

**DATED**

8<sup>th</sup> day of March 2018

**PLANNING OBLIGATION BY WAY OF UNILATERAL UNDERTAKING UNDER  
SECTION 106 OF THE TOWN & COUNTRY PLANNING ACT 1990 AND ALL  
OTHER ENABLING POWERS RELATING TO LAND AT ROCKFIELD FARM  
UNDY MONMOUTHSHIRE NP26 3EL**

**MONMOUTHSHIRE COUNTY COUNCIL**

Legal Services  
Monmouthshire County Council  
County Hall  
The Rhadyr  
Usk  
NP15 1GA

(JC PR80/50.0976)

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THIS DEED is dated 8<sup>th</sup> day of March 2018

- (1) MONMOUTHSHIRE COUNTY COUNCIL of County Hall The Rhadyr Usk  
Monmouthshire NP15 1GA (**Owner**)

## **BACKGROUND**

- (A) The Owner is the freehold owner of the Property registered under title numbers WA141350 and P3134 shown for the purposes of identification only edged red on the Plan.
- (B) The Council is the local planning authority for the purposes of the TCPA 1990 for the area in which the Property is situated.
- (C) The Owner has submitted the Planning Application to the Council.
- (D) In accordance with the Council's Local Development Plan, the Owner has agreed to enter into this Unilateral Undertaking in order to perform the required planning obligations set out in this deed
- (E) It is intended that at the time of the disposal of the Property, the developer/s will enter into a s106 agreement directly with the local planning authority the terms of which will mirror those contained herein.

## **AGREED TERMS**

### **1. INTERPRETATION**

The following definitions and rules of interpretation apply in this deed.

#### **1.1 Definitions:**

**Acceptable Cost Guidance:** the Acceptable Cost Guidance issued by the Welsh Government to RSLs as guidance on the acceptability of total scheme costs for grant purposes as at the date of a binding contract between the Owner and the RSL

**Adult Recreation Contribution:** to provide the sum of £800,000.00 towards the provision of adult recreation/ community facilities at the Three Fields site in Magor with Undy

**Affordable Housing:** subsidised housing (irrespective of tenure exclusive shared equity or other financial arrangements) that will be available to people who cannot afford to occupy dwellings generally available on the open market and for the avoidance of doubt will include housing available for rent at levels set by the Welsh Government

**Affordable Housing Contribution:** to provide 25% of the total number of dwellings on each phase to be affordable housing units

**Affordable Housing Units:** Dwellings to be constructed on the Site pursuant to the Development which shall be constructed in accordance with DQR.

**Base Rate:** the higher of 5% and the base rate from time to time of Barclays Bank plc.

**Commencement of Development:** the carrying out in relation to the Development of any material operation as defined by section 56(4) of the TCPA 1990 but disregarding for the purposes of this deed and for no other purpose, the following operations: demolition works; site clearance; ground investigations; site survey works; temporary access construction works; archaeological investigation; and erection of any fences and hoardings around the Property.

**Commenced and Commences** shall be construed accordingly.

**Commencement Date:** the date of Commencement of Development.

**Contribution:** means each provision or financial contribution payable under this Deed.

**Council:** Monmouthshire County Council of County Hall, The Rhadyr, Usk Monmouthshire NP15 1GA

**Default Interest Rate:** 4% per annum above the Base Rate.

**Development:** the development of the Property described in and permitted by the Planning Application.

**DQR:** the current Development Quality Requirements Design Standards and Guidance produced by the Welsh Government and those current at the date the Agreement is completed

**Dwelling:** a residential unit authorised to be constructed on the Site by the Planning Permission

**Highway Contribution:** to provide £70,000.00 as a contribution towards the Magor/Undy to Rogiet footpath and to construct the estate road up to the site boundary with the adjoining Vinegar Hill site.

**Index Linked:** increased in accordance with the following formula:

Amount payable = the Contribution x (A/B) where:

A= the figure for the Retail Prices Index (All Items) that applied immediately preceding the date of actual payment.

B= the figure for the Retail Prices Index (All Items) that applied when the index was last published prior to the date of this deed.

**Local Area of Play (LAP):** an area that will consist of six items of play equipment for the 0-5 years age range and associated facilities such as fencing, safety surfacing, seating and litter bins, or such other play provision equipment as may be agreed by the Council

**Maintenance Period:** means the period between the issue of the Practical Completion Certificate and the date the Open Space Area is transferred to the Council such period being not less than 12 months (or an alternative time at the service head recreation services' discretion)

**Neutral Tenure:** where tenure of the affordable housing is not predetermined but can vary according to needs, means and preferences of households to whom it is offered

**Occupation and Occupied:** occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction.

**Open Space Works:** laying out of any Open Space Land in accordance with the Open Space Works Specification.

**Open Space Works Specification:** a specification for the carrying out of the Open Space Works and the maintenance of them to be agreed in writing between the Developer and the Council before commencement of the Development.

**Plan:** the plan attached to this deed.

**Phase:** a phase for construction of the Development as shall be agreed pursuant to the Planning Permission

**Price:** 42% of the Acceptable Cost Guidance as at the date of a binding contract between the Landowner and the RSL.

**Private Dwellings:** means the Dwellings excluding the Affordable Housing Units

**Property:** the freehold land at Rockfield Farm Undy Monmouthshire shown edged red on the Plan and registered at HM Land Registry with absolute title under title numbers WA141350 and P3134.

**Planning Application:** an application for planning permission registered by the Council on 15<sup>th</sup> August 2016 under reference number DC/2016 00883.

**Planning Permission:** the planning permission to be granted by the Council in respect of the Planning Application.

**Play Area Certificate:** means the certificate issued by the Service Head- Recreation Services once he is satisfied that the Play Area has been completed to the standard required by the Council.

**Play Area Contribution:** means the sum of £175,000.00 to improve Rockfield View Play area and provide an on-site Local Area of Play (LAP) in Phase A or Phase D, and for their future maintenance.

**Practical Completion:** the 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 the other party's architect

**Reserved Matters Application:** means a reserved matters application pursuant to the Planning Permission

**RSL:** an RSL as defined in the Housing Act 1996 Part 1 with Welsh Government approved development status in Monmouthshire.

**Specified Date:** the date upon which an obligation arising under this Deed is due to be performed or such other date as shall be agreed in writing with the Council as appropriate



# Rockfield Farm, Undy Development framework

## 02



**Key**

- Development area (housing)
- Development area (employment)
- Potential future development area (1.7ha)
- Existing trees/vegetation
- Key frontages
- Existing realigned public right of way
- Key pedestrian/cycle links
- Informal open space
- Primary roads
- Local streets
- Pedestrian priority streets
- Green infrastructure
- Contours (0.5 m intervals)
- Landmark buildings

*Maven Ford*

*R South*



North



A090363|02

Scale: 1:2,500@A3  
Date: 22 July 2016

creative minds safe hands

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**Surface Water Attenuation Area:** means the surface water attenuation area to be provided on the Property.

**Sustainable Transport Contribution:** to provide the sum of £200,000.00 as a contribution towards the Magor Rail Station project and to provide the sum of £175,000.00 as a contribution towards public transport to develop the existing bus service

**TCPA 1990:** Town and Country Planning Act 1990.

**Working Day:** any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in Wales.

- 1.2 Clause headings shall not affect the interpretation of this deed.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.5 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.6 A reference to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.7 A reference to the Council shall include the successors to its respective statutory functions.
- 1.8 Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.9 Unless the context otherwise requires, a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.10 A reference to **writing** or **written** excludes faxes and e-mail.
- 1.11 Insofar as any clause or clauses or any part thereof of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed



- 1.12 A reference to **this deed** or to any other deed or document referred to in this deed is a reference to this deed or such other deed or document as varied or novated (in each case, other than in breach of the provisions of this deed) from time to time.
- 1.13 References to clauses are to the clauses of this deed.
- 1.14 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.15 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.
- 1.16 Insofar as different parts of or interests in the Property are owned by different persons each person covenants with the Council and with one another to co-operate insofar as they are able to ensure that the covenants herein on behalf of “the Owner” are fulfilled as expeditiously as possible

## **2. STATUTORY PROVISIONS**

- 2.1 This deed constitutes a planning obligation for the purposes of section 106 of the TCPA 1990, section 111 of the Local Government Act 1972 and any other enabling powers.
- 2.2 The obligations contained in clause 3 of this deed are planning obligations for the purposes of section 106 of the TCPA 1990 and are entered into by the Owner and will bind the interests held by those persons in the Property and their respective successors and assigns.
- 2.3 This deed shall come into effect on the date of grant of the Planning Permission.
- 2.4 The obligations contained in clause 3 of this deed are enforceable by the Council in accordance with section 106 of the TCPA 1990.
- 2.5 The Owner enters into this Deed in its capacity as landowner pursuant to section 1 of the Localism Act 2011 and any other enabling powers of the Owner.

## **3. THE OWNER’S COVENANTS WITH THE COUNCIL**

- 3.1 The Owner covenants to notify the Council of:

- (a) The date of Commencement of Development
- (b) The date of occupation of the first market housing unit
- (c) The date of occupation of the first affordable housing unit
- (d) The date of occupation of the 100<sup>th</sup> dwelling
- (e) The dated of occupation of the 200<sup>th</sup> dwelling
- (f) Provide occupancy figures at any time upon written request from the Council to do so

3.2 The Owner Covenants that if it has not provided the information referred to in clause 3.1. above within 20 working days of it becoming available it shall on each occasion it fails to do so pay to the Council the reasonable and proper costs (up to a max of £1000 on each occasion of default) the Council incurs in obtaining the information.

3.3 The Owner will observe and perform the obligations set out in this Deed and the Schedules

#### **4. INDEXATION OF CONTRIBUTION**

4.1 All financial contributions payable to the Council shall be Index Linked.

4.2 Where reference is made to an index and that index ceases to exist or is replaced or rebased then it shall include reference to any index which replaces it or any rebased index (applied in a fair and reasonable manner to the periods before and after rebasing under this deed) or in the event the index is not replaced, to an alternative reasonably comparable basis or index as the Council shall advise the Owner [and the Developer] in writing.

#### **5. RELEASE**

No person shall be liable for any breach of an obligation, restriction or covenant contained in this deed after parting with all of its interest in the Property, except in respect of any breach subsisting prior to parting with such interest.

#### **6. DETERMINATION OF DEED**

This deed shall be determined and have no further effect if the Planning Permission:

- (a) expires before the Commencement of Development;
- (b) is varied or revoked other than at the request of the Owner or Developer; or

(c) is quashed following a successful legal challenge.

**7. LOCAL LAND CHARGE**

This deed is a local land charge and shall be registered as such by the Council.

**8. INTEREST ON LATE PAYMENT**

If the Contribution has not been paid to the Council prior to or on the Specified Date, the Owner shall pay the Council interest on the Contribution at the Default Interest Rate (both before and after any judgment). Such interest shall accrue on a daily basis for the period from the Specified Date to and including the date of payment.

**9. COUNCIL'S COSTS**

The Owner shall agree to pay to the Council:

- (a) Its reasonable and proper legal costs together with all disbursements incurred in connection with the preparation, completion and registration of this deed.

**10. OWNERSHIP**

10.1 The Owner warrants that no person other than the Owner has any legal or equitable interest in the Property.

10.2 Until the obligations in clause 3 have been complied with the Owner will give to the Council within 10 Working Days, the following details of any conveyance, transfer, lease, assignment, mortgage or other disposition entered into in respect of all or any part of the Property:

- (a) the name and address of the person to whom the disposition was made; and
- (b) the nature and extent of the interest disposed of.

PROVIDED THAT this clause shall not apply to the disposal of an individual Residential Dwelling

**11. NOTICES**

11.1 A notice to be given under or in connection with this deed must be in writing and must be:

- (a) sent by first class post or other next working day delivery service.

11.2 Any notice to be given under this deed must be sent to the relevant party as follows:

- (a) to the Council at: County Hall The Rhadyr Usk Monmouthshire NP15 1GA marked for the attention of Head of Planning
- (b) to the Landowner at: County Hall The Rhadyr Usk Monmouthshire NP15 1GA marked for the attention of Legal Services

or as otherwise specified by the relevant person by notice in writing to each other person.

- 11.3 Any notice given in accordance with clause 11.1 and clause 11.2 will be deemed to have been received:
  - (a) if sent by first class post or other next working day delivery service at 9.00 am on the second Working Day after posting.
- 11.4 A notice given under this deed shall not be validly given if sent by fax or e-mail.
- 11.5 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## **12. INDEMNITY**

- 12.1 The Owner hereby undertakes that in the event of any claim or claims being made against the Council for any one or more of the following payments:
  - (a) Compensation (including any claim arising under the Land Compensation Acts)
  - (b) Damages
  - (c) Costs
  - (d) Charges
  - (e) Any other payment

Such claim arising in connection with or incidental to or in consequence of any failure on the part of the Owner to comply with its obligations under this Deed the Owner will hold the Council fully indemnified from and against each and every said claim

- 12.2 The Owner shall not be liable under this clause to indemnify the Council in respect of any claim only insofar as and to the extent that the said claim is found to have resulted from the negligent act or omission of the Council or its servants or agents save that for the purpose of this clause the Owner or persons acting on behalf of the Owner shall not be regarded as servants or agents of the Council.

**13. THIRD PARTY RIGHTS**

A person who is not a party to this deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this deed.

**14. GOVERNING LAW**

This deed and any dispute or claim arising out of or in connection with it or its subject matter, or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales as it applies in Wales.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

## **Schedule 1 Owner's Covenants to the Council in relation to PHASE A and D**

The Owner covenants with the Council:

### **Affordable Housing**

- 1.1. to provide 25% of all dwellings to be affordable housing units
- 1.2. To provide, design and construct the Affordable Housing Units in accordance with the Welsh Government Development Quality Requirements (DQR).
- 1.3. The Owner shall procure that the Affordable Housing Units are transferred to the RSL at the Price on the basis that such Affordable Housing is to be used for Affordable Housing purposes in perpetuity.
- 1.4. For the purpose of paragraphs 1.3 the relevant Affordable Housing Units shall be sold at the Price on the following basis:
  - 1.4.1 Not more than 4 (four) months following the approval of the reserved matters application, the Owner shall serve a notice on the RSL ("a Sale Notice") to sell the Affordable Housing Units to the RSL at the Price, at the same time, a copy of such notice shall be sent to the Council.
  - 1.4.2 If by the expiry of the period of 6 (six) months from the service of the Sale Notice on the RSL, the RSL:
    - (a) has declined the offer; or
    - (b) failed to accept or refuse the offer; or
    - (c) accepted the offer but failed to exchange contracts save for this shall not operate if the Owner has caused delay in replying to reasonable enquiries or providing necessary information so as to make exchange of contracts possible.then the RSL will be deemed to have rejected the Owner's offer to acquire the relevant Affordable Housing Units.
  - 1.4.3 Upon the actual or deemed rejection of an offer by the RSL the Owner shall serve a further Sale Notice upon the Council giving a period of 6 (six) months to identify another RSL ("the second RSL") or the Council itself to acquire the Affordable Housing Units at the Price.

1.4.4 If by the expiry of the period of twelve ( 12) months following the service of the notice under paragraph 1.4.3 the second RSL and the Council has:

- (a) declined the offer or
- (b) failed to accept or refuse the offer or
- (c) accepted the offer but failed to exchange contracts save for this shall not operate if the Owner has caused delay in replying to reasonable enquiries or providing necessary information so as to make exchange of contracts possible

then the second RSL and the Council will be deemed to have rejected the Owner's offer to acquire the relevant Affordable Housing Units and the Owner shall be entitled to sell the Affordable Housing Units on the open market free from the covenants in this Schedule.

- 1.5. Following a written request from the Council, to provide to the Council such information concerning the progress of negotiations for the disposal of the Affordable Housing Units as shall be reasonably required by the Council.
- 1.6. The Owner covenants not to occupy or permit first Occupation of more than 50% of the Private Dwellings until such time as the Affordable Housing Units have been constructed and are ready for Occupation.
- 1.7. The Affordable Housing Units shall be of Neutral Tenure and sold for not more than the Price.
- 1.8. To keep such full and proper records as are reasonably required to demonstrate to the Council compliance with the Affordable Housing obligations contained in this Agreement and any supplementary agreement hereto.
- 1.9. To procure that on the first disposal of each Affordable Housing Unit a restriction is entered in the Proprietorship Register of the title to each of the Affordable Housing Units in the following terms:-

“No disposition of the registered estate (other than a charge) by the proprietor of the registered estate is to be registered without a certificate signed by a conveyancer that the provisions of the First Schedule to the Agreement dated [ 2017] made between Monmouthshire County Council (1) and (2) pursuant to Section 106 of the Town and Country Planning Act 1990 have been complied with”.

## **Play Area Contribution**

- 2.1 Not to allow more than 100 dwellings to be occupied until:
- (d) the Local Area of Play (LAP) has been constructed on site located in accordance with the Reserved Matters approval, and until the sum of £75,000.000 has been paid for its construction and on-going maintenance costs.
  - (e) The sum of £100,000.00 has been paid in full to the Council to improve Rockfield View Play area and on-going maintenance costs.
- 2.2 to comply with any remedial Notice within 21 days of the Recreation Officer serving notice
- 2.3. to comply with any Remedial Notice and maintain and insure the Play Area for the Maintenance Period
- 2.4 not to allow more than 90% of the dwellings to be occupied until the Play area has been transferred to the Council for the sum of £1.00 following receipt of the Final Certificate and the Play Area Maintenance Contribution has been paid to the Council and the Council has acknowledged safe receipt of its reasonable legal fees and disbursements for such transfer
- 2.5 prior to the transfer of the Play Area to the Council the Owner shall provide the Council with the originals of the following documents relating to the Play Area
- (f) Health and Safety File
  - (g) Construction drawings
  - (h) Operational manuals
  - (i) Any other relevant documentation relating to the Play Area

## **Open Space Transfer and Works**

- 3.1 to fully implement the Open Space Works and shall not allow occupation of the last market housing unit until they have been completed to the reasonable satisfaction of the Council
- 3.2 to establish a management company to own and maintain the Open Space Land but it may by notice in writing to the Council and open payment of a commuted sum to be agreed between the Owner and the Council require the Council to take a transfer of the Open Space.



### **Highways Contribution**

- 4.1 to enter into s278 Agreements for the construction of the new junction off the B4245 prior to commencement of development.
- 4.2 to enter into a s278 Agreement for works on the Elms Road prior to commencement of development
- 4.3 to construct the Estate Road to serve phases A to D from the B4245 to adjoin the Elms Road prior to occupation of any dwellings

### **Adult Recreation Contribution**

- 5.1 Prior to commencement of development to provide the sum of £800,000.00 towards the provision of adult recreation/community facilities at the Three Fields site in Magor with Undy

### **Sustainable Transport Contribution**

- 6.1 to provide the sum of £87,500.00 towards public transport to develop the existing bus service, the sum will be payable prior to occupation of the 100<sup>th</sup> dwelling or prior to occupation of the final dwelling whichever is the soonest.

### **Surface Water Attenuation Area**

- 7.1. Not to commence the Development until the Council has approved in writing the design details for the Surface Water Attenuation Area submitted by the Owner to the Council for its approval
- 7.2 Not to occupy or allow occupation of any of the dwellings until the Owner has notified the Council in writing that the Owner has provided the Surface Water Attenuation Area on the Property in accordance with the agreed specifications and the Council has notified the Owner in writing that the works have been undertaken to the Council's reasonable satisfaction.

## **Schedule 2 Owner's Covenants to the Council in relation to PHASE B**

The Owner covenants with the Council:

### **Affordable Housing**

- 1.1. to provide 25% of all dwellings to be affordable housing units
- 1.2. To provide, design and construct the Affordable Housing Units in accordance with the Welsh Government Development Quality Requirements (DQR).
- 1.3. The Owner shall procure that the Affordable Housing Units are transferred to the RSL at the Price on the basis that such Affordable Housing is to be used for Affordable Housing purposes in perpetuity.
- 1.4. For the purpose of paragraphs 1.3 the relevant Affordable Housing Units shall be sold at the Price on the following basis:
  - 1.4.1 Not more than 4 (four) months following the approval of the reserved matters application, the Owner shall serve a notice on the RSL ("a Sale Notice") to sell the Affordable Housing Units to the RSL at the Price, at the same time, a copy of such notice shall be sent to the Council.
  - 1.4.2 If by the expiry of the period of 6 (six) months from the service of the Sale Notice on the RSL, the RSL:
    - (a) has declined the offer; or
    - (b) failed to accept or refuse the offer; or
    - (c) accepted the offer but failed to exchange contracts save for this shall not operate if the Owner has caused delay in replying to reasonable enquiries or providing necessary information so as to make exchange of contracts possible.then the RSL will be deemed to have rejected the Owner's offer to acquire the relevant Affordable Housing Units.
  - 1.4.3 Upon the actual or deemed rejection of an offer by the RSL the Owner shall serve a further Sale Notice upon the Council giving a period of 6 (six) months to identify another RSL ("the second RSL") or the Council itself to acquire the Affordable Housing Units at the Price.

1.4.4 If by the expiry of the period of twelve ( 12) months following the service of the notice under paragraph 1.4.3 the second RSL and the Council has:

- (a) declined the offer or
- (b) failed to accept or refuse the offer or
- (c) accepted the offer but failed to exchange contracts save for this shall not operate if the Owner has caused delay in replying to reasonable enquiries or providing necessary information so as to make exchange of contracts possible

then the second RSL and the Council will be deemed to have rejected the Owner's offer to acquire the relevant Affordable Housing Units and the Owner shall be entitled to sell the Affordable Housing Units on the open market free from the covenants in this Schedule.

- 1.5. Following a written request from the Council, to provide to the Council such information concerning the progress of negotiations for the disposal of the Affordable Housing Units as shall be reasonably required by the Council.
- 1.6. The Owner covenants not to occupy or permit first Occupation of more than 50% of the Private Dwellings until such time as the Affordable Housing Units have been constructed and are ready for Occupation.
- 1.7. The Affordable Housing Units shall be of Neutral Tenure and sold for not more than the Price.
- 1.8. To keep such full and proper records as are reasonably required to demonstrate to the Council compliance with the Affordable Housing obligations contained in this Agreement and any supplementary agreement hereto.
- 1.9. To procure that on the first disposal of each Affordable Housing Unit a restriction is entered in the Proprietorship Register of the title to each of the Affordable Housing Units in the following terms:-

“No disposition of the registered estate (other than a charge) by the proprietor of the registered estate is to be registered without a certificate signed by a conveyancer that the provisions of the First Schedule to the Agreement dated [ 2017] made between Monmouthshire County Council (1) and (2) pursuant to Section 106 of the Town and Country Planning Act 1990 have been complied with”.

### **Highways Contribution**

- 2.1 to pay the highway contribution prior to occupation of the 100<sup>th</sup> dwelling or prior to occupation of the final dwelling whichever is soonest.

### **Sustainable Transport Contribution**

- 3.1 Prior to the occupation of the 100<sup>th</sup> dwelling or final dwelling whichever is soonest the Owner shall provide the sum of £200,000.00 towards the Magor Rail Station project
- 3.2 to provide the sum of £87,500.00 towards public transport to develop the existing bus service prior to occupation of the 100<sup>th</sup> dwelling or the final dwelling whichever is soonest.

### **Open Space Transfer and Works**

- 4.1 to fully implement the Open Space Works and shall not allow occupation of the last market housing unit until they have been completed to the reasonable satisfaction of the Council.
- 4.2 to establish a management company to own and maintain the Open Space Land but it may by notice in writing to the Council and open payment of a commuted sum to be agreed between the Owner and the Council require the Council to take a transfer of the Open Space.

### **Schedule 3 Owner's Covenants to the Council in relation to PHASE C1 and C2**

The Owner covenants with the Council:

#### **Affordable Housing**

- 1.1. to provide 25% of all dwellings to be affordable housing units
- 1.2. To provide, design and construct the Affordable Housing Units in accordance with the Welsh Government Development Quality Requirements (DQR).
- 1.3. The Owner shall procure that the Affordable Housing Units are transferred to the RSL at the Price on the basis that such Affordable Housing is to be used for Affordable Housing purposes in perpetuity.
- 1.4. For the purpose of paragraphs 1.3 the relevant Affordable Housing Units shall be sold at the Price on the following basis:
  - 1.4.1 Not more than 4 (four) months following approval of the reserved matters application, the Owner shall serve a notice on the RSL ("a Sale Notice") to sell the Affordable Housing Units to the RSL at the Price, at the same time, a copy of such notice shall be sent to the Council.
  - 1.4.2 If by the expiry of the period of 6 (six) months from the service of the Sale Notice on the RSL, the RSL:
    - (a) has declined the offer; or
    - (b) failed to accept or refuse the offer; or
    - (c) accepted the offer but failed to exchange contracts save for this shall not operate if the Owner has caused delay in replying to reasonable enquiries or providing necessary information so as to make exchange of contracts possible.then the RSL will be deemed to have rejected the Owner's offer to acquire the relevant Affordable Housing Units.
  - 1.4.3 Upon the actual or deemed rejection of an offer by the RSL the Owner shall serve a further Sale Notice upon the Council giving a period of 6 (six) months to identify another RSL ("the second RSL") or the Council itself to acquire the Affordable Housing Units at the Price.

1.4.4 If by the expiry of the period of twelve ( 12) months following the service of the notice under paragraph 1.4.3 the second RSL and the Council has:

- (a) declined the offer or
- (b) failed to accept or refuse the offer or
- (c) accepted the offer but failed to exchange contracts save for this shall not operate if the Owner has caused delay in replying to reasonable enquiries or providing necessary information so as to make exchange of contracts possible

then the second RSL and the Council will be deemed to have rejected the Owner's offer to acquire the relevant Affordable Housing Units and the Owner shall be entitled to sell the Affordable Housing Units on the open market free from the covenants in this Schedule.

- 1.5. Following a written request from the Council, to provide to the Council such information concerning the progress of negotiations for the disposal of the Affordable Housing Units as shall be reasonably required by the Council.
- 1.6. The Owner covenants not to occupy or permit first Occupation of more than 50% of the Private Dwellings until such time as the Affordable Housing Units have been constructed and are ready for Occupation.
- 1.7. The Affordable Housing Units shall be of Neutral Tenure and sold for not more than the Price.
- 1.8. To keep such full and proper records as are reasonably required to demonstrate to the Council compliance with the Affordable Housing obligations contained in this Agreement and any supplementary agreement hereto.
- 1.9. To procure that on the first disposal of each Affordable Housing Unit a restriction is entered in the Proprietorship Register of the title to each of the Affordable Housing Units in the following terms:-

“No disposition of the registered estate (other than a charge) by the proprietor of the registered estate is to be registered without a certificate signed by a conveyancer that the provisions of the First Schedule to the Agreement dated [ 2017] made between Monmouthshire County Council (1) and (2) pursuant to Section 106 of the Town and Country Planning Act 1990 have been complied with”.

### **Highways Contribution**

- 2.1 to construct the estate road to be completed up to the site boundary with the adjoining Vinegar Hill site prior to occupation of any Unit in Phase C1 or Phase C2.

### **Open Space Transfer and Works**

- 3.1 to fully implement the Open Space Works and shall not allow occupation of the last market housing unit until they have been completed to the reasonable satisfaction of the Council.
- 3.2 to establish a management company to own and maintain the Open Space Land but it may by notice in writing to the Council and open payment of a commuted sum to be agreed between the Owner and the Council require the Council to take a transfer of the Open Space.



monmouthshire  
*sir fynyw*

Working with the citizens of Monmouthshire

**DRAFT**

**Approve of Outline Planning Permission**

Application No: **DC/2016/00883**

**Applicant:** Mrs Cerys Halford  
Monmouthshire County  
Council  
County Hall  
The Rhadyr  
Usk  
NP15 1GA

**Agent:**

**Location:** Rockfield Farm  
Undy  
Monmouthshire  
NP26 3EL

**Description of Proposal:** Master planned development of 13.8 hectares of land for residential use and employment use; up to 266 Proposed residential units and approximately 5575 square meters of B1 floor space.

**PLEASE READ THE ATTACHED NOTES**

Date: 29 November 2017

Signed:

**Development Control Manager**

Planning  
Department  
PO Box 106  
Caldicot  
NP26 9AN



**IMPORTANT THIS COMMUNICATION AFFECTS YOUR PROPERTY**

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**Conditions and Reasons**

<b>Condition No.</b>	<b>Condition</b>
1	Approval of the details of the layout, scale and appearance of the buildings and the landscaping of the site (hereinafter called the reserved matters) shall be obtained from the Local Planning Authority prior to any works commencing on site.
2	(a) Application for approval of all the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission. b) The development hereby approved must be begun either before the expiration of five years from the date of this permission, or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.
3	The development shall be carried out in accordance with the list of approved plans set out in the table below.
4	No development shall take place (including demolition, ground works, vegetation clearance) in each reserved matters area until a construction environmental management plan (CEMP: Biodiversity) has been submitted to and approved in writing by the local planning authority. The CEMP (Biodiversity) shall include the following: a) Risk assessment of potentially damaging construction activities. b) Identification of "biodiversity protection zones". c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction including.

	<p>d) The location and timing of sensitive works to avoid harm to biodiversity features.</p> <p>e) The times during construction when specialist ecologists need to be present on site to oversee works.</p> <p>f) Responsible persons and lines of communication.</p> <p>g) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person.</p> <p>h) Use of protective fences, exclusion barriers and warning signs.</p> <p>The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details, unless otherwise agreed in writing by the local planning authority.</p>
5	<p>Full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority in conjunction with each reserved matters application for landscaping. These details should reflect the guidelines set out in the GI Masterplan plan. Details shall include [for example]:-</p> <ul style="list-style-type: none"> <li>o Detailed plans / elevations of the proposed building</li> <li>o proposed finished levels or contours;</li> <li>o means of enclosure;</li> <li>o car parking layouts;</li> <li>o other vehicle and pedestrian access and circulation areas;</li> <li>o hard surfacing materials;</li> <li>o proposed and existing functional services above and below ground (e.g. drainage, power,</li> <li>o communications cables, pipelines etc. indicating lines, manholes, supports and CCTV installations.);</li> <li>o retained historic or other landscape features and proposals for restoration, where relevant.</li> <li>o Water Features</li> <li>o Clarification of access connections beyond the site</li> <li>o Where historic environment impacts are identified these are reflected through appropriate mitigation.</li> </ul>
6	<p>Each reserved matters application for layout shall include existing and proposed site sections as well as proposed finished floor levels to be submitted and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.</p>
7	<p>Before any works commence on site, a plan indicating the positions, design, materials and type of boundary treatment to be erected shall be submitted to and approved by the Local Planning Authority. This boundary treatment shall be implemented :</p> <ul style="list-style-type: none"> <li>a) before the use hereby approved is commenced or</li> <li>b) before the building(s) is / are occupied or</li> <li>c) in accordance with a timetable agreed in writing with the Local Planning Authority.</li> </ul>

8	<p>Prior to any works commencing on site a Construction Management Plan (CMP) in each reserved matters area shall be submitted to and approved by the Local Planning Authority, which shall include traffic management measures, hours of working, measures to control dust, noise and related nuisances, and measures to protect adjoining users from construction works. The development shall be carried out in accordance with the approved CMP.</p>
9	<p>No development shall take place until the applicant, or their agents or successors in title, has secured implementation of a programme of Archaeological work in accordance with that out-lined in "Rockfield Farm, Undy, Monmouthshire Written Scheme of Investigation for Archaeological Works Version 2" (Dyfed Archaeological Trust (Project no. FS16-096, dated April 2017).</p>
10	<p>No development shall commence until a foul water drainage scheme to satisfactorily accommodate the foul water discharge from the site has been submitted to and approved in writing by the local planning authority. The approved details shall evidence that no surface water and/or land drainage shall be allowed to connect directly or indirectly with the public sewerage network.</p> <p>Thereafter, no part of the development shall be brought into use and no dwelling shall be occupied until the agreed foul drainage system has been constructed, completed and brought into use in accordance with the approved scheme.</p>
11	<p>No trees or shrubs are to be removed on each reserved matters area until there has been submitted and agreed in writing a scheme of tree protection in accordance with information shown in the Pre-development Tree Survey dated March 2016. The information shall contain the following:</p> <ul style="list-style-type: none"> <li>o A tree retention and removal plan.</li> <li>o A scaled tree protection plan showing retained trees and their root protection areas on the proposed layout.</li> <li>o An Arboricultural Method Statement showing how trees/shrubs may be protected from harm where construction activity within any root protection area is unavoidable.</li> <li>o A scheme of access facilitation pruning.</li> <li>o Tree protection barrier details.</li> <li>o A scheme of arboricultural monitoring over the course of the development.</li> </ul>
12	<p>In conjunction with the submission of the first of the reserved matters, a phasing strategy for the whole site shall be submitted to and approved in writing with the Local Planning Authority. The strategy will include development, physical and green infrastructure, and recreation/open space provision. The implementation of the site shall be undertaken in accordance with that phasing strategy.</p>
13	<p>A Green Infrastructure Management Plan shall be submitted to, and be approved in writing by, the local planning authority with</p>

	<p>the first reserved matters application. The content of the Management Plan shall include the following;</p> <ul style="list-style-type: none"> <li>a) Description and evaluation of Green Infrastructure assets to be managed.</li> <li>b) Trends and constraints on site that might influence management.</li> <li>c) Aims and objectives of management.</li> <li>d) Appropriate management options for achieving aims and objectives.</li> <li>e) Prescriptions for management actions.</li> <li>f) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a twenty-year period).</li> <li>g) Details of the body or organization responsible for implementation of the plan.</li> <li>h) Ongoing monitoring and remedial measures.</li> <li>i) A schedule of landscape maintenance for a minimum period of five years.</li> </ul> <p>The Management Plan shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery. The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the Green Infrastructure Management Plan are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning Green Infrastructure objectives of the originally approved scheme. The approved plan will be implemented in accordance with the approved details.</p>
14	<p>Reserved matters applications for layout and appearance shall include a "lighting design strategy for biodiversity" to be submitted for approval in writing by the local planning authority. The strategy shall:</p> <ul style="list-style-type: none"> <li>a) identify those areas/features on site that are particularly sensitive for biodiversity and that are likely to cause disturbance in or around their breeding sites and resting places or along important routes used to access key areas of their territory, for example, for foraging; and</li> <li>b) show how and where external lighting will be installed (through the provision of appropriate lighting contour plans and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent the above species using their territory or having access to their breeding sites and resting places. All external lighting shall be installed in accordance with the specifications and locations set out in the strategy, and these shall be maintained thereafter in accordance with the strategy. Under no circumstances should any other external lighting be installed without prior consent from the local planning authority.</li> </ul>
15	<p>Each reserved matters application for layout shall include a potable water scheme to satisfactorily accommodate the water usage from the site to be submitted to and approved in writing</p>

	by the local planning authority. Thereafter, no development shall be brought into use and no dwelling shall be occupied until the agreed foul drainage system has been constructed, completed in accordance with the approved scheme.
16	Details of for the re-engineering and change of use for The Elms shall be submitted in conjunction with the relevant reserved matters application for layout. The development shall be carried out in accordance with those approved details.
17	Each reserved matters applications for layout and appearance shall include full details of noise mitigation for each dwelling to be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details prior to the occupation of each dwelling.
18	If the demolition of Rockfield Farmhouse and associated outbuildings does not commence (or, having commenced, is suspended for more than 12 months) within 1 year from the date of the planning consent, a review of bat roost and nesting bird potential shall be reconsidered. The review shall be informed by further ecological surveys commissioned to i) establish if there have been any changes in the presence and/or abundance of bats or nesting birds and ii) identify any likely new ecological impacts that might arise from any changes. Where the survey results indicate that changes have occurred that will result in ecological impacts not previously addressed in the approved scheme, the original approved ecological measures will be revised and new or amended measures, and a timetable for their implementation, will be submitted to and approved in writing by the local planning authority prior to the commencement of stripping and demolition of the Farmhouse and outbuildings. Works will then be carried out in accordance with the proposed new approved ecological measures and timetable.
19	All hard and soft landscape works shall be carried out in accordance with the approved details and to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other recognised Codes of Good Practice. The works shall be carried out prior to the occupation of any part of the development or in accordance with the timetable agreed with the Local Planning Authority. Any trees or plants that, within a period of five years after planting, are removed, die or become, in the opinion of the Local Planning Authority, seriously damaged or defective, shall be replaced as soon as is reasonably practicable with others of species, size and number as originally approved, unless the Local Planning Authority gives its written consent to any variation.

**Reasons:-**

1.1	The application is in outline only.
2.1	In order to comply with Section 92 of the Town and Country Planning Act 1990.
3.1	To ensure the development is carried out in accordance with the approved drawings, for the avoidance of doubt.
4.1	To safeguard Priority Habitats and Protected species during development in accordance with LDP policy NE1 and The Environment (Wales) Act 2016.
5.1	To ensure the provision afforded by appropriate landscape design and Green Infrastructure.
6.1	In the interest of maintaining the amenity value of the area.
7.1	In the interests of the amenities of the area.
8.1	To ensure the development is carried out in a safe and considerate manner
9.1	To identify and record any features of archaeological interest discovered during the works, in order to mitigate the impact of the works on the archaeological resource.
10.1	To prevent hydraulic overloading of the public sewerage system, to protect the health and safety of existing residents and ensure no pollution of or detriment to the environment.
11.1	To ensure the long term health and viability of valuable green infrastructure assets in accordance with Policy S13 - Landscape, Green Infrastructure and the Natural Environment.
12.1	For the avoidance of doubt given the phased nature of the development.
13.1	To maintain and enhance Green Infrastructure Assets in accordance with LDP policies, DES1, S13, GI1, NE1, EP1 and SD4. (Legislative background - Well Being of Future Generations Act 2015, Planning (Wales) Act 2015 Environment (Wales) Act 2016).
14.1	To safeguard habitat used by foraging and commuting species and to limit adverse changes to behaviour of biodiversity in accordance with LDP Policy EP3.
15.1	To ensure each property can be served with an adequate water supply.
16.1	To ensure that the existing public highway is re-engineered in the interest of highway safety and Local Development Plan Policy MV1.
17.1	To safeguard the amenities of the occupiers of the dwellings and ensure compliance with Policy EP1 of the Local Development Plan.
18.1	To review impacts on protected and priority species prior to development in accordance with LDP Policy NE1 and The Environment (Wales) Act 2016.
19.1	To ensure the provision, establishment and maintenance of a reasonable standard of landscape in accordance with the

approved designs.

**Informatives:-**

**Bats** - Please note that Bats are protected under The Conservation of Habitats and Species Regulations 2010 (as amended) and the Wildlife and Countryside Act 1981 (as amended). This protection includes bats and places used as bat roosts, whether a bat is present at the time or not. If bats are found during the course of works, all works must cease and Natural Resources Wales contacted immediately (0300 065 3000).

**Nesting birds** - Please note that all birds are protected by the Wildlife and Countryside Act 1981 (as amended). The protection also covers their nests and eggs.

To avoid breaking the law, do not carry out work on trees, hedgerows or buildings where birds are nesting. The nesting season for most bird species is between March and September.

**Badgers** - Please note that Badgers are protected under the Protection of Badgers Act 1992. It is illegal to wilfully kill, injure, take, possess or cruelly ill-treat a badger, or attempt to do so; to intentionally or recklessly interfere with a badger sett by damaging or destroying it; to obstruct access, or any entrance of, a badger sett and to disturb a badger when it is occupying a sett. To avoid breaking the law, follow the advice provided by the consultant ecologist and if work is within 30m of a sett consult with Natural Resources Wales.

The archaeological work must be undertaken to the appropriate Standard and Guidance set by Chartered Institute for Archaeologists (CIfA), ([www.archaeologists.net/codes/ifa](http://www.archaeologists.net/codes/ifa) ) and it is recommended that it is carried out either by a CIfA Registered Organisation ([www.archaeologists.net/ro](http://www.archaeologists.net/ro) ) or an accredited Member.

The Local Planning Authority is to be notified of the commencement of site works. A copy of a standard form is attached to this consent for this purpose.

Any person carrying out the development to which this planning permission relates must display at or near the place where the development is being carried out, at all times when it is being carried out, a copy of any notice of the decision to grant it, in accordance with Schedule 5B to the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 as amended and Section 71ZB of the Town and Country Planning Act 1990 as amended by Section 34 of the Planning (Wales) Act 2015.

**Street Naming/Numbering** - The Naming & Numbering of streets and properties in Monmouthshire is controlled by Monmouthshire County Council under the Public Health Act 1925 - Sections 17 to 19, the purpose of which is to ensure that any new or converted properties are allocated names or numbers logically and in a consistent manner. To register a new or converted property please view Monmouthshire Street Naming and Numbering Policy and complete the application form which can be viewed on the Street Naming & Numbering page at [www.monmouthshire.gov.uk](http://www.monmouthshire.gov.uk)

This facilitates a registered address with the Royal Mail and effective service delivery from both Public and Private Sector bodies and in particular ensures that Emergency Services are able to locate any address to which they may be

summoned. It cannot be guaranteed that the name you specify in the planning application documents for the address of the site will be the name that would be formally agreed by the Council's Street Naming and Numbering Officer because it could conflict with the name of a property within the locality of the site that is already in use.

The reserved matters application(s) for the site should include a scheme of biodiversity enhancements which shall build upon the recommendations of the submitted ecological reports:

Rockfield Farm, Undy, Monmouthshire An Ecological Survey Report by Just Mammals Consultancy LLP on behalf of Monmouthshire County Council dated February 2016

And Rockfield Farm, Undy, Monmouthshire An extended Phase 1 habitat and species

assessment and bat and bird survey by Just Mammals Consultancy LLP on behalf of Monmouthshire County Council dated August 2014.

The proposed development (including any demolition) has been screened under the Environmental Impact Assessment Regulations and it is considered that an Environmental Statement is not required.

#### **Monmouthshire Local Development Plan Policies:-**

1	S1 LDP The Spatial Distribution of New Housing Provision
2	S2 LDP Housing Provision
3	S3 LDP Strategic Housing Sites
4	S4 LDP Affordable Housing Provision
5	S5 LDP Community and Recreation Facilities
6	S12 LDP Efficient Resource Use and Flood Risk
7	S13 LDP Landscape, Green Infrastructure and the Natural Environment
8	S16 LDP Transport
9	S17 LDP Place Making and Design
10	SAH5 LDP Rockfield Farm, Undy
11	H1 LDP Residential Development in Main Towns, Severnside Settlements and Rural Secondary Settlements
12	CRF1 LDP Retention of Existing Community Facilities
13	SD2 LDP Sustainable Construction and Energy Efficiency
14	SD4 LDP Sustainable Drainage
15	DES1 LDP General Design Considerations
16	DES2 LDP Areas of Amenity Importance
17	EP1 LDP Amenity and Environmental Protection
18	NE1 LDP Nature Conservation and Development
19	GI1 LDP Green Infrastructure
20	EP5 LDP Foul Sewage Disposal
21	MV1 LDP Proposed Developments and Highway Considerations
22	MV2 LDP Sustainable Transport Access
23	MV3 LDP Public Rights of Way



The **Plans** approved with this permission are:

<b>Plan Ref No.</b>	<b>Version No</b>	<b>Status</b>
A090363[B]01		Approved
A090363[B]02		Approved
A090363[B]03		Approved
Rockfield Farm, Undy, Monmouthshire Written Scheme of Investigation for Archaeological Works Version 2" (Dyfed Archaeological Trust (Project no. FS16-096, dated April 2017).		Approved

**DRAFT**

Executed as a deed by affixing )  
the common seal of )  
**MONMOUTHSHIRE COUNTY** )  
**COUNCIL** )  
in the presence of: )



*Maureen Powell*

*Member of the Council*

*R Stanton*

*Authorised Officer*

