



**Homes &  
Communities  
Agency**

Birmingham City Council

The Council House

Birmingham B1 1BB

Date:

13<sup>th</sup> January 2016

Dear Sirs

**The Meadway Regeneration Programme**

- 1 We have agreed that we will provide funding to you on the following basis:
  - 1.1 Homes and Communities Agency (the "**Agency**") is prepared to provide Birmingham City Council ("**You**") funding of up to **£6,598,000** (the "**Funding**") on the terms and conditions set out in this letter.
  - 1.2 You acknowledge and agree that the Agency's obligation to provide the Funding is subject to the Agency receiving any approvals the Agency may require (whether internally or from central Government) and on central Government making funds available to the Agency for the Funding.
  - 1.3 This letter and the attached schedules (together with any documents which are attached to it or referred to in it) will form the Agreement between You and the Agency.
  - 1.4 The key points of the proposed Funding for the Project are as follows:

<b>Amount of Funding</b>	Up to a maximum of £6,598,000
<b>Funding Recipient</b>	Birmingham City Council
<b>Project</b>	The acquisition and demolition of the Poolway shopping centre and adjacent residential units and the construction of associated infrastructure to enable future residential and commercial development on the Property
<b>Aim of the Project</b>	To deliver up to 136,000ft <sup>2</sup> of new retail floor space and up to 139 market sale and 138 affordable homes



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<b>Outputs and Milestones</b>	See the Section of this letter titled Performance Data and Financial Profiling
<b>Start Date</b>	The date of this agreement
<b>Target Completion Date</b>	The date 48 months from the date of this agreement
<b>End Date</b>	The date 60 months from the date of this agreement

## 2 TERMS AND CONDITIONS

2.1 The offer made by the Agency is subject to the terms of this Agreement including the terms specified in the general terms and conditions specified at Schedule 3.

2.2 All defined terms shall have the meaning set out at **Schedule 1**.

### 2.3 Payment and use of Funding

2.3.1 The Agency will pay the Funding as detailed in **Schedule 3** in instalments as detailed below in relation to Qualifying Expenditure. Each instalment will be paid direct to your nominated bank account subject to the general Clawback and other provisions of this Agreement, within 28 days of receiving a correctly completed Claim Form

2.3.2 The Agency may delay payment of an instalment if, following receipt of your Claim Form, it requires further information from You. In these circumstances, the Agency will write to You within 14 days of receipt of your Claim Form setting out what further information it requires and the time period for providing that information.

2.3.3 You will only use the Funding towards Qualifying Expenditure.

2.3.4 You acknowledge that (unless otherwise agreed by the Agency) the Agency shall have no obligation to make any payment under this Agreement after the End Date .

### 2.4 Reporting

You will provide the Agency with the reports (and at the frequency) set out in Schedule 5.





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## 2.5 Repayment

If You are required to repay the Funding, this will be indicated in Schedule 6 and You shall comply with the provisions of that Schedule.

## 2.6 Lapse of Offer

This offer will automatically lapse if, without the Agency's written consent, either;

2.6.1 You make no claim for Funding within 12 months of this offer; or

2.6.2 You fail to return your acceptance within 30 days of the date of this offer.

## 2.7 Communications

2.7.1 Your contact for all enquiries at the Agency is the Senior Area Manager – Stoke and Staffordshire Homes and Communities Agency, 5 St Philip's Place, Colmore Row, Birmingham B3 2PW.

2.7.2 All correspondence with the Agency must be in writing and either be delivered at or sent by first class post to Arpley House, 110 Birchwood Boulevard, Birchwood, Warrington WA3 7QH.

2.7.3 Any notice or other communications between us shall be accepted as having been received;

(a) if sent by first-class post, three days after posting exclusive of the day of posting; or

(b) if delivered by hand, on the day of delivery.

2.7.4 And in the case of the Agency addressed as set out above and in the case of You Birmingham City Council of The Council House, Birmingham, B1 1BB with a copy being served on Director of Legal & Democratic Services, PO Box 15992, Birmingham, B2 2UQ (quoting reference LS/PTY/SL/145237).

2.7.5 Either of us may change the details of service by notice in accordance with the above.

## 2.8 Amendments to the Agreement

The Agency may amend or vary the Agreement where either;

2.8.1 mandatory changes are required by the UK or EU laws or regulations provided that the Agency shall first consult with You



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and shall seek to ensure that wherever possible the effect of any variations or amendments preserve the Funding available pursuant to this Agreement; or

2.8.2 by mutual written consent between You and the Agency.

### 3 ACCEPTANCE

- 3.1 This offer is effective from the date of this letter and remains valid for a period of 30 days (unless extended, in writing, by the Agency). If You wish to accept the offer, please sign and return the enclosed copy of this letter.
- 3.2 On acceptance of the Agency's offer, You will be bound by the terms and conditions of the Agreement. You will be accepting legal obligations and should consider taking independent professional advice before such acceptance.
- 3.3 By accepting this offer You acknowledge that no amendments You make to this Agreement following issue by the Agency will be valid unless expressly agreed between You and the Agency in advance in writing and unless there has been such prior written agreement your acceptance of this offer will be an acceptance of the Agreement as issued by the Agency.

### 4 TERMINATION

- 4.1 The Agency reserves the right to terminate this Agreement by notice in writing with immediate effect where;
- 4.1.1 You become Insolvent;
- 4.1.2 You fail to achieve any Milestone within the relevant timescales set out in Schedule 3 of this Agreement or any reasonable extended timescale requested in advance by You and approved by the Agency acting reasonably PROVIDED THAT such extension may not extend the period for achieving any Milestone beyond the End Date;
- 4.1.3 You fail to remedy any breach of this Agreement which is capable of remedy within 14 days of the Agency requesting You to do so;
- 4.1.4 You commit a breach of this Agreement which is incapable of remedy.
- 4.1.5 You fail to achieve any of the Milestones by the End Date

### 5 AGENCY'S OBLIGATIONS



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5.1 The Agency shall:

- (a) work with You and (at its own cost) use reasonable endeavours to carry out all relevant and appropriate acts to ensure that the full Amount of Funding will be available for the Project on the terms of this Agreement; and
- (b) Consider (if the PAA funding programme permits) further funding to You (in addition to the Amount of Funding) in the event that the actual cost of the Allowable Expenditure exceeds the Amount of Funding.
- (c) Work collaboratively with You to procure a developer/contractor and to oversee the delivery programme for the Project.

Yours faithfully

*B8197*  


Bayo Dosunmu  
Assistant Chief Executive

**On behalf of Homes and Communities Agency**

**On Copy:** We hereby accept the Agency's offer of Funding and the terms and conditions of this Agreement.

Signed this 13<sup>th</sup> day of January 2015-2016

SIGNED by (print name) BRIGID DUFFY

  
Signature

Authorised to sign on behalf of Birmingham City Council:





## SCHEDULE 1

### DEFINITIONS

The following terms shall have the following meanings when used in this Agreement (unless the context requires otherwise)

<b>Affordable Housing</b>	means subsidised housing provided by You that will be made permanently available as Affordable Rent and/or Social Rent.
<b>Affordable Rent</b>	means the rents for low cost rental accommodation (as defined in Section 69 of HRA 2008) other than accommodation at Social Rent but for the avoidance of doubt shall not exceed the rent charged (for properties of the same house type) for dwellings occupied on an Affordable Rent basis and let by You.
<b>Acquisition Funding</b>	means a financial contribution of up to £4,223,003 to be made by the Agency to you under the terms of this Agreement for the purpose of carrying out the Acquisition Obligations
<b>Acquisition Obligations</b>	means Your obligations in this agreement to acquire all third party leasehold and freehold interest in the Property
<b>Acquisition Strategy</b>	means a detailed strategy for the acquisition by You of the legal interests comprising or affecting the Property (including occupational leases) approved by the Agency (such approval not to be unreasonably withheld or delayed)
<b>Administration Expenses</b>	Will be calculated at 1% of the advanced Funding (excluding any amounts repaid)
<b>Agreement</b>	This letter and the attached Schedules and documents annexed.
<b>Base Interest Rate</b>	means the base rate of Barclays Bank plc or such other rate of an alternative clearing bank as the Agency determines (acting reasonably)
<b>Best Practice</b>	Means know-how and information which the Agency reasonably regards as best practice in the relevant sector, area, profession, business and/or industry
<b>Business Day</b>	means 8.00 am to 6.00 pm any day (other than a Saturday or Sunday) on which banks are open in London for normal banking business and excluding public holidays
<b>Business Plan</b>	means the business plan for the Project setting out information including:-



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	total costs; envisaged total Eligible Expenditure; Milestones and Outputs; total source of funding for the Project; anticipated Market Value of the Project Assets at Practical Completion;
<b>CDM Co-ordinator</b>	The individual defined as such under the CDM Regulations
<b>CDM Regulations</b>	Construction (Design and Management) Regulations 2015 as the 'principal designer'.
<b>Change of Control</b>	Has the same meaning as set out in section 840 of the Income and Corporation Taxes Act 1988.
<b>Claim Form</b>	The document to be provided to your Agency contact at agreed intervals to claim Funding and attached at Annexure 1
<b>Clawback</b>	The Agency's right to recover the whole or any part of the Funding under paragraph 4.
<b>Client</b>	means the individual defined as such under the CDM Regulations
<b>Commercially Sensitive Information</b>	All information which relates to, or could have an impact upon, commercial activities conducted in a competitive environment, or information whose release could damage reputation or business confidence.
<b>Completion Date</b>	The date by which the Project is actually completed to the Agency's reasonable satisfaction and in accordance with the terms of this Agreement.
<b>Confidential Information</b>	means any and all information whether disclosed or otherwise made available by one Party to another (or otherwise obtained or received by a Party) whether before or after the date of this Agreement including but not limited to:-  (a) know-how, confidential, commercial and financial information and all other information which should reasonably be treated as confidential (whether marked confidential or otherwise);  (b) the existence or terms of this Agreement or other information





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	<p>relating to the Project; and</p> <p>(c) information relating to a Party's business and affairs, its customers, employees and suppliers;</p> <p>in whatever form in each case (including but not limited to information given orally or in writing or in any document electronic file or machine readable form or other means of recording or representing information whatsoever) and including any information (in whatever form) derived from such information</p>
<b>Demolition Funding</b>	means a financial contribution of up to £950,000 to be made by the Agency to you under the terms of this Agreement for the purpose of carrying out the Demolition Works
<b>Demolition Works</b>	means the demolition of the buildings existing on the Property at the date of this agreement
<b>Disposal</b>	means a transfer, disposal or grant of any legal or equitable interest in or over the Project Assets or part thereof (other than (in relation to any land assets) by way of grant of a legal charge or the grant of a licence not creating exclusive possession terminable on 3 months' notice or less) including by way of lease
<b>Disposal Strategy</b>	means a detailed strategy for the marketing and disposal by You of the legal interests comprising the retail and open market residential elements of the proposed development on the Property such strategy to be approved in writing by the Agency (such approval not to be unreasonably withheld or delayed)
<b>EIR</b>	means the Environmental Information Regulations 2004, and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation
<b>EIR Exception</b>	means any applicable exemption to EIR
<b>EU Procurement Regulations</b>	All applicable United Kingdom and European procurement legislation and any implementing measures and any other legislation in connection with the procurement of works, supplies or services including European Union directives 2004/18/EC, 89/665/EEC and 2004/17/EC, United Kingdom Statutory Instruments 1991/268, 1995/201, 1993/3228 and 2006/6 insofar as the same are applicable
<b>Exempted Information</b>	means any information that is designated as falling or potentially falling within the FOIA Exemptions or the EIR Exceptions





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<b>First Outline Planning Application</b>	means an application for circa 30,000sqft retail and circa 130 homes on the Property
<b>FOIA</b>	The Freedom of Information Act 2000 and any subordinate legislation made under this Act from to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation
<b>FOIA Authority/Authorities</b>	means a public authority as defined by FOIA and/or EIR
<b>FOIA Exemption</b>	means any applicable exemption to FOIA
<b>Funding</b>	The Acquisition Funding the Demolition Funding and the Infrastructure Funding
<b>HRA 2008</b>	means the Housing and Regeneration Act 2008
<b>HS Legislation</b>	Any applicable health and safety legislation, statutory instruments or regulations (including but not limited to the Health and Safety at Work etc. Act 1974) and any guidance and/or codes of practice relating to them
<b>Information</b>	means in relation to:  (a) FOIA, the meaning given under section 84 of the FOIA and which is held by an FOIA Authority at the time of receipt of an RFI; or  (b) EIR, has the meaning given under the definition of "environmental information" in section 2 of the EIR and which is held by an FOIA Authority at the time of receipt of an RFI
<b>Infrastructure Funding</b>	means a financial contribution of up to £1,425,000 to be made by the Agency to You under the terms of this Agreement for the purpose of enabling the carrying out of the Infrastructure Works
<b>Infrastructure Works</b>	means the construction of infrastructure (including roads and service conduits) on the Property and (where required under the terms of a planning permission for the development of the Property or any related planning agreement or alternative memorandum of understanding entered into between the local planning authority and You) on land outside the Property
<b>Intellectual</b>	Includes, without limit, all copyright (and future copyright), patents, trademarks and service marks (whether registered or not) design rights, registered designs, database rights, moral



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<b>Property</b>	rights and know-how together with the right to register, protect, enforce and exploit the above anywhere in the world.
<b>Insolvency</b>	You are unable to pay your debts as they fall due or are insolvent (within the meaning of s.123(1) of the Insolvency Act 1986 in the case of a company, or s.268 of the Insolvency Act 1986 in the case of an individual) or You enter into any arrangement with creditors, or a liquidator, trustee in bankruptcy, receiver, administrator, administrative receiver or similar is appointed, or possession or enforcement or any other similar process is taken against You or any of your assets and Insolvent shall be interpreted accordingly.
<b>Joint Communications Plan</b>	means a plan for the management and coordination of communications with external third parties regarding the Project, the development of the Property and the provision of the Funding
<b>Market Value</b>	<p>means in relation to the Project Assets or any part or parts thereof (including in each case the Works (or the relevant part thereof) thereon) the Market Value as defined in the Practice Statement Number PS 3.2 of the RICS Appraisal and Valuation Standards 6<sup>th</sup> Edition as varied from time to time BUT (in addition to the assumptions mentioned in that definition) on the following further assumptions in relation to the Project Assets (or relevant part or parts of it):</p> <ul style="list-style-type: none"><li>(a) the Disposal is subject to and with the benefit of any subsisting leases which are Permitted Disposals or agreements for the same but otherwise sold with vacant possession free from all charges and other encumbrances;</li><li>(b) the Applicant has a good and marketable title;</li><li>(c) all necessary Consents for any works have been obtained and the same can be lawfully used;</li><li>(d) any damage caused by any insurable risk has been made good; and</li><li>(e) it has the benefit of all easements and rights necessary for the beneficial use and occupation of it; and</li><li>(f) which complies with the Applicant's obligations to obtain Market Value under the Local Government Act 1972; and</li><li>(g) State Aid Law (as defined under <b>Clause 5</b> of Schedule 2)</li></ul>





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<b>Milestones</b>	Key events and stages as agreed between You and the Agency in relation to the Project and set out at Schedule 3.
<b>Outputs</b>	Specific targets and objectives agreed between You and the Agency and set out at Schedule 3.
<b>Phase 1</b>	The area of the Property the subject of the First Outline Planning Application
<b>Phase 2</b>	The Property but excluding Phase 1
<b>Pre-Conditions</b>	Conditions set out in a Schedule (where applicable) which must be met by You to the satisfaction of the Agency in connection with the Project and approved in writing with Agency prior to the commencement of the Agreement.
<b>Principal Contractor</b>	The individual defined as such under the CDM Regulations
<b>Project</b>	The project to which the Funding relates, details of which are set out in section 1.4 of the letter
<b>Project Assets</b>	means the Property and any buildings and infrastructure constructed on it
<b>Property</b>	means the Poolway shopping centre and adjacent residential and open space land shown edged red on the plan at Annexure 2.
<b>Qualifying Expenditure</b>	The costs which the Agency is satisfied have been or will be wholly and necessarily incurred and paid by You in carrying out the Acquisition Obligations, the Infrastructure Works and the Demolition Works which without limitation and for the avoidance of doubt does not include any finance charges or marketing costs but does include any non-recoverable VAT and professional fees in connection with the design supervision and/or implementation of the Project. The evidence required by the Agency to support a claim for Qualifying Expenditure will be copy invoices and/or other satisfactory of expenditure with samples provided, copy building contract or consultant appointments;
<b>Receipts</b>	means the aggregate of all proceeds or other receipts on the Project including but not limited to:-  (a) all rents, licence fees and other income or sums received or receivable; and  (b) all proceeds received or receivable or the amount or value of



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	<p>all consideration received or receivable from any disposal of any Project Assets;</p> <p>(c) the proceeds of any insurance policy;</p> <p>(d) interest (if any) accruing on any items listed at (a) to (c) above;</p> <p>but excluding:-</p> <p style="padding-left: 40px;">Funding; and</p> <p style="padding-left: 40px;">Public Sector Match Funding</p>
<b>Regulatory Body</b>	any UK or EU Government department or agency or any other regulatory body having jurisdiction whether regional, national or local and including, but not limited to, the Department for Communities and Local Government, UK central Government, the European Commission or any successor such department, agency or regulatory body which, whether under statute, rules, regulations, codes of practice or otherwise, is entitled to regulate, investigate, or influence the matters dealt with in this Agreement or any other affairs of the Agency
<b>Request for Information/RFI</b>	Shall have the meaning set out in the FOIA or any request for information under EIR which may relate to the Project this Agreement or any activities or business of the FOIA Authorities
<b>Social Rent</b>	means low cost rental accommodation as defined in Section 69 of HRA 2008 made permanently available for letting to persons at Target Rents on secure tenancy terms.
<b>Target Rents</b>	means those rent levels as specified by the United Kingdom Government's Social Rent Guidance in respect of Social Rent as published by the Department for the Environment Transport and the Regions March 2001 (including any guidance subsequently issued by that or any successor department in relation to that document) and calculated in accordance with the Rent Influencing Regime Guidance as published by the Corporation in October 2001 and any other guidance subsequently issued by the Agency in relation to that document.
<b>Start Date</b>	The date by which the work on the Project is to be started.
<b>Target Completion Date</b>	The target for the Completion Date as set out in paragraph 1.4 and Schedule 3 (subject to any extension approved in writing by the Agency)





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**SCHEDULE 2**

**DETAILED TERMS AND CONDITIONS OF FUNDING**

**1 PRE-CONDITIONS OF FUNDING**

The Agency is under no obligation to make any Funding available unless the Pre-conditions detailed in **Schedule 4** are satisfied.

**2 WARRANTIES AND REPRESENTATIONS**

In accepting this offer (and every time You submit a claim form) You warrant and confirm to the Agency that;

(a) You are a legally constituted body and You have the full capacity and authority and all necessary consents to enter into and perform the obligations on You under this Agreement and You acknowledge that they constitute valid, legal and binding obligations of and on You and are enforceable against You;

(b) all information, documents and accounts provided by You or on your behalf, from time to time are and will be true, valid and correct;

(c) You are not in breach of any law or regulation agreement or obligation which affects or may affect your ability to commit to this Agreement;

(d) You are not under any statutory obligation to carry out the Project or any part of it;

(e) You are not aware of any fact or circumstance that may affect the successful completion of the Project;

(f) You will ensure that all the necessary permissions consents and licences are in place and maintained for the duration of the Project without limitation.

(g) You will ensure that all necessary planning consents and property licences for the Project are in place and maintained for the duration of the Project. If any such consents or licences are varied in any way or revoked You must inform the Agency in writing immediately.

(h) You will comply with EU Procurement Regulations (to the extent that the same apply).

(i) You will procure that all contractors comply with EU Procurement Regulations (to the extent that the same apply).

(j) You will not acquire any interest in the Property other than in accordance with the Acquisition Strategy and You will not dispose of any interest in the Property other than in accordance with the Disposal Strategy.

(k) You will comply with the terms of Birmingham City Council Cabinet approval dated 16 March 2015 (subject: "Moving Forward the Meadway Regeneration Programme") or such other executive authority obtained by You and approved by the Agency acting reasonably PROVIDED THAT this obligation shall cease in the event of the said Cabinet approval (or any subsequent replacement executive authority which has been approved by the Agency) is overturned, or successfully challenged for its validity AND FURTHER PROVIDED THAT in the event that a relevant executive authority is overturned, or successfully challenged for its validity, You shall use reasonable endeavours to obtain a replacement executive authority on terms approved by the Agency acting reasonably.

**3 RECYCLING OF RECEIPTS**

All Receipts must be reinvested by You into either

(a) The Project; or

(b) another project utilising "City Deal" Public Asset Accelerator Programme funding

**4 CLAWBACK ON DEFAULT**

The Agency reserves the right to withhold payment of any instalments and/or recover all or any part of the Funding (together with Administration Expenses) it has already made if without the Agency's written consent, either;

You commit a material breach any of the terms and conditions of the Agreement (and fail to remedy such breach within 14 days of the Agency asking You to do so);

You become Insolvent or any steps are taken by any person toward such Insolvency;

any of the Pre-conditions detailed in the attached Schedule 4 (if applicable for the purposes of this Agreement) are not satisfied or waived by the Agency within the relevant periods set out in this agreement

PROVIDED THAT the Agency shall not withhold payment in the event that such failure to satisfy the Pre-Conditions has been contributed to by the Agency's default.

**5 OVERPAYMENTS**

The Agency may vary or withhold any or all of the payments of Funding under this Agreement and/or





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require repayment of any or all Funding already paid to the extent that:-

repayment or recovery is required under or by virtue of any European Union State aid laws (including without limitation under Article 107 of the Treaty on the Functioning of the European Union and/or any applicable judgement, court order, statute, statutory instrument, regulation, directive or decision (insofar as legally binding) ("State Aid Law"); and/or

the Agency is otherwise required to repay or recover such Funding in whole or in part by or to the European Commission

Any Funding required to be repaid in accordance with this **Clause 5** will bear interest at such rate as required under or by virtue of State Aid Law from the date of the Agency's notice requiring repayment to the date of repayment (both before and after judgement) or such other period as may be required under or by virtue of State Aid Law.

## 6 CONDUCT

(a) You must comply with and assist and co-operate with the Agency in order that it can comply with (and require third parties who benefit from this Funding and any contractors You may appoint do the same) all applicable legal obligations and statutory requirements in relation to the Project, including, but not limited to:-

- EU and UK Planning and Environmental legislation
- EU State Aid Law, including but not limited to N7471A/99 and N747/8/99 Partnership Support for Regeneration (1) Support for Speculative Developments and (2) Support for Bespoke Developments
- HS Legislation
- Employment legislation
- CDM Regulations
- Equal opportunities (in relation to race, sex, disability, faith and sexuality)
- Financial regulations and legislation
- Copyright and Data Protection legislation

(b) You must not grant any lender security over assets funded, or part-funded, by this Funding unless You have first obtained the Agency's written consent.

(c) In carrying out the Project You must not act directly or indirectly in any way that will bring the Agency into disrepute.

(d) You must inform the Agency immediately if any of You or your directors or partners are a) disqualified, or b) subject to investigation or challenge which may have a detrimental effect upon the Agency and/or the Project.

(e) You must advise the Agency immediately of any threat of or any notice or any resolution in respect of any Insolvency.

(f) You will act in good faith to achieve the Outputs and will provide evidence of this to the Agency as required by the Agency.

(g) You will provide the Agency with such evidence that it requires that Qualifying Expenditure has been incurred.

(h) You will ensure that all contractors appointed or engaged on the Project will comply at all times with the HS Legislation and the CDM Regulations and will ensure that:-

the terms of the Works Contracts are clear that, and have the effect that, the Agency is not the Client for the purposes of the relevant Works;

where for the purposes of the Project a contractor is a Designer or CDM Coordinator, that contractor will comply with the obligations imposed on such role(s) under the CDM Regulations;

each contractor co-operates fully with the CDM Coordinator and the Principal Contractor appointed under the CDM Regulations (whether or not either of these roles are carried out by the relevant contractor);

each contractor allocates adequate resources to enable it to comply with its obligations under the relevant contract and the CDM Regulations;

each contractor co-operates with all other persons involved in the Project to consider the prevention of risks and protection of persons who may be exposed to risks;

no contractor will by any act or omission do anything that would cause You to breach or be prosecuted under the HS Legislation and/or the CDM Regulations; and

You and each contractor have at all times due regard to the protection and safety of members of the public and their property on the relevant site, adjoining land owners and their property, visitors to the relevant site and their property and will at all times comply with the requirements of the Health and Safety Executive, the HS Legislation and all rules codes and





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regulations (including the CDM Regulations) and legislation relating to the health and safety of workers, and to the undertaking of construction works.

## 7 INSURANCE

(a) You must take out and maintain with a reputable insurance company adequate insurance of the type and level of cover which it is reasonable to expect from a business such as that operated by You.

(b) You must produce a schedule of all appropriate insurance cover and copies of all relevant cover notes and insurance policies to the Agency within 28 days of any such reasonable request being made by the Agency.

## 8 FOIA

(a) The Parties to this Agreement are FOIA Authorities and are subject to legal duties which may require the release of information under FOIA and/or EIR and that the FOIA Authorities may be under an obligation to provide Information subject to a Request for Information.

(b) The FOIA Authority in receipt of or to receive the RFI ("Relevant FOIA Authority") shall be responsible for determining in its absolute discretion whether:-

any information is Exempted Information or remains Exempted Information; and/or

any Information is to be disclosed in response to a Request for Information;

and in no event shall any party, other than the Relevant FOIA Authority, respond directly to a RFI except to confirm receipt of the RFI and that the RFI has been passed to the Relevant FOIA Authority.

(c) Subject to clause (d) below, all Parties acknowledge that the Relevant FOIA Authority may disclose information:

without consulting the other: or

following consultation with the other party and having taken (or not taken, as the case may be) its views into account.

(d) Without in any way limiting Clauses (b) and (c), in the event that the Relevant FOIA Authority received a RFI, the Relevant FOIA Authority will, where appropriate, as soon as reasonably practicable notify the other Party.

(e) The Parties will assist and co-operate with one another as requested by the Relevant FOIA Authority to enable the Relevant FOIA Authority to comply with its obligations to disclose information under FOIA and EIR within the prescribed periods for compliance and in

particular without limitation will (and shall procure that its agents and sub-contractors will), at their own cost:

transfer any RFI received to the Relevant FOIA Authority as soon as practicable after receipt and in any event within two Working Days of receiving a request for information;

provide all such assistance as may be required from time to time by the Relevant FOIA Authority to enable the Relevant FOIA Authority to comply with its obligations to disclose Information;

provide the Relevant FOIA Authority with any Information already in its possession or power in such form that the Relevant FOIA Authority requires within five Working Days (or such other period as the Relevant FOIA Authority may specify) of the Relevant FOIA Authority requesting that information;

(f) Nothing in this Agreement will prevent the Relevant FOIA Authority from complying with any valid order, decision, enforcement or practice recommendation notice issued to it by the Information Commissioner under FOIA and/or EIR in relation to any Exempted Information.

## 9 INTELLECTUAL PROPERTY RIGHTS

(a) The Agency is entitled to make publicly available Best Practice arising from the Project ("Project Know-how") and (subject to Clause 9.(c) You hereby grant to the Agency a licence (to the full extent that You own the Project Know-how and are able to validly grant such licence) to use such Project Know-how in accordance with this Clause. The Agency will have the right to amend the Project Know-how or to combine with any other know how as it thinks fit when compiling and publishing what it regards as Best Practice.

(b) If the Intellectual Property Rights in Project Know-how are owned by a third party, You will use your reasonable endeavours (but at the cost of the Agency) to obtain a licence for the Agency to use such Project Know-how in accordance with this Clause 9. You will notify the Agency where You are unable to obtain such licence and will identify which parts of the Project Know-how the Agency is not licensed to use ("Excluded Know how").

(c) Subject to Clause 9(b) You will provide the Agency with complete copies of and access to all information and know-how relating to or derived from the Project (including the methods by which the Project was conducted). You will provide all assistance and explanation requested by the Agency to enable it to disseminate Best Practice.

(e) You agree to indemnify the Agency and keep it indemnified at all times against all or any costs, claims, damages or expenses incurred by the Agency, or for which the Agency may become liable, with respect to any





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intellectual property infringement claim or other claim relating to the Intellectual Property Rights in the Project Know-how (other than Excluded know-how). Nothing in this clause shall restrict or limit the Agency's general obligation at law to mitigate a loss it may suffer or incur as a result of an event that may give rise to a claim under this indemnity and the Agency shall as soon as reasonably practicable, give written notice of any claim to You specifying the nature of the claim in reasonable detail and provide any relevant documentation associated with such claim.

## 10 INDEMNITY

You will be liable for and will indemnify the Agency in full for any expense, liability, loss, claim or proceedings arising under statute, tort (including negligence), contract and/or at common law in respect of personal injury to or death of any person or loss of or damage to property (whether belonging to the Agency or otherwise) or any claim by any third party arising directly or indirectly out of or caused or contributed to by the Project and/or the performance or non-performance or delay in performance by You of your obligations under this Agreement except to the extent that the same is due to any act omission or neglect of the Agency<sup>1</sup>.

## 11 ACCESS TO INFORMATION

(a) You are required to provide the Agency, in writing, any such information about the Funding as it requires for the conduct of its statutory functions or which may be required by any Regulatory Body in respect of its regulatory and / or compliance functions.

(b) You are required to record for the Agency any such information as may be required to monitor and evaluate the performance of the Agreement. You are required to retain this information for access by the Agency or any Regulatory Body for a minimum period of 10 years from the Completion Date.

(c) You are required to provide to the Agency, at reasonable request, access to all and any information about the Project including the location(s) at which the Project will be/ has delivered, Outputs and / or beneficiaries of the Funding from the Start Date up to and including the End Date.

## 12 TRANSFER

The offer of Funding is personal to You. Unless otherwise specifically agreed in writing by the Agency You may not assign, novate, transfer, sub-contract or dispose of in any other way either the benefit of the Funding or any of your obligations under this Agreement.

## 13 VAT

You and the Agency both understand and agree that the Funding by the Agency under this Agreement is not consideration for any supply for Value Added Tax ("VAT") purposes whether by You or otherwise. If, notwithstanding the agreement and understanding of You and the Agency, it is determined that the Funding is consideration for a supply for VAT purposes, the Funding shall be treated as inclusive of any VAT.

## 14 CHANGES

You must advise the Agency immediately if You want or require to make any changes to the Project including, but not limited to, changes to any of the Outputs, Milestones, Start Date, End Date, Target Completion Date, Project costs and/or funding of the Project. Any changes must be agreed, in writing, with the Agency before taking effect.

## 15 PUBLICITY

(a) You will ensure that, where appropriate, publicity is given to the Project by drawing attention to the benefits and opportunities afforded by it. In acknowledging the contribution and investment made by the Agency You must comply with any guidance on publicity provided by or on behalf of the Agency from time to time.

(b) You must not publicise or promote the Funding without the Agency's prior written agreement.

(c) Any reference to the Agency or the Funding in any publicity and / or promotional material relating to the Project must be approved, in advance and in writing, by the Agency.

(d) The Agency reserves the right to use all data provided by You in relation to the Funding for publicity or promotional purposes.

## 16 DEVELOPMENT OBLIGATIONS

You are to provide funding of up to £20.819m towards the Project to cover the cost of:

The delivery of open space improvements

The delivery of affordable housing at the Property

All project management costs

All costs related to any compulsory purchase orders



# Homes & Communities Agency

All site surveys associated with the delivery of the Project and the development of the Property

You are to be responsible for the cost of any cost overruns and will use reasonable endeavours to secure executive authority to provide additional funding to cover the amount (if any) by which the actual cost of the Allowable Expenditure exceeds the Funding though for the avoidance of doubt nothing in this Agreement shall be deemed to fetter the discretion and decision-making powers of Birmingham City Council) and no warranty can be given that executive approval can or will be obtained.

You are to submit to the Agency for approval a draft Acquisition Strategy and a draft Disposal Strategy within the timescales set out in the Milestones/Outputs section of this agreement and the Agency shall confirm whether or not such draft strategies are approved within 20 Working Days of receipt of each complete draft (including programme)

You are to use reasonable endeavours to acquire all third party leasehold and freehold interests in the Property in accordance with the Acquisition Strategy and using compulsory purchase order powers where appropriate and necessary (subject to the use of such powers being reasonable and commercially sensible in all the circumstances)

You will not acquire any interest in the Property other than in accordance with the Acquisition Strategy (save for any interests for which an agreement was entered into prior to the date of this Agreement).

You will not dispose of any interest in the Property other than:-

- (1) in accordance with the Disposal Strategy (and for the avoidance of doubt this is to include an obligation not to dispose of the parts of the Property allocated for commercial or private residential development for less than Market Value; and
- (2) The letting of Affordable Housing on the Property.

You are to agree with the Agency a governance structure that includes both representatives from You and the Agency (to comprise a project steering group that report into the Public Asset Accelerator Board.

You are to put in place appropriate project and risk management procedures to ensure delivery of the development of the Property

You are to submit to the Agency for approval a draft Joint Communications Plan within the timescales set out in the Milestones/Outputs section of this agreement

You are to act as lead developer in relation to the affordable housing element of the scheme (the affordable housing element is not to be disposed of to a third party prior to development)

You are to use the Agency's DPP2 for the procurement of any developer or contractor appointed in relation to the Project and the development of the Property

You are to use reasonable endeavours to secure Phase 2 Business case executive approval from Birmingham City Council by 31<sup>st</sup> December 2018 (though nothing in this Agreement shall be deemed to fetter the discretion and decision-making powers of Birmingham City Council) and no warranty can be given that executive approval can or will be obtained.

You are to use reasonable endeavours to achieve the Outputs in the carrying out of the Project.

You are to achieve each of the Milestones within the relevant timescales set out in Schedule 3 of this Agreement (subject to any extensions of time agreed by the Agency acting reasonably)

## 17 ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties relating to its subject matter and supersedes all prior negotiations, representations and undertakings whenever occurring.

## 18 FURTHER ASSURANCE

On the written request of the Agency, You will promptly execute and deliver or procure the execution and delivery of any further documents necessary to obtain for the Agency the full benefit of this Agreement.

## 19 APPLICABLE LAW





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This Agreement is governed and interpreted in accordance with English Law and subject to the jurisdiction of the courts of England and Wales. If any provision of this Agreement is found to be invalid, illegal

or unenforceable by a court of competent jurisdiction such provision shall be severed from it and the remainder of the provisions of this Agreement shall otherwise remain in full force and effect.



SCHEDULE 3

PERFORMANCE DATA AND FINANCIAL PROFILING

1 OUTPUTS AND MILESTONES

MILESTONE	TARGET COMPLETION DATE
Target Completion Date	The date 48 months from the date of this Agreement
Phase 2 Business case approval from Birmingham City Council	31 July 2018
Submit draft Acquisition Strategy for approval by Agency	30 November 2015
Submit draft Joint Communications Plan for approval by Agency	31 December 2015
Satisfaction of Acquisition Pre-Conditions	31 December 2015
Satisfaction of Infrastructure Pre-Conditions	31 July 2017
Completion of Acquisition of all existing Third Party interests at the Property	The date three years from and including the date of this Agreement
Commencement of Infrastructure Works	The date two years from and including the date of this Agreement
Completion of Infrastructure Works	The date 4 years from and including the date of this Agreement
Completion of Demolition Works	31 December 2018

**Outputs**

Employment/retail floorspace up to 136,000ft<sup>2</sup>

Open market sale housing up to 139 homes





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Affordable Housing up to 138 homes

Associated Private sector investment £30m

Brownfield land reclaimed 3.77ha

## 2 PROFILE OF FUNDING EXPENDITURE

QUALIFYING EXPENDITURE			
Expenditure type	Total Costs (£)	Estimated expenditure date	Estimated date of Funding drawdown
Acquisition of properties within property red line	£4,223,703	2015 to 2018	2015 to 2018
Demolition Works	£950,000	2018	2018
Infrastructure works	£1,425,000	2016 to 2019	2016 to 2019



**SCHEDULE 4**

**PRE-CONDITIONS**

**ACQUISITION FUNDING CONDITIONS**

- 1 The Agency will not advance any Acquisition Funding under this Agreement (even where a Claim Form has been submitted) unless:-
  - (a) the Agency is satisfied that You are not in breach of this Agreement; and
  - (b) You have provided satisfactory evidence to the Agency that You have complied with your representations and warranties set out in Clause 2 of Schedule 2; and
  - (c) the Agency has approved the Acquisition Strategy and is satisfied (acting reasonably) that You are complying with the Acquisition Strategy.
  
- 2 The Agency may agree to pay Funding to You before the above pre-conditions have been met without prejudice to its rights to refuse to pay any further Funding until those conditions are met.

**INFRASTRUCTURE FUNDING CONDITIONS**

- 1 The Agency will not advance any Infrastructure Funding under this Agreement (even where a claim form has been submitted) unless:
  - (a) the Agency is satisfied that You are not in breach of this Agreement; and
  - (b) You have provided satisfactory evidence to the Agency that You have complied with your representations and warranties set out in Clause 2 of Schedule 2; and
  - (c) the Agency is satisfied (acting reasonably) that contractors have been unconditionally appointed and contracted with and such contractors have sufficient capability, experience and funding to carry out the Infrastructure Works and the Demolition Works by the Target Completion Date and it is agreed that the Agency shall be deemed to be satisfied with any contractor appointed pursuant to the Agency's DPP2 framework; and
  
- 2 The Agency may agree to pay Funding to You before the above pre-conditions have been met without prejudice to its rights to refuse to pay any further Funding until those conditions are met.





**SCHEDULE 5**

**REPORTING**

**PART ONE**

- 1 **QUARTERLY RETURN:** The Claim Form shall be completed quarterly and submitted by You to the Agency within 14 days of the end of the relevant quarter, then quarterly thereafter. The first return will cover the three months starting with the date of this Agreement and the final return is to be submitted within 14 days following the Completion Date.
  
- 2 **ANNUAL PROGRESS REPORT:** This is an annual report which shall be submitted by You to the Agency within 30 days of the first anniversary of the date of this Agreement then annually thereafter. This shall include the following information (in relation to the Project):
  - (a) Actual Expenditure against Agency approved Qualifying Expenditure.
  - (b) Achievement of Outputs and Milestones.
  - (c) Other benefits achieved.
  - (d) Total estimated expenditure for remainder of project programme to Completion Date.
  
- 3 **COMPLETION REPORT**

You shall complete and submit to the Agency (within 3 months following the Completion Date) a Completion Report including the following information:-

  - (a) A summary account of the achievement of Milestones and Outputs up to Completion Date.
  - (b) A commentary highlighting lessons learnt, key successes achieved during Project and disappointments or failures encountered up to Completion Date.
  - (c) A financial statement showing Actual Expenditure against Agency approved Qualifying Expenditure both (i) [annually] and (ii) in total. This statement must also show any Receipts and any other income or capital receipts.
  - (d) A summary of the overall funding received for the Project (including the Funding), the source of the funding and whether the same was (i) approved by the Agency; (ii) received; and (iii) spent (and if so, how).



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**SCHEDULE 6**

**REPAYMENT**

**GRANT FUNDING REPAYMENT**

- 1 There shall be no repayment of Funding other than as set out in Clause 4.





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**ANNEXURE 1**

**CLAIM FORM**



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## Homes and Communities Agency Grant Funding

### APPLICATION FOR PAYMENT OF GRANT

This form must be used each time an application for payment of grant (claim) is submitted. A claim must be submitted in accordance with the funding agreement.

Payment will be made by automated credit transfer using Bankers automated Clearing Services Ltd (BACS). This avoids postal delays and guards against possible loss, fraud or theft.

The completed claim together with supporting documentation (architects certificates, quantity surveyor's valuations etc) must be submitted to the relevant Officer as per the funding agreement.

Project (Please use the name on the Agreement) and Phase

Claim Number

Period of claim (Start date and end date)



Name and address of Claimant


Designated Bank Account:

Name of Bank and Branch

--

Bank Sort Code

--	--	--	--	--	--	--

Account Name

--

Account Number

--	--	--	--	--	--	--	--

### Details of Claim

Total estimated Qualifying Expenditure	
100% of infrastructure costs	
100% demolition costs	
65% of total acquisition costs	
Maximum Grant allowed	£6,980,000

Qualifying Expenditure for this claim	
Total Qualifying Expenditure claimed against and approved to date (not including this claim)	
Payment claimed this period	
Total claimed and approved to date including this claim	
Evidence attached (red book valuation or works valuation report)	

Signed

Name (Printed)  
and Position in organisation



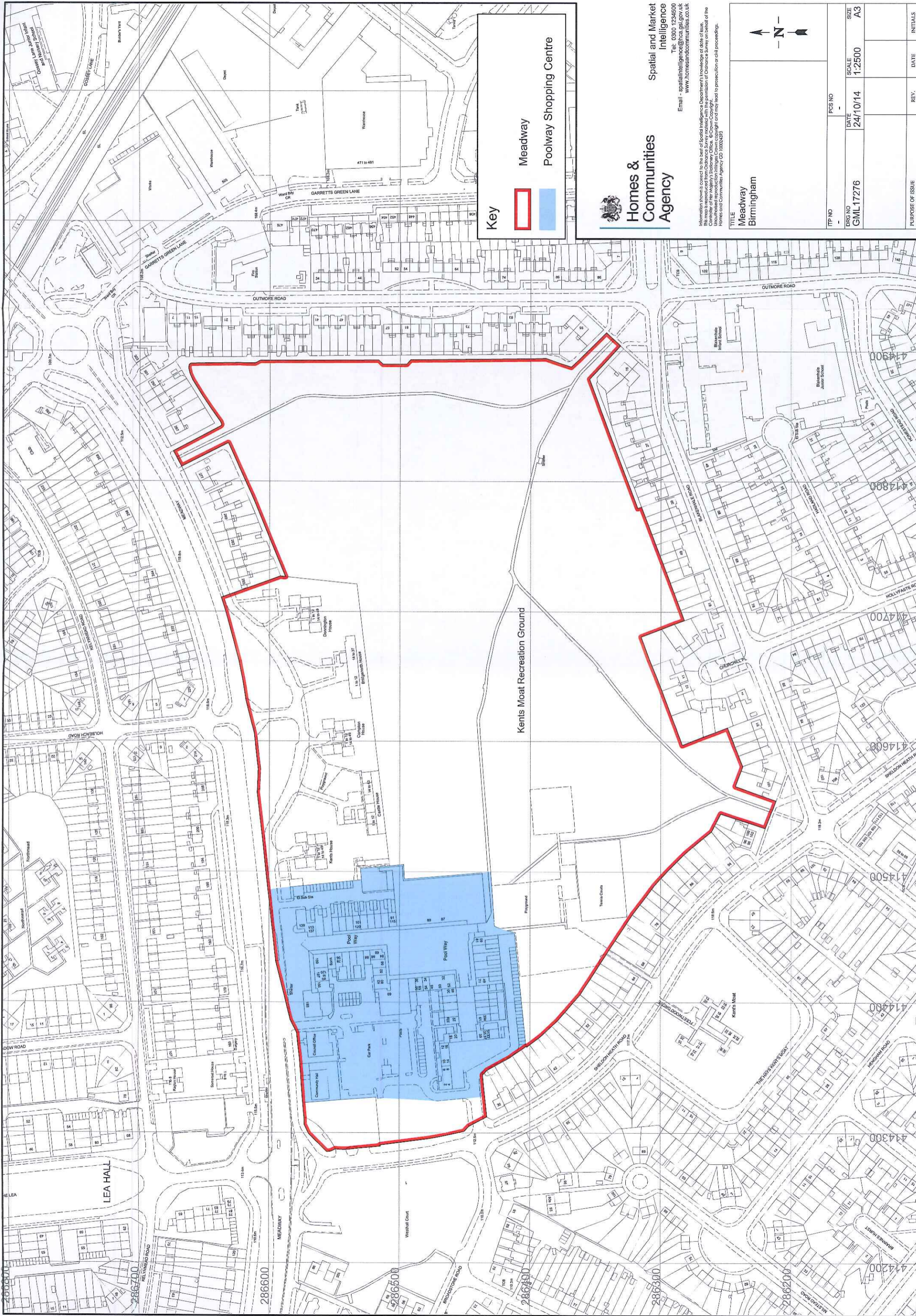


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**ANNEXURE 2**

**PLAN**





**Key**

- Meadway
- Poolway Shopping Centre



**Homes & Communities Agency**

Spatial and Market Intelligence

Tel: 0300 1234500  
 Email: spatialintelligence@hca.gov.uk  
 www.homesandcommunities.gov.uk

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ITP NO -	DATE 24/10/14	SCALE 1:2500	SIZE A3
DRG NO GML17276		REV. -	DATE -
PURPOSE OF ISSUE -		REV. -	INITIALS -