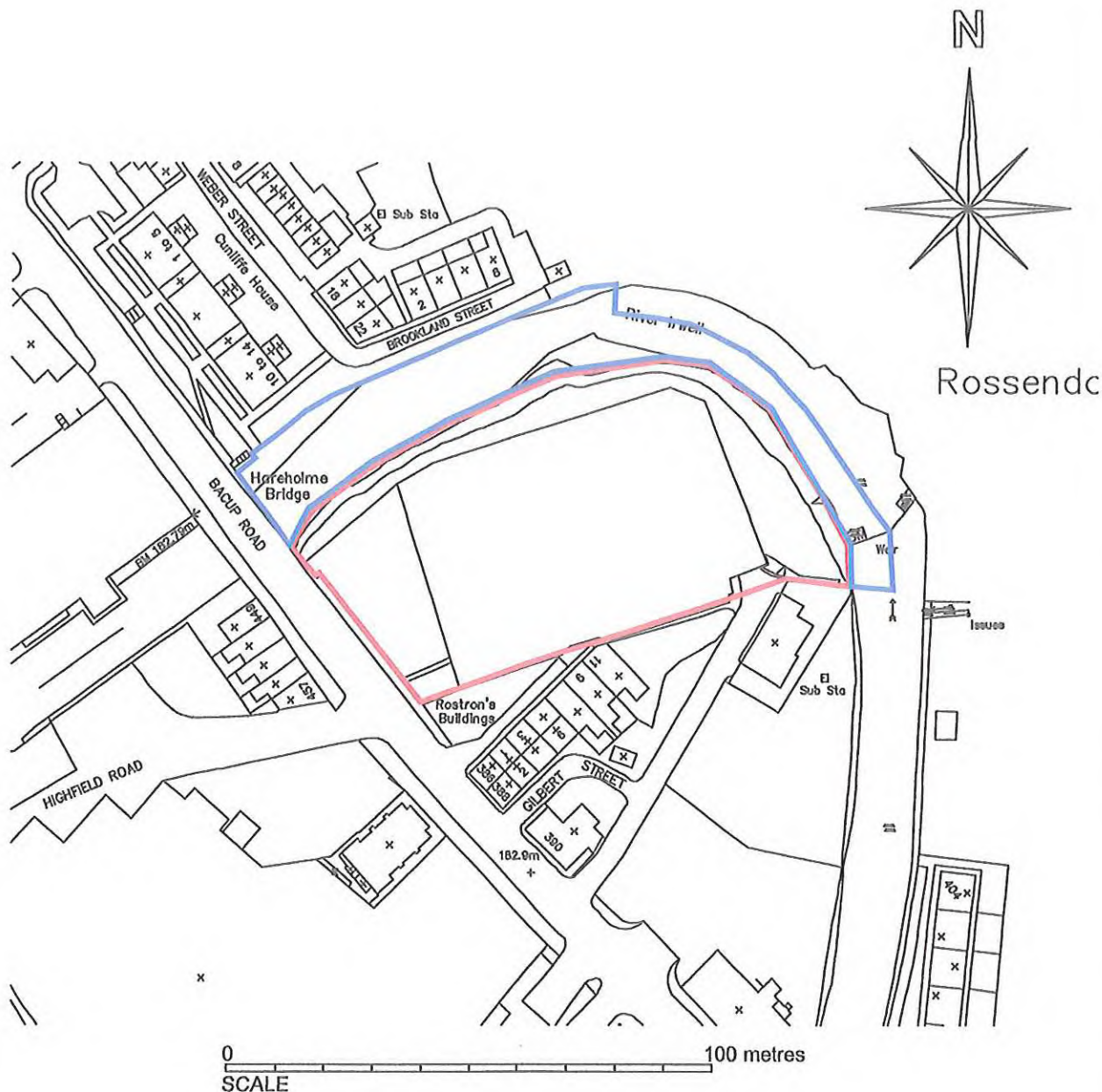
THIRD SCHEDULE

The Owner covenants with the Council as follows:

- (1) On the date of execution of this Agreement to pay the Highways Commuted Sum to fund a Traffic Regulation Order to restrict parking and waiting of vehicles on highways in the vicinity of the Site by the County Council
- (2) On the date of execution of this Agreement to pay the Council's reasonable legal fees in the sum of £1000.00 (inclusive of VAT).

- (3) To notify the Council in writing of the Commencement of the Development and of the first occupation of any house permitted by the Permission and such notices shall be served on the Council within 7 days of the Commencement of the Development and of the first occupation of any house permitted.
- (4) Prior to first occupation of any of the houses permitted by the Permission to pay to the Council the Open Space Commuted Sum
- (5) Undertake a Viability Appraisal of the Development within 21 days of receipt of written notice from the Council requiring such Viability Appraisal to be carried out; it shall be undertaken at the cost of the Owner using a contractor who shall first be approved in writing by the Council and the results shall be provided to the Council within 7 days of its completion in the event the Council request a viability appraisal
- (6) In the event that the Viability Appraisal referred to in paragraph 5 shows a net profit in excess of the figure £419112 shown in the existing Viability Appraisal at Annexure 2, a sum equivalent to 75% of that excess shall be paid to the Council within 60 days of the Council agreeing in writing the Viability Appraisal together with an administration fee of £250.00

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



LOCATION PLAN
Bacup Road Hareholme
Rossendale BB4 7JJ
 scale 1:1250 @ A4

R.A. FISK & ASSOCIATES
 Chartered Architects

20 Chorley Road
 Swinton
 Manchester
 M27 5AJ

Tel: 0161-793-5300
 Fax: 0161-794-4799

THE COMMON SEAL of ROSSENDALE)
BOROUGH COUNCIL was hereunto)
affixed in the presence of:-)



NO. IN SEAL REGISTER
115078

Authorised Signatory

EXECUTED as a Deed by
BERKSHIRE HOMES)
(NORTHERN)LIMITED)
acting by:-



Director

In the presence of



Signature

Name

Address

.....

.....

Occupation

2013/041

Rossendale Borough Council

Town & Country Planning Act 1990 Planning Permission

Applicants Name: Berkshire Homes Ltd

Notice Recipient : R A Fisk & Associates
20 Chorley Road
Swinton
Manchester
M27 5AJ

Part 1 - Particulars of Application:

Date Received: 28/02/2013 Application Number: 2013/0041

Proposed Works : Erection of 17 no two storey dwellings and new vehicular access

Location : Land opposite 449- 457 Bacup Road Hareholme
BB4 7JJ

Part 2 – Particulars of Decision

Rossendale Borough Council hereby give notice that planning permission has been granted for the execution of works referred to in Part 1 hereof in accordance with the application and plans submitted subject to the **following conditions and reasons:**

- 1 The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason for Condition:

Required by Section 51 of the Planning and Compulsory Purchase 2004 Act.

- 2 The development shall be carried out in accordance with the plan numbers 3061:18 E, 3061:02 A, 3061:03 A, 3061:05 A, 3061:06B, 3061:07, 3061:08, 3061:09, 3061:10, 3061:11, 3061:12, 3061:14, 3061:15, unless otherwise first agreed in writing by the Local Planning Authority.

Reason for Condition:

To ensure a satisfactory appearance to the development and to accord with Policies 1 and 23 of the Council's Core Strategy DPD.

- 3 No development shall take place until samples of the facing materials to be used in the construction of the buildings hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out

in accordance with the approved details.

Reason for Condition:

In the interests of visual amenity in accordance with Policies 1 and 24 of the Council's adopted Core Strategy DPD.

- 4 Prior to commencement of development full details of the measures to be taken in respect of the buildings to ensure residents of them do not experience unacceptable disturbance from traffic noise shall be submitted to the Local Planning Authority. Development shall not commence until details of the measures to be taken have been approved in writing by the Local Planning Authority and the development shall be completed in accordance with the approved details.

Reason for Condition:

In the interests of resident amenity, having regard to the submitted Noise Report, in accordance with Policies 1 and 24 of the Council's adopted Core Strategy DPD.

- 5 Prior to commencement of development a scheme of landscaping and boundary treatment shall be submitted to the Local Planning Authority to include details of the means by which the existing vehicular access to the site will be permanently closed to vehicles. Any planting forming part of the approved scheme shall be carried out in the following planting season and any trees or shrubs removed, dying or becoming seriously damaged or diseased within 5 years of planting shall be replaced by trees or shrubs of a similar size or species, unless otherwise first agreed in writing by the Local Planning Authority.

Reason for Condition:

To ensure that the development will be of satisfactory appearance, in accordance with Policies 1 and 23 of the Council's Core Strategy DPD (November 2011).

- 6 Minimum finished floor levels for buildings shall be set at 182.10m Above Ordnance Datum.

Reason for Condition:

To reduce the danger from flooding, and to accord with the advice of the Environment Agency and Policies 1, 23 and 24 of the Council's adopted Core Strategy DPD.

- 7 Prior to commencement of development the following shall be submitted to the Local Planning Authority:
- a) A Contaminated Land Phase II Report to assess the actual/potential contamination risks at the site for approval by the Local Planning Authority.
 - b) Should the approved Phase II Report indicate that remediation is necessary then a Remediation Statement shall be submitted to and approved in writing by the Local Planning Authority.
 - c) The remediation scheme in the approved Remediation Statement shall then be carried out and a Site Completion Report detailing the action taken at each stage of the works (including validation works) shall be submitted to and approved in writing

by the Local planning Authority prior to first occupation of any part of the development hereby approved.

Reason for Condition:

To ensure development of the site proceeds in a safe and satisfactory form, having regard to the findings of the submitted Contaminated Land Phase I Report, to accord with Policies 1, 23 and 24 of the Council's adopted Core Strategy DPD.

- 8 Prior to commencement of development full details of the facilities to be provided within the development to provide for 10% of total energy usage from renewable sources or a 10% reduction in energy usage through efficiency measures; or a combination of the two shall be submitted to the Local Planning Authority. The renewable energy facilities shall be implemented in accordance with the approved scheme/timetable prior to the first occupation of the development hereby approved and shall thereafter maintained, unless otherwise first agreed in writing by the Local Planning Authority.

Reason for Condition:

In order to encourage the use of renewable energy sources, in accordance with Policies 19/23 and 24 of the Council's adopted Core Strategy DPD.

- 9 Prior to commencement of development full details of a scheme for the provision and implementation of a surface-water regulation system, and foul water shall drain to a separate system. Development shall not commence until the details have been approved in writing by the Local Planning Authority and the development shall be completed in accordance with the approved details.

Reason for Condition:

To reduce the danger from flooding, and to accord with the advice of the Environment Agency/United Utilities, PPS25, Policy EM5 of the Regional Spatial Strategy and Policy DC1 of the Rossendale District Local Plan.

- 10 No development shall commence until a scheme for the delivery of a widening of the footway on Bacup Road from the access road to the north west side of the adjacent river bridge outside No.386-390 Bacup Road and provision of a central refuge island on Bacup Road has been submitted to and approved in writing by the Local Planning Authority. The agreed scheme shall be completed prior to first occupation of any of the dwellings hereby permitted unless otherwise first agreed in writing by the Local Planning Authority.

Reason for Condition:

To accord with the recommendations of LCC Highways, in the interests of highway safety, in accordance with Policies 1, 23 and 24 of the Council's adopted Core Strategy DPD.

- 11 Prior to first occupation of any of the dwelling units hereby permitted the new access, road and associated footways shall be constructed, drained, surfaced and illuminated in accordance with a scheme first submitted to and approved in writing by

the Local Planning Authority, unless otherwise first agreed in writing by the Local Planning Authority.

Reason for Condition:

In the interests of pedestrian and highway safety in accordance with Policies 1, 23 and 24 of the Council's Core Strategy DPD.

- 12 Prior to first occupation of any of the dwelling units hereby permitted the proposed parking areas shall be constructed, drained and surfaced in accordance with a scheme first submitted to and approved in writing by the Local Planning Authority, unless otherwise first agreed in writing by the Local Planning Authority. Thereafter these parking areas shall be kept freely available for the parking and manoeuvring of cars at all times.

Reason for Condition:

In the interests of pedestrian and highway safety in accordance with Policies 1, 23 and 24 of the Council's Core Strategy DPD.

- 13 Prior to the commencement of construction on site a Site Construction Plan shall be submitted to and approved in writing by the Local Planning Authority. The Site Construction Plan shall include: details/timetable of demolition/remediation/construction; vehicle wheel-cleaning facilities; construction traffic parking; & construction compound location. The approved Site Construction Plan shall be implemented and adhered to throughout the demolition/remediation/construction period.

Reason for Condition:

To protect the amenities of neighbours and in the interests of pedestrian/highway safety, in accordance with Policies 1, 23 and 24 of the Council's Core Strategy DPD.

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

Reason for Condition:

To safeguard the amenities of neighbours, in accordance with Policies 1 and 24 of the Council's Core Strategy DPD.

- 15 Not to commence development on the site (pursuant to Section 56(4) of the Town & Country Planning Act 1990 (as amended), other than by works of demolition, remediation or clearance of the site, unless and until a Section 106 Obligation has been entered into with the terms of the attached Draft, unless a variation is first agreed in writing by the Local Planning Authority.

Reason for Condition:

To secure making of a Traffic Regulation Order & associated works in the vicinity of the site in the interests of highway safety, to ensure provision of Play Space/Open

Space to meet the needs of residents of the development &/or access thereto, and to ensure that appropriate residential units are provided as Affordable Housing to meet a recognised local need, in accordance with the submitted application and the accompanying Viability Appraisal and to accord with Sections 4 / 6 / 11 of the National Planning Policy Framework (2012) and Policies 1 / 4 / 8 / 9 / 17 / 18 / 22 / 24 of the Rossendale Core Strategy DPD (2011).

Summary of Reasons for Approval

The proposed development is appropriate in principle in the Urban Boundary of Rawtenstall and, subject to the accompanying S.106 Obligation and Conditions, the resulting development will secure the regeneration of a derelict/brownfield site in a manner that goes some way towards meeting the local housing needs and will not detract to an unacceptable extent from visual and neighbour amenity, highway safety or in respect of any other material planning consideration.

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

RBC adopted Core Strategy DPD (2011)

- Policy 1 General Development Locations and Principles
- Policy 2 Meeting Rossendale's Housing Requirement
- Policy 3 Distribution of Additional Housing
- Policy 4 Affordable and Supported Housing
- Policy 5 Meeting the Needs of Gypsies, Travellers and Travelling Showpeople
- Policy 6 Training & Skills
- Policy 7 Social Infrastructure
- Policy 8 Transport
- Policy 9 Accessibility
- Policy 10 Provision for Employment
- Policy 11 Retail & Other Town Centre Uses
- Policy 12 The Valley Centre
- Policy 13 Protecting Key Local Retail
- Policy 14 Tourism
- Policy 15 Overnight Visitor Accommodation
- Policy 16 Preserving & Enhancing the Built Environment
- Policy 17 Rossendale's Green Infrastructure
- Policy 18 Biodiversity, Geodiversity and Landscape Conservation
- Policy 19 Climate Change and Low and Zero Carbon sources of Energy
- Policy 20 Wind Energy
- Policy 21 Supporting the Rural Economy and its Communities
- Policy 22 Planning Contributions
- Policy 23 Promoting High Quality Designed Spaces
- Policy 24 Planning Applications Requirements

Date: 30 May 2013

Development Control
First Floor
The Business Centre
Futures Park
Bacup OL13 0BB

Neil Birtles
Principal Planning Officer

Notes

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.

Appeal

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). 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.

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 provision of Part VI of the Town and Country Planning Act 1990.

Statement under Article 31(1)(cc) of the Town and Country Planning (Development Management Procedure) (England) Order 2010 (as amended):

The proposal complies with the development plan and would improve the economic, social and environmental conditions of the area. It therefore comprises sustainable development and the Local Planning Authority worked proactively and positively to issue the decision without delay. The Local Planning Authority has therefore implemented the requirement in Paragraphs 186-187 of the NPPF.