

HYNDBURN BOROUGH COUNCIL

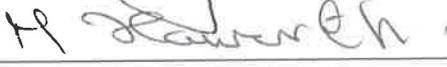
APPROVAL FOR URGENT CABINET DECISION

(Executive Procedure Rule B16)

Summary and Approvals

1. **Title of Report :** Proposed Licence Agreement with Keepmoat Homes Ltd to facilitate site investigations of the Steiner Street site, Accrington
2. **Report Author :** Helen McCue Melling – Regeneration & Property Manager
3. **Purpose of Report :** Approval is sought to enter into a licence agreement with Keepmoat Homes Ltd to facilitate site investigations of the site known as Steiner Street, Accrington (as shown in Appendix 1) .
4. **Decision Requested:**
  - 4.1 Delegate authority to the Head of Regeneration and Housing to agree the detailed terms of the licence agreement referred to in the main Cabinet Report that will follow.
  - 4.2 Delegate authority to the Head of Housing and Regeneration to enter into Licence Agreement on behalf of the Council with Keepmoat Homes Ltd. to allow them to carry out site investigations.
5. **Reason for Urgency :**
  - 5.1 The site known as Steiner Street in Accrington is outside the scope of the Overarching Development Agreement and Keepmoat have been asked by the Head of Housing and Regeneration to look at bringing forward plans for housing on the site.
  - 5.2 Keepmoat are due to complete Project Phoenix Phase 2 by the end of the calendar year. Part of the remaining land to be transferred to Keepmoat to continue the comprehensive regeneration plans on Phoenix Phase 1 requires a CPO due to an unregistered interest and an outstanding interest. This may take approximately eighteen months to complete and, as such, this is an opportune time to consider the viability of Steiner Street as a new housing site.
  - 5.3 Site Investigations are necessary to test ground conditions which determine the foundations, drainage, numbers and layout, all of which will have a determining factor on the viability of a scheme.
  - 5.4 Time is of the essence to determine if Steiner Street is viable or not and if a scheme can be agreed with the Council in time for Keepmoat to move operations to this site when Phoenix Phase 2 completes in October /November this year.
  - 5.5 Keepmoat will meet all costs associated with the site investigations
  - 5.6 If plans can be agreed then we would seek to agree terms for disposal of the site to Keepmoat, subject to compliance with all statutory requirements. Approval for such a disposal would be sought via a Cabinet report in due course.
6. **Approvals of Members and Officers :**

Designation	Signature to give approval
<u>Officers</u>	
Chief Executive *	
Executive Director (Legal and Democratic Services)	

Deputy Chief Executive	
Chief Officer/Head of Service	
<b><u>Elected Members</u></b>	
Leader	
Deputy Leader	
Portfolio Holder	
Mayor (to agree to exempt from call-in)	

\* or Deputy Chief Executive in his absence, or if Chief Executive is the decision-taker

**7. Date of Decision (when finally approved):**

22/04/2016

APPENDIX 1

Date: 19 April 2016

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Ordnance Survey LA 100022321

Title:



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<b>REPORT TO:</b>		CABINET	
<b>DATE:</b>		8th June 2016	
<b>PORTFOLIO:</b>		Cllr Clare Cleary – Housing	
<b>REPORT AUTHOR:</b>		Helen McCue-Melling Regeneration & Property Manager.	
<b>TITLE OF REPORT:</b>		Licence Agreement with Hyndburn Borough Council and Keepmoat Homes Ltd	
<b>EXEMPT REPORT (Local Government Act 1972, Schedule 12A)</b>	<b>No</b>	Paragraph 3 - Relating to the financial or business affairs of any particular person (including the authority holding that information)	
<b>KEY DECISION:</b>	<b>No</b>	If yes, date of publication:	

### 1. Purpose of Report

- 1.1 To seek approval for the Council to enter into licence agreement with Keepmoat Homes Ltd to carry out site investigations to land at Steiner Street Accrington

### 2. Recommendations

That Cabinet gives delegated authority to the Head of Regeneration and Housing to:

- 2.1 agree the detailed terms of a Licence Agreement with Keepmoat Homes Ltd in respect of site investigations at Steiner Street in Accrington. (Appendix 1)
- 2.2 enter into the Licence Agreement on behalf of the Council with Keepmoat Homes Ltd on the agreed terms

### 3. Reasons for Recommendations and Background

- 3.1 The site known as Steiner Street Accrington (identified on the plan at appendix 1) was assembled using Housing Market Renewal funding, with the last properties demolished in January 2013. This was done to reduce the oversupply of two bedroom terraced housing in the area and to facilitate redevelopment of the assembled site. Since then the site has been difficult to manage due to fly tipping and anti-social behaviour. Various developers have informally viewed the site including Globe Enterprises, Gleasons, Galiford Try, Country Side, Barnfield (as house builder) and Place First. No development plans have been forthcoming due to, it is alleged, the poor access for

non-housing use, low housing values and the existence of a culvert. The site has not been formally advertised on the open market

- 3.2 The Steiner Street site has been cleared for several years without any plans coming forward to date. An opportunity has arisen because Keepmoat will be completing construction of the Phoenix Phase 2 development at the end of the calendar year and are looking for their next site in accordance with the ODA. The remainder of the Phoenix Phase 1 site is not fully assembled due to an outstanding interest and an unregistered title and a Compulsory Purchase Order is likely to be required to acquire them. This process could take eighteen months to complete. As such, in an attempt to keep house building continuing in the area, the Housing and Regeneration Manager has asked Keepmoat to consider bringing plans forward for housing at Steiner Street.
- 3.3 Keepmoat now need to carry out site investigations which are essential to determine site conditions, layout, development costs and land value.
- 3.4 Keepmoat, subject to this approval, will carry out the site investigations by way of a licence granted by the Council as per the draft Licence in Appendix 2 and will pay for their own costs associated with carrying out the site investigations in accordance with the Licence.
- 3.5 The Licence will expire after 4 consecutive weeks from the date it is signed.
- 3.6 The proposed licence terms are set out in Appendix 2. The licence does not give Keepmoat any right to purchase the site and no option to purchase will be given.
- 3.7 If a mutually acceptable development proposal can be agreed with Keepmoat, the Council will seek to agree terms for disposal of the site to Keepmoat subject to compliance with all statutory requirements. Approval for such a disposal would be sought via a Cabinet report in due course.
- 3.8 If a mutually acceptable scheme cannot be agreed with Keepmoat then the site will advertised for sale on the open market.

#### **4. Alternative Options considered and Reasons for Rejection**

- 4.1 A failure to grant the licence may mean that Keepmoat move out of the Borough until the next site comes forward via a CPO, which could be in 2018. Therefore time is of the essence if we are to maintain continuity of house building in West Accrington by our developer partner.
- 4.2 An alternative to the current proposal would be for the Council to put the site up for sale on the open market with the site conditions unknown. This has dissuaded developers thus far.

5. **Consultations**

5.1 The Leader of the Council, portfolio holder, ward members, and the Regeneration & Housing Panel have already expressed an interest in the site being developed for housing and are pleased that Keepmoat may be asked to develop plans for consideration. Any development proposal received from Keepmoat will be shared with members and the Regeneration and Housing Panel for their feedback. Their comments, along with those of Regeneration and Housing officers and those resulting from the pre planning application advisory process will, where appropriate, be included in the proposals.

6. **Implications**

<b>Financial implications (including any future financial commitments for the Council)</b>	Each party to bear their own costs in preparing and executing the licence
<b>Legal and human rights implications</b>	This is not an agreement to dispose to Keepmoat. Any proposed disposal to Keepmoat will be the subject of a further Cabinet Report if an agreed scheme comes forward
<b>Assessment of risk</b>	There is a risk that Keepmoat and the Council will be unable to agree a development proposal for the site. Should this be the case then the site will be advertised for sale on the open market.
<b>Equality and diversity implications</b> <i>A <u>Customer First Analysis</u> should be completed in relation to policy decisions and should be attached as an appendix to the report.</i>	No implications identified

7. **Local Government (Access to Information) Act 1985:**  
**List of Background Papers**

7.1 N/A

8. **Freedom of Information**

8.1 The report does not contain exempt information under the Local Government Act 1972,



APPENDIX 1

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**APPENDIX 2**

**HYNDBURN BOROUGH COUNCIL**

and

**KEEPMOAT LIMITED**

**L I C E N C E**

relating to land at Steiner Street Accrington in Lancashire

**HYNDBURN BOROUGH COUNCIL  
ACCRINGTON**

## L I C E N C E

Date: 2016

Council: Hyndburn Borough Council of Scaitcliffe House  
Ormerod Street Accrington (acting by Jane Ellis its  
Executive Director (Legal & Democratic Services))

Licensee: Keepmoat Limited (company number 01998780)  
whose registered office is situate at The Waterfront  
Lakeside Boulevard South Yorkshire DN4 5PL

Property: All that land shown edged red on the attached plan

Purpose: Undertaking and completing surveys, environmental,  
soil and other tests, investigations, inspections and  
measurements, including a topographical and  
borehole survey, for the purpose of assessing the  
suitability of the Property for residential development

Acknowledgement Fee: £1.00

Commencement Date: [ ] April 2016

Expiry Date: Four consecutive weeks from the Commencement  
Date

Unless the contrary intention appears, references:-

- 1.1 To clauses by letter or number are references to the relevant clause in this Licence;
- 1.2 "Party" means either party to this Licence and "Parties" shall be construed accordingly;
- 1.3 References to *liability* include, where the context allows, claims, demands, proceedings, damages, losses, costs and expenses;

- 1.4 Any references to a statute shall include all instruments orders plans regulations by laws permissions and directions for the time being issued or given under it or deriving validity from it;
- 1.5 Any references to a statute or statutory instruments include any statute or statutory instruments amending, consolidating or replacing them respectively from time to time in force and references to a statute include statutory instruments and regulations made pursuant to it;
- 1.6 References to "consent of the Council" or words to similar effect mean a prior consent in writing signed by or on behalf of the Council in its capacity as landowner only and references to "approved" and "authorised" or words to similar effect mean as the case may be approved or authorised in writing by or on behalf of the Council;
- 1.7 Any approvals or consents required to be obtained from any Party shall not be unreasonably withheld or delayed;
- 1.8 Where the Licensee comprises two or more parties the obligations of the Licensee are in relation to each party joint and several;
- 1.9 The masculine includes the feminine and vice versa;
- 1.10 The singular includes the plural and vice versa;
- 1.11 Any reference to this Licence or to any other document shall include (except where expressly stated otherwise) any variation, amendment or supplement to such document to the extent that such variation, amendment or supplement is not prohibited under the terms of this Licence;
- 1.12 A reference to a person includes firms, partnerships and corporations and their successors and permitted assignees or transferees;
- 1.13 Headings are for convenience of reference only;
- 1.14 An obligation to do anything includes an obligation to procure its being done;
- 1.15 Any restriction includes an obligation not to permit infringement of the restriction;

- 1.16 The term "Property" includes each and every part of it and any estate or interest in it;
- 1.17 Save where a contrary intention is shown, or where an express discretion is given by this Licence, the Council shall act reasonably in exercising its rights hereunder;
- 1.18 If there is any ambiguity or conflict between the implied terms and the express terms of this Licence then the express terms shall prevail.

### CONDITIONS

- (a) In consideration of the Acknowledgement Fee the Council hereby grants an exclusive licence to the Licensee to enter and remain upon the Property for the Purpose and the Licensee shall use the Property for no other purpose whatsoever
- (b) The Licensee shall pay the Acknowledgement Fee to the Council on the Commencement Date if demanded
- (c) The use of the Property by the Licensee for the Purpose shall in no way limit or diminish the rights or powers of the Council as owner of the Property. Possession of the Property is retained by the Council subject to the rights granted by this Licence. The Licensee shall not impede in any way the Council or its officers servants or agents in the exercise of the Councils rights of possession and control of the Property. This Licence does not confer on the Licensee or any other person any legal or equitable right, title, interest or estate in the Property nor does it create, imply or give rise to any expectation that such right, title, interest or estate will be hereinafter conferred
- (d) The Licensee shall obtain all necessary permissions and consents, whether statutory or otherwise, required in connection with this Licence and the Purpose and shall comply with any conditions imposed thereby
- (e) The Licensee shall comply with the requirements of the Health and Safety at Work etc Act 1974 and act as client for the purpose of the Construction (Design and Management) Regulations 2015 in so far as the same apply to the Purpose. The Licensee shall at its own expense ensure that any excavations are backfilled and compacted with excavated material as soon as reasonably possible (and PVA cement mortar may be used for backfilling where any such excavations encounter artesian conditions)

(f) This Licence permits the Licensee and its servants and agents to bring upon the Property vehicles, plant, equipment and materials reasonably required for the Purpose Provided That the Licensee shall:-

- i. Take vehicular access to the Property from the adopted public highway at Steiner Street, Frederick Street or Portland Street
- ii. Take reasonable measures at its own expense to prevent loss of or damage to the bunds currently in place to prevent unauthorised access to the Property
- iii. In the event of temporary removal of or loss of or damage to any part of the said bunds during the course of the Purpose, at the Licensee's expense temporarily reinstate the same or take such other measures as the Licensee shall agree in writing with the Council to prevent unauthorised access to the Property and the Licensee shall permanently reinstate the bunds to the Council's reasonable satisfaction at the Licensee's expense upon completion of the Purpose or termination or expiry of the Licence, whichever shall be the sooner
- iv. Comply with all reasonable requirements of the Council with regard to access onto the Property and shall reinstate and make good at its own cost and to the reasonable satisfaction of the Council any damage caused to the public highway and / or the Property by the Licensee or its servants or agents in the exercise of such access.
- v. Provide wheel washing facilities for all vehicles leaving the Property and ensure that all such vehicles have their wheels washed before entering the public highway.
- vi. Use the rights granted by this licence in such a manner as to cause the minimum disturbance and inconvenience to the Council and owners and occupiers of any neighbouring or adjoining property.
- vii. Take reasonable care of the Property and keep the same in a tidy condition, free from rubbish and debris

- viii. Not light any fires or burn any rubbish at the Property
  - ix. Be responsible for the safety and security of any vehicles, plant, equipment and materials brought onto the Property or used in connection with the Purpose
  - x. Provide the Council free of charge with a complete copy of the reports, surveys and results received by the Licensee in connection with the Purpose
  - xi. Upon completion of the Purpose or termination or expiry of the Licence, whichever shall be the sooner, reinstate the Property at its own expense and to the reasonable satisfaction of the Council and assign to the Council the benefit of any guarantees or warranties provided to the Licensee in connection with the Purpose
- (g) The Licensee shall not do nor permit nor suffer to be done anything on the Property or in connection with the Purpose which may be or become a nuisance or annoyance to the Council or the occupiers of any property adjoining or neighbouring the Property and the Council may by notice in writing to the Licensee forthwith suspend this Licence for such reasonable period as the Council may determine in the event of such nuisance or annoyance occurring
- (h) For the duration of this Licence the Licensee shall maintain public liability insurance in the sum of five million pounds (£5,000,000.00) in connection with its use and occupation of the Property
- (i) The rights granted by this Licence may be terminated by the Council forthwith by notice in writing to the Licensee upon any breach of any provisions of this Licence
- (j) This Licence is a personal arrangement between the Council and the Licensee and is not assignable
- (k) Upon termination or expiry of this Licence, whichever shall be the sooner, the Licensee shall procure that that the Property is vacated and that all vehicles, plant, equipment, materials and refuse are removed from the Property.

- (l) This Licence will end in on the Expiry Date or the termination of this Licence pursuant to clause (i) whichever shall be the sooner
- (m) The Council shall not be responsible for any loss injury damage or expense which may be suffered or sustained by the Licensee in the event of any defect or abnormality of the Property or any part thereof or in the event of the same proving unfit for the Purpose or if the same shall be found to be subject to any rights encumbrances or easements which are existing at the date hereof and should have been revealed by site survey or inspection.
- (n) The Licensee shall:
- i. be liable for and shall indemnify the Council in full against any expense, liability, loss, claim or proceedings arising under statute or at common law in respect of personal injury to or death of any person whomsoever or any nuisance or loss of or damage to property whether belonging to the Council or otherwise or any claim by any third party arising out of or in the course of or caused or contributed to by the performance or purported performance or non-performance or delay in performance by the Licensee or its servants or agents of the Licensee's rights and obligations under this Licence except to the extent that the same is due to any act or neglect of the Council; and
  - ii. be liable for and shall indemnify the Council against any expense, liability, loss, claim or proceedings arising directly or indirectly from or in connection with any breach of the terms of this Licence by or otherwise through the default or negligence of the Licensee or its servants or agents.

and in respect of any claims made pursuant to this clause (n) the Council will:-

- i. give notice promptly in writing to the Licensee of all claims brought or made against Council;
- ii. at reasonable cost to the Licensee provide all such assistance as the Licensee may reasonably require in connection with any claims; and
- iii. use all reasonable endeavours to mitigate losses remedies and liabilities resulting from the claims.

(o)

- i. Nothing in this Licence shall constitute a partnership or joint venture between the Parties or constitute the Licensee as the agent of the Council for any purpose whatsoever.
- ii. The Licensee will not say or do anything which may pledge the credit of or otherwise bind the Council or that may lead any other person to believe that the Licensee is acting as the Council.

(p) If any term, condition or provision contained in this Licence shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall to that extent be omitted from this Licence and shall not affect the validity, legality or enforceability of the remaining parts of this Licence.

(q)

- i. The failure of any Party at any one time to enforce any provision of this Licence in no way affects its right thereafter to require complete performance by the other Party, nor may the waiver of any breach or any provision be taken or held to be a waiver of any subsequent breach of any provision or be a waiver of the provision itself.
- ii. Where in this Licence any obligation of a Party is to be performed within a specified time that obligation shall be deemed to continue after that time if the Party fails to comply with that obligation within the time.
- iii. Any waiver or release of any right or remedy of a Party must be specifically granted in writing signed by that Party and shall:

- a. be confined to the specific circumstances in which it is given;
- b. not affect any other enforcement of the same or any other right; and
- c. (unless it is expressed to be irrevocable) be revocable at any time in writing.

(r) Notwithstanding anything apparently or impliedly to the contrary in this Licence, in carrying out its statutory duties or functions the discretion of the Council shall not be

fettered, constrained or otherwise unlawfully affected by the terms of this Licence or any such other deed or document

- (s) Except as otherwise expressly provided, no person who is not a party shall be entitled to enforce any terms of this Licence solely by virtue of the Contracts (Rights of Third Parties) Act 1999.
- (t) This Licence shall be governed by and construed in accordance with the laws of England and Wales and the Parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.
- (u) Each Party shall pay its own costs in connection with the negotiation, preparation, and execution of this Licence, and all documents ancillary to it.
- (v)
  - i. This Licence and the conditions herein contained constitute the entire agreement between the Parties
  - ii. The Licensee hereby acknowledges that save as set out or referred to in this Licence there are and have been no representations made by or on behalf of the Council of whatsoever nature on the faith of which the Licensee is entering into this Licence.
- (w) Any rights and remedies provided for in this Licence whether in favour of the Council or the Licensee are cumulative and in addition to any further rights or remedies which may otherwise be available to those parties
- (x) Insofar as any of the rights and powers of the Council provided for in this Licence shall or may be exercised or exercisable after the termination or expiry of this Licence the provisions of this Licence conferring such rights and powers shall survive and remain in full force and effect notwithstanding such termination or expiry.

Signed

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Authorised signatory on behalf of Keepmoat Limited

Signed

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Authorised signatory on behalf of Hy

