DATED 4th June 2018

(1) BARNSLEY METROPOLITAN BOROUGH COUNCIL

(2) WENTWORTH TRUSTEE COMPANY LIMITED

(3) HOYLAND DEVELOPMENTS LIMITED

# AGREEMENT
under section 106 Town and Country Planning Act 1990
relating to
land to the north of Hawshaw Lane, Hoyland Common, Barnsley

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**THIS AGREEMENT** is made on 4th June **2018**

**BETWEEN:-**

(1) **BARNSLEY METROPOLITAN BOROUGH COUNCIL** of the Town Hall, Church Street, Barnsley S70 2TA (the **"Council"**);

(2) **WENTWORTH TRUSTEE COMPANY LIMITED** (Company number 3736061) whose registered office is at Hitchcock House, Hilltop Park, Devizes Road, Salisbury, SP3 4UF (the **"Owner"**)

(3) **HOYLAND DEVELOPMENTS LIMITED** (Company number 09899754) whose registered office is at 2 Duchy Road, Harrogate, HG1 2EP (the **"Developer")**

**WHEREAS:-**

(A) By virtue of the 1990 Act the Council is the Local Planning Authority for the purposes of this Agreement for the area in which the Land is situated and is the Local Planning Authority by whom the planning obligations hereby created are enforceable.

(B) The Owner is the registered freehold proprietor with absolute title of the Land registered with other land at HM Land Registry under Title Number SYK524911

(C) The Developer has entered into a Planning Promotion Agreement and Option Agreement in relation to land in the ownership of the Owner (which includes the Land) made between the Owner (1), Fitzwilliam Trust Corporation Limited (2), the Developer (3) and CRM Land and Developments Limited dated 24 March 2016 and is by way of a unilateral notice registered against Title Number SYK524911.The Land is subject to the Planning Promotion Agreement only.

(D) The Developer has submitted the Application.

(E) The Council would not grant Planning Permission for the Development unless the covenants contained herein were entered into by the Owner.

(F) The Owner by entering into this Agreement does so to create planning obligations in respect of the Land and each part of it in favour of the Council pursuant to section 106 of the 1990 Act and to be bound by and observe and perform the covenants, agreements, conditions and stipulations hereinafter contained.

(G) The parties agree that the obligations contained in this agreement comply with regulation 122 of the Community Infrastructure Levy Regulations 2010.

**NOW THIS DEED WITNESSES AS FOLLOWS**

1. **DEFINITIONS AND INTERPRETATION**

1.1 In this Agreement the following expressions shall have the following meanings:-

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| **"1990 Act"** | means the Town and Country Planning Act 1990 (as amended) |
| **"Affordable Housing"** | means housing to be provided to eligible households whose needs are not met by the market in accordance with the definition in Annex 2 of the National Planning Policy Framework (or any future guidance or initiative that replaces or supplements |

it) including the Affordable Housing Units

**"Affordable Housing Contribution"**

a sum equal to the difference between:

(1) the open market value of the Affordable Housing Units required to be provided under this Agreement and

(2) the price that would be financially viable for a Registered Provider to acquire the Affordable Housing Units ("the RP Price")

The RP Price is to be determined by reference to the transfer matrix at Schedule 3 (unless otherwise agreed in writing by the Council) and any subsequent updates the Council may produce at the date of calculation for "intermediate sale/rent in other areas within the Borough" and "affordable rent in other areas within the Borough"

The Affordable Housing Contribution is to be calculated at the date the Affordable Housing Contribution is due and to be agreed between the Owner and the Council in accordance with this definition (such agreement not to be unreasonably withheld or delayed)

AND the Affordable Housing Contribution is to be used by the Council in lieu of the provision or part provision of Affordable Housing on the Land for the provision of or improvements to existing Affordable Housing elsewhere within a 5 mile radius of the Land

**"Affordable Housing Units"**

means Affordable Housing consisting of

(1) 15% of the total number of Dwellings in accordance with Policy CSP15 of the Core Strategy OR

(2) 10% of the total number of Dwellings in the event that the New Local Plan has been adopted prior to the determination of the Reserved Matters Application and as adopted the affordable housing policy indicates development of the Land in accordance with the Planning Permission should provide 10% of the total number of Dwellings

UNLESS a Viability Appraisal submitted with a Reserved Matters Application and approved in writing by the Council concludes the Development is only viable with a lesser or no amount of Affordable Housing in which case that lesser or no amount of Affordable Housing shall be provided

the location, size, tenure (social rented or affordable rented as defined in NPPF) mix and type to be

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| | agreed in writing with the Council |
| **"Application"** | means the outline application for planning permission (reference number 2016/1531) for the development of approximately 100 dwellings (all matters of detail reserved apart from means of access) |
| **"Chargee"** | means any mortgagee or chargee of the Registered Provider or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925 or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator) of the whole or any part of the Affordable Housing Units; |
| **"Commencement of Development"** | means the date upon which the Development shall commence by the carrying out on the Land pursuant to the Planning Permission of a material operation as specified in section 56(4) of the 1990 Act **SAVE THAT** the term "material operation" shall not include operations in connection with any work of or associated with demolition, site clearance, remediation works, environmental investigation, site and soil surveys, erection of a contractor's work compound, erection of a site office and erection of fencing to the site boundary and **"Commence Development"** and **"Commencement"** shall be construed accordingly |
| **"the Core Strategy"** | means the Barnsley Local Development Framework Core Strategy adopted September 2011 |
| **"Council's Approved List"** | means the following Registered Providers: Berneslai Homes Limited; South Yorkshire Housing Association Limited; Yorkshire Housing Limited; Guinness Northern Counties Limited; Equity Housing Group Limited; Leeds and Yorkshire Housing Association Limited; Together Housing Association Limited ; and Wakefield and District Housing Limited or such other Registered Provider(s) that may be agreed in writing between the Owner and the Council from time to time; |
| **"Development"** | means the development of the Land in accordance with the Planning Permission |
| **"Dwellings"** | means the residential units that may be built on the Land as part of the Development |
| **"Education Contribution"** | means the sum of two hundred and eleven thousand five hundred and thirty pounds |

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| | (£211,530.00) towards the provision or improvement of additional secondary school places and any ancillary works at Kirk Balk Academy |
| **"Expert"** | means an independent person of at least 10 years standing in the area of expertise relevant to the dispute to be agreed between the Parties or, failing agreement, to be nominated at the request and option of any of them, at their joint expense, by or on behalf of the President for the time being of the Law Society |
| **"Homes and Communities Agency"** | means the Homes and Communities Agency or any body or bodies undertaking the existing functions of the Homes and Communities Agency within the meaning of Part I of the Housing and Regeneration Act 2008 |
| **"Head of Planning and Building Control"** | means the Head of Planning and Building Control of the Council for the time being or such other officer of the Council nominated by him for the purposes of this Agreement |
| **"Independent Surveyor"** | means a member of the Royal Institution of Chartered Surveyors appointed by the Owner at its own cost but first approved by the Council and the phrase **"Independent Surveyors"** shall be construed accordingly |
| **"Index"** | means the Building Costs Information All-In Tender Price Index published by the Royal Institution of Chartered Surveyors or any official publication substituting it |
| **"Interest"** | Means interest at 4% per cent above the base lending rate of Barclays Bank Plc from time to time |
| **"Land"** | means all that land situate at shown edged red on Plan 1 |
| **"New Local Plan"** | means the draft Local Plan submitted to the Secretary of State for examination in public on 23rd December 2016 |
| **"Occupation"** | means occupation for the purposes of the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration, or occupation for marketing or display, or occupation in relation to security operations and **"Occupant"** shall be construed accordingly |
| **"Open Market Dwellings"** | means the Dwellings excluding the Affordable Housing Units and **"Open Market Dwelling"** shall be construed accordingly |
| **"Parties"** | means the parties to the Agreement and **"Party"** |

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| | shall be construed accordingly |
| **"Plan 1"** | means the plan appended to this Agreement at Appendix 1 |
| **"Planning Permission"** | means a planning permission to be granted pursuant to the Application substantially in the form of the draft of which is appended at Appendix 2 |
| **"Practical Completion"** | issue of a certificate of practical completion by the Owner's architect or in the event that the Development is constructed by a party other than the Owner the issue of a certificate of practical completion by that other party's architect |
| **"Protected Tenant"** | means any tenant including their successors in title, charges, mortgagees, receivers and administrative receivers) who:<br>a. has exercised the right to acquire pursuant to the Housing Act 1996 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Housing Unit or acquires the relevant Affordable Housing Unit pursuant to a voluntary sales policy of his landlord; or<br>b. has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Housing Unit; or<br>c. has been granted a shared ownership lease by a Registered Provider (or similar arrangement where a share of the Affordable Housing Unit is owned by the tenant and a share is owned by the Registered Provider) in respect of a particular Affordable Housing Unit and the tenant has subsequently purchased from the Registered Provider all the remaining shares so that the tenant owns the entire Affordable Housing Unit |
| **"Registered Provider"** | means a registered provider as defined by the Housing and Regeneration Act 2008 (or as redefined by any amendment, replacement or re-enactment of such Act) and registered under the provisions of the Housing and Regeneration Act 2008 or any company or other body approved by the Homes and Communities Agency for receipt of social housing grant as may be proposed by the Owner and approved by the Council |
| **"Reserved Matters Application"** | An application for reserved matters approval pursuant to the Planning Permission |
| **"Travel Plan"** | means the travel plan dated 14 December 2016 |

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means a travel plan co-ordinator to be appointed by the Owner and approved in writing by the Head of Planning and Building Control in relation to the Travel Plan

means an appraisal of the viability of the Development at the date of submission of the Reserved Matters Application in accordance with the Homes and Communities Development Appraisal Toolkit current at that date or any other appraisal methodology accepted by the RICS unless a particular methodology is specified in local or national planning policy at the date of submission of the Reserved Matters Application in which case that methodology will be used

means an independent assessment obtained by the Council of any Viability Appraisal

the will dated 3 July 1970 (with the two codicils thereto) governing immovable property in Great Britain of the late The Right Honourable Olive Dorothea Countess Fitzwilliam who died on 14 December 1975 which will and codicils were proved in the Principal Registry of the Family Division of the High Court of Justice on 26 February 1976 by Robert Edward MacWatt, Allan Berkeley Valentine Hughes and Messrs Hoare Trustees being the executors named in the said will

Where the context so requires:

1.1.1 the singular includes the plural and vice versa and words importing the masculine gender only include the feminine and neuter genders and extend to include a corporation sole or aggregate;

1.1.2 references to any party or body in this Agreement shall include the successors in title and assigns of that party and in the case of the Council shall include any successor Local Planning Authority exercising planning powers under the 1990 Act;

1.1.3 wherever there is more than one person named as a party and where more than one party undertakes a covenant all their covenants can be enforced against all of them jointly and against each individually unless there is an express provision otherwise;

1.1.4 any covenant by a party not to do any act or thing shall be deemed to include a covenant not to cause, permit, procure or suffer the doing of that act or thing;

1.1.5 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;

1.1.6 references to Clauses, paragraphs, and Schedules are references to Clauses, paragraphs, and Schedules to this Agreement and are for reference only and shall not affect the construction of this Agreement;

1.1.7 the headings and contents list are for reference only and shall not affect construction.

## 2. OPERATIVE PROVISIONS

2.1 This Agreement is a planning obligation made in pursuance of section 106 of the 1990 Act (as substituted by section 12 of the Planning and Compensation Act 1991) and to the extent that the covenants in this Agreement are not made under section 106 of the 1990 Act they are made under section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and all other powers so enabling.

2.2 The covenants, restrictions and requirements imposed upon the Owner under this Agreement create planning obligations pursuant to section 106 of the Act and are enforceable by the Council as Local Planning Authority against the Owner.

## 3. CONDITIONALITY

The Owner's obligations in Clause 4.1 below (save for any pre-Commencement obligations) are conditional upon:-

3.1 the grant of the Planning Permission; and

3.2 the Commencement of Development.

## 4. PLANNING OBLIGATIONS

4.1 From the date ascertained pursuant to Clause 3 above the Owner hereby covenants with the Council to observe and perform the covenants in Schedule 1 of the Agreement.

4.2 The Council hereby covenants with the Owner to observe and perform the covenants contained in Schedule 2 of this Agreement.

## 5. MISCELLANEOUS

5.1 No party shall be bound by the terms of this Agreement or be liable for the breach of any covenants, restrictions or obligations contained in this Agreement occurring after it has parted with its interest in the Land or the part in respect of which such breach occurs (but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest) and the retention of any right of way over the Land shall not constitute an interest for the purpose of this clause.

5.2 Where the agreement, approval, consent or expression of satisfaction is required by any party under the terms of this Agreement such agreement, approval, consent or expression of satisfaction shall not be unreasonably withheld or delayed.

5.3 The obligations hereby created shall be registered as a Local Land Charge.

5.4 Following the performance and satisfaction of all the obligations contained in this Agreement the Council shall upon request effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Agreement.

5.5 Subject to clause 5.7 this Agreement shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development.

5.6 If pursuant to Clause 5.5 this Agreement shall terminate and cease to have effect the Council shall upon request remove any entry relating to this Agreement from the Register of Local Land Charges.

5.7 In the event that a condition or conditions to the Planning Permission is or are varied pursuant to section 96A of the 1990 Act this Agreement shall continue in full force in respect of the Planning Permission with the relevant condition or conditions as so varied.

5.8 Insofar as any Clause or Clauses of this Agreement are found (for whatever reason) to be invalid, illegal or unenforceable then such invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of the remaining provisions of this Agreement.

5.9 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 one relating to the Development as specified in the Application) granted after the date of this Agreement.

5.10 Nothing in this Agreement shall be construed as restricting the exercise by the Council of any power or discretion exercisable by it under the 1990 Act or under any other Act of Parliament nor prejudicing or affecting the Council's rights, powers, duties and obligations in any capacity as a local or public authority.

5.11 Subject to paragraph 4 of Schedule 1 this Agreement shall not be binding upon the owner/occupiers or tenants of the Dwellings nor any statutory undertaker which has an interest in any of the Land for the purposes of this Agreement and for the avoidance of doubt they shall not be liable for any breach of any covenant, restriction or obligation contained in this Agreement.

## 6. NOTIFICATION

All notices, requests and demands or other written communications to or upon the parties pursuant to this Agreement shall be deemed to have been properly given or made if dispatched by first class letter or facsimile transmission to the party to which such notice, request, demand or other written communication is to be given or made under this Agreement and addressed as follows (or to such other address as the party to whom the notices, requests, demands or other written communication is to be given or made shall from time to time notify in writing to the other parties as its address for the purposes of this Clause 6):-

6.1 to the Council care of the Head of Planning and Building Control quoting the Application reference number: 2016/1531

6.2 to the Owner at the address shown on page 1 of this Agreement; and

6.3 to the Developer at the address shown on page 1 of this Agreement.

## 7. THIRD PARTIES

No person who is not a party to this Agreement may enforce any terms hereof pursuant to the Contracts (Rights of Third Parties) Act 1999 **PROVIDED THAT** this Clause shall not affect any right of action of any person to whom this Agreement has been lawfully assigned or becomes vested in law.

8. **WAIVER**

No waiver (whether expressed 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 relevant terms or conditions or for acting upon any subsequent breach or default.

9. **LEGAL COSTS**

The Developer shall pay to the Council its reasonable legal fees of £1000 prior to completion of this Agreement.

10. **CHANGE IN OWNERSHIP**

The Owner covenants with the Council to provide the Council with immediate written notice of any change in ownership of any of their interests in the Land occurring before all the obligations under this Agreement have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Land or unit of occupation purchased by reference to a plan.

11. **INDEXATION**

Any sum referred to in this Agreement shall be increased by an amount equivalent to the increase in the Index from the date hereof until the date on which such sum is payable.

12. **INTEREST**

If any payment under this Agreement is paid late Interest will be payable from the date payment is due to the date of payment

13. **VAT**

All consideration given in accordance with the terms of this Agreement shall be exclusive of any Value Added Tax properly payable.

14. **DISPUTE PROVISIONS**

14.1 Any dispute arising between the Parties relating to any matter contained in this Agreement may be referred to the Expert by any Party.

14.2 The Expert will act as an expert and not as an arbitrator.

14.3 Each Party will bear its own costs and the Expert's costs will be paid as determined by him.

14.4 The Expert will be required to give notice to each of the Parties, inviting each of them to submit to him written representations and cross representations with such supporting evidence as they shall consider necessary and the Expert shall have regard thereto in making his decision.

14.5 The Expert's decision will be given in writing as expediently as possible with reasons and in the absence of manifest error will be final and binding on the Parties.

15. **JURISDICTION**

This Agreement is governed by and interpreted in accordance with the law of England and Wales and the parties submit to the exclusive jurisdiction of the courts of England and Wales.

16. **DELIVERY**

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

17. **LIMITATION OF TRUSTEE LIABILITY**

The Owner declares and acknowledges that the Land is bound by the terms of this Agreement but for the avoidance of doubt it is hereby agreed that notwithstanding any provision to the contrary in this Agreement Wentworth Trustee Company Limited holds the Land on trust for the Will Trust and the liability of the Wentworth Trustee Company Limited shall be limited to the extent of the assets held by the Wentworth Trustee Company Limited on the trusts of the Will Trust including the freehold land bound by this Agreement

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

## SCHEDULE 1

## THE OWNER'S OBLIGATIONS

1. **AFFORDABLE HOUSING**

The Owner covenants with the Council:-

1.1 The Affordable Housing Units shall not be used or Occupied other than as Affordable Housing subject to paragraphs 1.2 to 1.11 below.

1.2 Not to cause or permit more than 50% Dwellings to be Occupied until the Affordable Housing Units have been constructed to Practical Completion and subject to paragraph 1.11 below transferred to a Registered Provider

1.3 The Affordable Housing Units shall be transferred to a Registered Provider with the benefit of the following:

1.3.1 full and free rights of access both pedestrian and vehicular from the public highway to the Affordable Housing Units; and

1.3.2 full and free rights to the passage of water soil electricity gas and other services through the pipes channels wires cables and conduits which shall be in the adjoining land up to and abutting the boundary to the Affordable Housing Units all such services to be connected to the mains.

1.4 The Owner shall provide the Council notice within 14 days of the Practical Completion of the Affordable Housing Units.

1.5 The Owner shall use its reasonable endeavours to market the Affordable Housing Units to a Registered Provider appearing on the Council's Approved List and will promptly upon agreeing heads of terms for a transfer of the Affordable Housing Units to the Registered Provider submit to the Council the name of the chosen Registered Provider for the Council's approval (such approval not to be unreasonably withheld or delayed) ("the Initial Registered Provider Transfer Terms"). For the avoidance of doubt, the Owner shall not transfer the Affordable Housing Units to a Registered Provider not appearing on the Council's Approved List subject to any variations to the Council's Approved List that may be agreed in writing between the Council and the Owner from time to time.

1.6 The Owner will thereafter use reasonable endeavours to exchange contracts with the Registered Provider agreed under paragraph 1.5 above for the sale of the Affordable Housing Units and will keep the Council informed on the progress.

1.7 If the proposed sale does not proceed in accordance with the Initial Registered Provider Transfer Terms the Owner will continue to use reasonable endeavours to exchange contracts with an alternative Registered Provider appearing on the Council's Approved List (subject to any variations to the Council's Approved List that may be agreed in writing between the Council and the Owner from time to time) and will keep the Council informed of progress.

1.8 The Owner shall construct the Affordable Housing Units in accordance with the Planning Permission unless otherwise agreed in writing with the Council and shall provide each Affordable Housing Unit with all necessary rights of access and egress from the same together with all the essential water, sewerage and electricity supplies without the imposition of any financial cost or the creation of any ransom element.

1.9 The obligations in this Deed shall not be binding on:

1.9.1 any Protected Tenant or any mortgagee or chargee, receiver or administrative receiver of the Protected Tenant or any person deriving title from the Protected Tenant or any successor in title thereto and their respective mortgagees and chargees or receivers of administrative receivers;

1.9.2 any Chargee, subject to paragraph 1.10 or any person deriving title from the Chargee or any successor in title thereto and their respective mortgagees and chargees or receivers of administrative receivers, or

1.9.3 any purchaser from a mortgagee or chargee, of an individual Affordable Housing Unit pursuant to any default by the individual mortgagor or any person deriving title from that individual mortgagor or any successor in title thereto and their respective mortgagees and chargees or receivers of administrative receivers.

1.10 A Chargee shall prior to seeking to dispose of any Affordable Housing Units pursuant to any default under the terms of its mortgage or charge give not less than 30 days prior notice to the Council of its intention to dispose and:

1.10.1 in the event that the Council responds within 30 days from receipt of the notice indicating that arrangements for the transfer of the Affordable Housing Units can be made in such a way as to safeguard them as Affordable Housing then the Chargee shall co-operate with such arrangements and shall use its reasonable endeavours to complete such transfer;

1.10.2 if the Council does not serve its response to the notice served under paragraph 1.10.1 of this Schedule within 30 days then the Chargee shall be entitled to dispose of the Affordable Housing Units free of the restrictions set out in this Schedule;

1.10.3 if the Council or any other person cannot within 30 days of the date of service of its response under paragraph 1.10.1 of this Schedule complete such transfer then provided that the Chargee shall have complied with its obligations under paragraph 1.10 of this Schedule the Chargee shall be entitled to dispose free of the restrictions set out in this Schedule

PROVIDED THAT at all times the rights and obligations in this paragraph 1.10 shall not require the Chargee to act contrary to its duties under the charge or mortgage and that the Chargee shall not be required to complete a disposal of the whole or any part of the Affordable Housing Units for a consideration less than the amount due and outstanding under the terms of the relevant security documentation insofar as it relates to the specific Affordable Housing Units that are intended to be sold including all accrued principal monies, interest and costs and expense.

1.11 If any of the Affordable Housing Units have not been contracted for sale to the Registered Provider within nine calendar months of the date of Practical Completion of the last of the Affordable Housing Units or such earlier date agreed in writing by the Council and the Council has confirmed in writing that it is satisfied that paragraphs 1.4 to 1.7 of this Schedule have been complied with then the Owner shall pay the Affordable Housing Contribution to the Council **PROVIDED THAT** such sum shall only be payable in respect of those Affordable Housing Units not already transferred to a Registered Provider and upon such payment the Owner will be free to offer such dwellings for sale on the open market free from the affordable housing obligations in this Schedule as Open Market Dwellings.

1.12 In the event that paragraph 1.11 of this Schedule applies the open market value of the Affordable Housing Units shall be agreed in the first instance between the Owner and the Council and in default of such agreement in accordance with clause 14.

1.13 If any Viability Appraisal is submitted as part of a Reserved Matters Application the Owner shall pay the Council's reasonable costs relating to any Viability Assessment it may require

## 2. EDUCATION CONTRIBUTION

The Owner covenants with the Council:-

2.1 to pay to the Council the Education Contribution prior to the Occupation of 25% of the total number of Dwellings or within one year of Commencement of Development whichever is earlier

2.2 not to Occupy more than 25% of the total number of Dwellings unless the Education Contribution has been paid to the Council

## 3. TRAVEL PLAN

The Owner covenants with the Council:-

3.1 to implement the approved Travel Plan in accordance with the timescales contained therein and for the duration set out therein

3.2 to comply with the terms of the approved Travel Plan and procure that the Travel Plan Co-ordinator complies with its obligations and duties set out in the Travel Plan for the duration of its appointment

3.3 to appoint a nominated Travel Plan Co-ordinator in accordance with the provisions of the approved Travel Plan to ensure that the Travel Plan Co-ordinator remains appointed for the duration of the construction of the Development

3.4 to review the Travel Plan in accordance with the provisions of the approved Travel Plan

## 4 PUBLIC OPEN SPACE

4.1 The Owner shall lay out 15% of the net developable area of the Land (in accordance with the Council's Supplementary Planning Document Open Space Provision on New Housing Developments (March 2012)) ("Open Space SPD") for use as public open space (including a mix of formal and informal play areas

4.2 The programme for the provision of Public Open Space in paragraph 4.1 above including long term maintenance arrangements is to be agreed with the Council in writing prior to Commencement of Development implemented in accordance with the timetable contained in the programme or forthwith upon Council approval if no such timetable is approved and retained as Public Open Space thereafter

4.3 Upon Occupation of the Development the Owner shall pay to the Council a financial contribution towards off-site green space calculated in accordance with the formula in Appendix 2 of the Open Space SPD

4.4 Not to Occupy more than one Dwelling until the financial contribution referred to in paragraph 4.3 has been paid to the Council

## SCHEDULE 2

## THE COUNCIL'S COVENANTS

The Council covenants with the Owner:-

1. to issue separate receipts on request for any sum paid to the Council under this Agreement;

2. to place the Education Contribution in an interest bearing account or in separate accounts as the Council shall at its discretion decide;

3. not to apply the Education Contribution for any purpose other than for the purposes set out in this Agreement within the Council's area; and

4. that in the event the Education Contribution or any part or parts thereof are not expended or committed within 5 (five) years of the date of the final payment due then the sum or sums not expended or committed plus interest accrued will be repaid to the Wentworth Trustee Company Limited

## SCHEDULE 3

## THE TRANSFER MATRIX OF VALUES FOR AFFORDABLE HOUSING

| Intermediate sale/rent Housing Rural West, Penistone, Dodworth, Darton and Barugh | | | | | | |
|---|---|---|---|---|---|---|
| House Types | Total Average Sqm | Total Average Price | Minimum Design Guide Size Sqm | Average Value based on Design Guide Sqm | Average Payment by RHP to Developer 2015 | Average Payment by RHP to Developer 2014 |
| 1 bed 1 person flat | 61 | £103,500 | 46 | £78,049 | £52,000 | |
| 1 bed 2 person flat | 61 | £103,500 | 47 | £79,745 | £52,767 | |
| 2 bed 3 person flat | 61 | £94,375 | 62 | £95,922 | £59,067 | |
| 2 bed bungalow | 67,5 | £159,944 | 62 | £146,911 | £96,312 | |
| 2 bed 3 person house | 71 | £142,165 | 62 | £124,144 | £79,733 | £64,256 |
| 3 bed 4 person house | 94 | £168,728 | 77 | £138,213 | £98,213 | £72,953 |
| 4 bed 5 person house | 115 | £218,900 | 93 | £177,023 | £123,483 | £104,536 |
| 4 bed 6 person house | 119 | £222,924 | 101 | £189,204 | £131,250 | |

| Intermediate sale/rent Housing in other areas within the Borough | | | | | | |
|---|---|---|---|---|---|---|
| House Types | Total Average Sqm | Total Average Price | Minimum Design Guide Size sqm | Average Value based on Design Guide Sqm | Average Payment by RHP to Developer 2015 | Average Payment by RHP to Developer 2014 |
| 1 bed 1 person flat | 49 | £69,950 | 46 | £65,977 | £39,108 | |
| 1 bed 2 person flat | 49 | £69,950 | 47 | £67,411 | £40,573 | |
| 2 bed 3 person flat | 56 | £70,231 | 62 | £77,909 | £44,583 | |
| 2 bed bungalow | 62 | £115,329 | 62 | £115,329 | £71,580 | |
| 2 bed 3 person house | 62 | £93,583 | 62 | £94,215 | £56,688 | £55,800 |
| 3 bed 4 person house | 81 | £117,716 | 77 | £112,298 | £71,421 | £70,950 |
| 4 bed 5 person house | 84 | £152,752 | 93 | £133,920 | £88,575 | £85,000 |
| 4 bed 6 person house | 107 | £154,896 | 101 | £145,210 | £92,025 | |

| Affordable Rented Housing Rural West, Penistone, Dodworth, Darton and Barugh | | | | | |
|---|---|---|---|---|---|
| House Types | Minimum Design Guide Sqm | Average Value based on Design Guide Sqm | Avereage Weekly Target Rent | Average Payment by RHP to Developer 2015 | Average Payment by RHP to Developer 2014 |
| 1 bed 1 person flat | 46 | £78,049 | £69.98 | £43,125 | |
| 1 bed 2 person flat | 47 | £79,745 | £71.77 | £43,598 | |
| 2 bed 3 person flat | 62 | £95,922 | £80.41 | £51,443 | |
| 2 bed bungalow | 62 | £146,911 | £95.09 | £65,225 | |
| 2 bed 3 person house | 62 | £124,144 | £88.87 | £59,467 | £55,833 |
| 3 bed 4 person house | 77 | £138,213 | £101.35 | £67,853 | £65,116 |
| 4 bed 5 person house | 93 | £177,023 | £112.50 | £80,065 | £76,933 |
| 4 bed 6 person house | 101 | £189,204 | £117.54 | £84,087 | |

| Affordable Rented Housing in other areas within the Borough | | | | | |
|---|---|---|---|---|---|
| House Types | Minimum Design Guide Sqm | Average Value based on Design Guide Sqm | Average Weekly Target Rent | Average Payment by RHP to Developer 2015 | Average Payment by RHP to Developer 2014 |
| 1 bed 1 person flat | 46 | £65,977 | £71.28 | £37,075 | |
| 1 bed 2 person flat | 47 | £67,411 | £73.50 | £41,725 | |
| 2 bed 3 person flat | 62 | £77,909 | £80.69 | £49,274 | |
| 2 bed bungalow | 62 | £115,329 | £88.81 | £54,700 | |
| 2 bed 3 person house | 62 | £94,215 | £84.76 | £56,480 | £50,896 |
| 3 bed 4 person house | 77 | £112,298 | £94.57 | £64,063 | £59,350 |
| 4 bed 5 person house | 93 | £133,920 | £113.24 | £77,975 | £71,830 |
| 4 bed 6 person house | 101 | £145,210 | £115.69 | £79,700 | |

**EXECUTED** as a Deed (but not delivered until dated) by affixing the Common Seal of **BARNSLEY METROPOLITAIN BOROUGH COUNCIL** )
)
)
)
)

in the presence of:-

G Kirk Name

Signature

Service Director Job Title

PRB 27/6/17 Min 15

No. 982 IN REGISTER

**EXECUTED** as a Deed by acting by **WENTWORTH TRUSTEE COMPANY LIMITED acting by** two directors or a director and its secretary )
)
)
)

.....Director

.....Director/Secretary

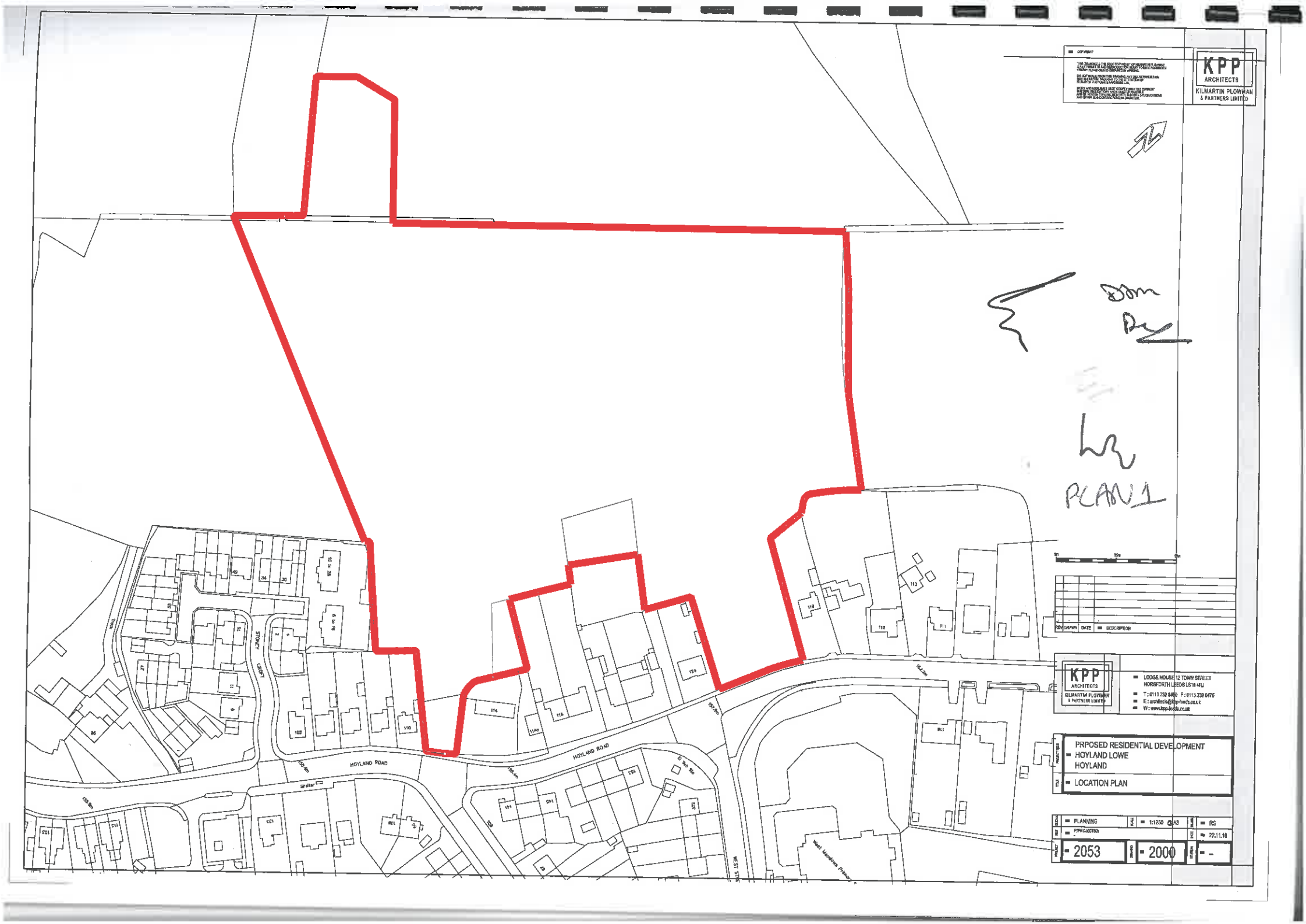
**EXECUTED** as a Deed by acting by **HOYLAND DEVELOPMENTS LIMITED acting by** two directors or a director and its secretary )
)
)
)

.....Director

.....Director/Secretary

## APPENDIX 1

## PLAN 1


KPP
ARCHITECTS
KILMARTIN PLOWMAN & PARTNERS LIMITED
PLAN 1
HOYLAND ROAD
STONEY CROFT
KPP
ARCHITECTS
KILMARTIN PLOWMAN & PARTNERS LIMITED
LODGE HOUSE 12 TOWN STREET
HORSFORTH LEEDS LS18 4RJ
T: 0113 239 0460 F: 0113 239 0475
E: architects@kpp-leeds.co.uk
W: www.kpp-leeds.co.uk
PROPOSED RESIDENTIAL DEVELOPMENT
HOYLAND LOWE
HOYLAND
LOCATION PLAN
PLANNING
1:1250 @ A3
RS
22.11.16
2053
2000

## APPENDIX 2

## DRAFT PLANNING PERMISSION

BARNSLEY
Metropolitan Borough Council

**Place Directorate**
**Economic Regeneration**
**Planning and Building Control**
Head of Service: Joe Jenkinson

# GRANT OF OUTLINE PLANNING PERMISSION

TOWN AND COUNTRY PLANNING ACT 1990

APPLICATION NO. 2016/1531

**To** Mark Johnson
Johnson Mowat
Coronet House
Queen Street
Leeds
LS1 2TW

**DESCRIPTION**
**LOCATION** Land north of Hawshaw Lane, Hoyland, Barnsley

Permission is granted for the proposals which were the subject of the Application and Plans registered by the Council on 13 January 2017 and described above.

The approval is subject on compliance with the following conditions:

1 The development hereby permitted shall not be commenced unless and until approval of the following reserved matters has been obtained in writing from the Local Planning Authority:-

(a) the layout of the proposed development.
(b) scale of building(s)
(c) the design and external appearance of the proposed development.
(d) landscaping
**Reason: In order to allow the Local Planning Authority to assess the details of the reserved matters with regard to the development plan and other material considerations.**

2 Application for approval of the matters reserved in Condition No. 1 shall be made to the Local Planning Authority before the expiration of three years from the date of this permission, and the development, hereby permitted, shall be begun before the expiration of two years from the date of approval of the last of the reserved matters to be approved.
**Reason: In order to comply with the provision of Section 92 of the Town and Country Planning Act 1990.**

3 Plans at the reserved matters stage should have regard to the details indicated on drawing 2053-2001 rev A 'concept masterplan for the residential development of Hoyland Lowe' and the KPP Architects Design, Access and Heritage Statement and the PWP Design 'Landscape Strategy Handbook' ref PWP164 100 (rev02) 12.12.16.
**Reason: In the interests of the visual amenities of the locality and in accordance with LDF Core Strategy Policy CSP 29, Design.**

4 Vehicular access to the development shall be carried out in accordance with Fore plan ref 3406 SK004 001 'Preliminary Access Arrangement onto B6096 Hawshaw Lane' which forms part of the Transport Assessment Version 1 dated 14th December 2016.
**Reason: In the interest of highway safety, in accordance with Core Strategy Policy CSP 26.**

5 Visibility splays, having the dimensions 2.4m x 82.5m to the north and 2.4m x 70.4m to the south, shall be safeguarded at the junction with the B6098 Hoyland Road/Hawshaw Lane, such that there is no obstruction to visibility and forming part of the adopted highway.
**Reason: In the interest of highway safety, in accordance with Core Strategy Policy CSP 26.**

6 Prior to the commencement of development, details shall be submitted to and approved in writing by the Local Planning Authority of arrangements which secure the following highway improvement works:

Provision of new signing/ lining at the junction of Sheffield Road/ Hoyland Road/ Tankersley Lane junction.

The works shall be completed in accordance with the approved details and a timetable to be submitted to and approved in writing by the Local Planning Authority.
**Reason: In the interest of highway safety, in accordance with Core Strategy Policy CSP 26.**

7 Detailed plans shall accompany the reserved matters submission indicating existing ground levels, finished floor levels of all dwellings and associated structures, road levels and any proposed alterations to ground levels. Thereafter the development shall proceed in accordance with the approved details.
**Reason: To enable the impact arising from need for any changes in level to be assessed and in accordance with LDF Core Strategy Policy CSP 29, Design.**

8 No development shall take place, including any works of demolition, 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. The Statement shall provide for:
- The parking of vehicles of site operatives and visitors
- Means of access for construction traffic
- Loading and unloading of plant and materials
- Storage of plant and materials used in constructing the development
- The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
- Wheel washing facilities
- Measures to control the emission of dust and dirt during construction
- Measures to control noise levels during construction

**Reason: In the interests of highway safety, residential amenity and visual amenity, in accordance with Core Strategy Policies CSP 26 and CSP 40.**

9 Vehicular and pedestrian gradients within the site shall not exceed 1:12.
**Reason: In the interest of highway safety, in accordance with Core Strategy Policy CSP 26.**

10 Prior to any works commencing on-site, a condition survey (including structural integrity) of the highways to be used by construction traffic shall be carried out in association with the Local Planning Authority. The methodology of the survey shall be approved in writing by the Local Planning Authority and shall assess the existing state of the highway. On completion of the development a second condition survey shall be carried out and shall be submitted for the written approval of the Local Planning Authority, which shall identify defects attributable to the traffic ensuing from the development. Any necessary remedial works shall be completed at the developer's expense in accordance with a scheme to be agreed in writing by the Local Planning Authority.
**Reason: In the interest of highway safety, in accordance with Core Strategy Policy CSP 26.**

11 No development shall take place until:

(a) Full foul and surface water drainage details,including a scheme to maintain or reduce surface water run-of from existing greenfield rates, and a programme of works for implementation, have been submitted to and approved in writing by the Local Planning Authority:

(b) Porosity tests are carried out in accordance with BRE 365, to demonstrate that the subsoil is suitable for soakaways;

(c) Calculations based on the results of these porosity tests to prove that adequate land area is available for the construction of the soakaways;

Thereafter no part of the development shall be occupied or brought into use until the approved scheme has been fully implemented and the scheme shall be retained throughout the life of the development.
**Reason: To ensure proper drainage of the area, in accordance with Core Strategy policy CSP4.**

12 No development or other operations being undertaken on site shall take place until the following documents in accordance with British Standard 5837:2012 Trees in relation to design, demolition and construction - Recommendations have been submitted to and approved in writing by the Local Planning Authority:

Tree survey
Tree protective barrier details
Tree protection plan
Arboricultural method statement

The erection of barriers and any other measures specified for the protection of any retained tree shall be undertaken in accordance with the approved plans and particulars before any equipment, machinery or materials are brought on to the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced off in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the written consent of the Local Planning Authority.
**Reason: To ensure the continued wellbeing of the trees in the interests of the amenity of the locality in accordance with Core Strategy Policy CSP 36 Biodiversity and Geodiversity.**

13 Construction or remediation work comprising the use of plant, machinery or equipment, or deliveries of materials shall only take place between the hours of 0800 to 1800 Monday to Friday and 0900 to 1400 on Saturdays and at no time on Sundays or Bank Holidays.
**Reason: In the interests of the amenities of local residents and in accordance with Core Strategy Policy CSP 40.**

14 Detailed proposals shall accompany the reserved matters submission of a scheme of sound insulation measures to ensure that adequate amenity standards are provided for future residents. Proposals shall be designed in accordance with the recommendations contained within the Kilmartin, Plowman and Partners Planning Noise Assessment report ref DC2106-R1.
**Reason: In the interests of the amenities of local residents and in accordance with Core Strategy Policy CSP 40.**

15 No development shall take place until there has been submitted to and approved in writing by the Local Planning Authority a plan indicating the position of boundary treatment to be erected. The boundary treatment shall be completed before the dwelling is occupied. Development shall be carried out in accordance with the approved details.
**Reason: In the interests of the visual amenities of the locality and the amenities of occupiers of adjoining property in accordance with Core Strategy policy CSP 29.**

16 Detailed proposals shall accompany the reserved matters submission of a scheme of biodiversity mitigation and enhancement. Proposals shall be designed in accordance with the recommendations contained within EnviroTech report 3457, version 4 received by the Local Planning Authority 5th April 2017.
**Reason: To conserve and enhance biodiversity in accordance with Core Strategy Policy CSP 36.**

17 An intrusive site investigation shall accompany the reserved matters submission. The investigation must be undertaken by competent persons and a written report of the findings must be produced. The report of the findings must include:

- The submission of a scheme of intrusive site investigations for the high walls within the site for approval;
- The submission of a scheme of intrusive site investigations for the shallow coal workings for approval; and
- The undertaking of both of those schemes of intrusive site investigations.
- The submission of a report of findings arising from both of the intrusive site investigations, including the results of any gas monitoring undertaken;
- The submission of a layout plan which identifies the opencast high walls and the definition of suitable 'no-build' zones;
- The submission of a scheme of remedial works for the shallow coal workings for approval.

Thereafter the development shall be carried out in accordance with the approved report including any remedial options.
**Reason: To ensure that the development meets the requirements of the NPPF by demonstrating that the application site is, or can be made, safe and stable for the proposed development.**

18 Prior to commencement of development an investigation and risk assessment to assess the nature and extent of any contamination on the site shall be submitted to and approved in writing by the Local Planning Authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The report of the findings must include:
(i) a survey of the extent, scale and nature of contamination;
(ii) an assessment of the potential risks to:

- human health,
- property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,
- adjoining land,
- groundwaters and surface waters,
- ecological systems,
- archeological sites and ancient monuments;

(iii) an appraisal of remedial options, and proposal of the preferred option(s).
This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'.

The development shall be carried out in accordance with the approved report including any remedial options.
**Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with Core Strategy Policy CSP 39.**

19 The development hereby permitted shall not begin until a scheme has been submitted to and approved in writing by the Local Planning Authority for the provision of or enhancement to off-site public open space in accordance with the Open Space Provision on New Housing Development SPD. The provision or enhancement of the off site open space shall be provided prior to completion of the development in accordance with the approved scheme.
**Reason: In the interests of residential and visual amenity to ensure adequate provision of public open space in accordance with Core Strategy Policy CSP 29.**

20 Pedestrian intervisibility splays, having the dimensions 2m x 2m, shall be safeguarded at the drive entrance/exit such that there is no obstruction to visibility at a height exceeding 1m above the nearside channel level of the adjacent highway.
**Reason: In the interest of highway safety, in accordance with Core Strategy Policy CSP 26.**

21 No development shall take place until a scheme for disposing of surface water is approved by the Local Planning Authority. That scheme will follow the principles of a sustainable urban drainage systems (SUDS) unless demonstrated to be inappropriate. The scheme shall include the following details:

- Information about the design storm period and intensity, the model employed to delay and control the surface water discharged from the site and the site measures taken to prevent pollution of the receiving groundwater and/or surface waters;
- A timetable for its implementation; and
- A management and maintenance plan for the lifetime of the development which shall include arrangements to secure the operation of the scheme throughout its lifetime.

The development shall be implemented in accordance with the approved scheme and maintained thereafter in accordance with the approved management and maintenance plan.
**Reason: To ensure proper sustainable drainage of the area in accordance with Core Strategy Policy CSP 3.**

**Informative(s)**

*Pursuant to article 31(1)(cc) of the Town and Country Planning (Development Management Procedure) Order 2010 (as amended), the Local Planning Authority have, where possible, made a pre-application advice service available, complied with our Planning Service Charter for Business and otherwise actively engaged with the applicant in dealing with the application.*

*Please be aware that the Council monitors construction sites and open land within the vicinity such sites in an attempt to prevent fly tipping (i.e. unauthorised deposit of waste on land), which is illegal under the Environmental Protection Act 1990. The penalties for fly-tipping can include:*

- *a fine of up to £50,000 and*
- *up to six months imprisonment on conviction*

*Therefore, if necessary, please ensure that all demolition waste and waste associated with the construction of the approved development is disposed of via approved methods and that documents are retained to prove this.*

Signed Dated: 10 May 2018

Joe Jenkinson

Head of Planning and Building Control

The grant of this consent does not constitute or imply permission, approval or consent by the Local Authority for any other purpose.

**NOTES:-**

**Appeals to the Secretary of State**

If you are aggrieved by the decision of the Council to grant permission for the proposed development subject to conditions then you can appeal to the Secretary of State for the Environment, Transport and Regions under Section 78 of the Town and Country Planning Act. If you want to appeal, then you must do so within six months of the date of this notice, using a form which you can get from The Planning Inspectorate, Room 3/24 Hawk Wing, Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN.

The Secretary of State can allow a longer period for giving notice of an appeal, but he will not normally be prepared to use this power unless there are special circumstances which excuse the delay in giving notice of appeal. The Secretary of State need not consider an appeal if it seems to him that the Local Planning Authority could not have granted planning permission for the proposed development or could not have granted it without the conditions it imposed, having regard to the statutory requirements, to the provisions of the development order and to any directions giving under the order. In practice, the Secretary of State does not refuse to consider appeals solely because the Local Planning Authority based its decision on a direction given by him.

**Purchase Notices**

If either the Local Planning Authority or the Secretary of State for the Environment, Transport and Regions 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.

**Compensation**

In certain circumstances compensation may be claimed from the Local Planning Authority if permission is refused or granted subject to conditions by the Secretary of State on appeal or on reference to the application to him. These circumstances are set out in Sections 114 and related provisions of the Town and Country Planning Act 1990.