

DATED 18 September 2015

BARNSELY METROPOLITAN BOROUGH COUNCIL

and

BARNSELY COLLEGE

AGREEMENT

under Section 106 of the Town and Country Planning Act 1990 (as amended)
relating to development on land at Carrington Avenue, Barnsley

A.C. Frosdick, LL.B. DipLG,
Director of Legal and Governance
Town Hall,
Barnsley S70 2TA.

THIS DEED OF AGREEMENT is made the 18th day of September Two Thousand and Fifteen

BETWEEN

(1) **BARNSELY METROPOLITAN BOROUGH COUNCIL** of Town Hall Barnsley South Yorkshire S70 2TA ("the Council") of the first part and

(2) **BARNSELY COLLEGE** of P.O. Box 266 Church Street, Barnsley, South Yorkshire, S70 2YW ("The Owner") of the second part

RECITALS

(1) The Council is the Local Planning Authority for the purposes of this Agreement for the area within which the land described in the First Schedule hereto ("the Land") is situated and is the authority by whom the obligations contained in this Agreement are enforceable.

(2) The Owner is the registered proprietor with Title Absolute of the Land under Land Registry Title Number SYK532137, SYK547973 and SYK326086.

(3) The parties agree that the obligations within this Agreement comply with the requirements of regulation 122 of the Community Infrastructure Levy Regulations 2010.

NOW THIS DEED WITNESSETH AS FOLLOWS:-

DEFINITIONS

1 For the purposes of this Deed the following expressions shall have the following meanings

"the 1990 Act" means the Town and Country Planning Act 1990 (as amended)

"the Application" means the application for outline planning permission submitted to the Council for residential development with the reference number 2014/0807

“the Commencement of Development” means the actual date upon which the Development is begun by the carrying out of any material operation as defined by Section 56(4) of the Town and Country Planning Act 1990 and “Commence Development” is to be construed accordingly

“the Development” means the development of that part of the Land shown edged red on Plan 1 for residential development in accordance with the Planning Permission

“the Dwellings” means the residential units that may be built on the Land as part of the Development and reference to **“Dwelling”** shall be construed accordingly

“First Occupation” means the date following completion of the Development to the extent that the Development is capable of beneficial occupation and use for the purposes permitted by the Planning Permission, upon which any part of the Development is first Occupied for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations.

“the Fleets” means the area of land shown edged red on Plan 3

“Index” means the All In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation or if that Price Index ceases to exist such index as the Council reasonably nominates

“Interest” means interest at 4 per cent above the base lending rate of Barclays Bank Plc from time to time or should this rate cease to exist such other bank lending rate as the Council may reasonably nominate

“Land” means all that land described at the First Schedule

“LEAP” means a ‘local equipped area for play’ as defined by Fields in Trust (or such successor body or organisation whose primary objects are protecting and improving outdoor sports and play spaces) including at least five items of play equipment predominantly for children up to the age of 12 years with seating for accompanying adults. The area of the LEAP shall be a minimum of 300m².

“Occupation” and “Occupy” and “Occupied” means occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations

“Plan 1” means the plan marked Plan 1 and annexed hereto

“Plan 2” means the plan marked Plan 2 and annexed hereto

“Plan 3” means the plan marked Plan 3 and annexed hereto

“the Planning Permission” means the planning permission granted or to be granted pursuant to the Application

“Playing Fields Improvement Works” means improvements to the playing fields at the Fleets to improve the capacity and overall function of the facility as a multi use pitch for both the College and community use, including the installation of fencing around the current playing fields and creation of a new playing pitch layout (facilitated by qualitative improvements to drainage) to incorporate the senior football pitches presently used by the College and the utilisation of the remaining area to provide two further mini pitches

“the Playing Pitches Contribution” means the sum of £250,000 (two hundred and fifty thousand pounds) to be paid by the Owner to the Council and to be applied by the Council for the reinstatement of a full sized for purpose artificial turf pitch (AGP) at Dorothy Hyman Leisure Centre to include a new 3G carpet suitable primarily for football use and also new fencing and lighting with other associated upgrading works to meet current design and technical standards

NOTES

1. The drawings are made to the following scale:
 2. The drawings are made to the following scale:
 3. The drawings are made to the following scale:

Gangli
**AUTHORISED
 SIGNATORY**

Rev	By	Date	Description

Client
Barnsley College

CAPITA

Property design

North Yorkshire Council, Queens, The
 North Yorkshire Council, Queens, The
 North Yorkshire Council, Queens, The

Project

**Barnsley College Housing
 Development Sites**

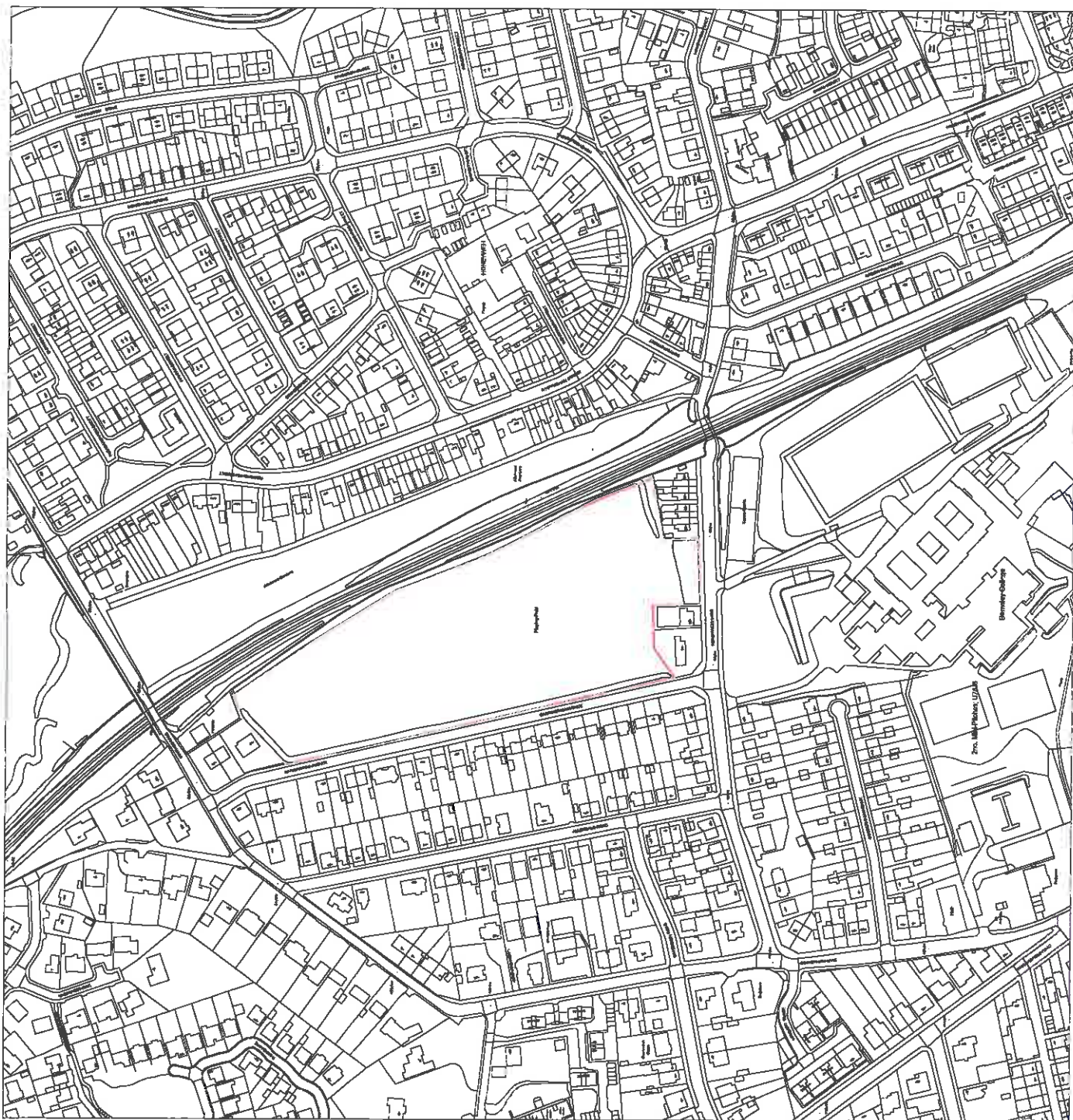
Drawing Title

**Carrington Avenue -
 Location Plan**

Drawn By: SM	Date: 26.05.14
Checked By: JPD	Date: 26.05.14
Approved By: AA	Date: 26.05.14
Project Number: CS071060 / A / 002	Rev: -
Drawing Scale: 1:1250 @ A1	Drawing Status: FEASIBILITY TENDER/ CONTRACT AS BUILT

Plan 1
 W. foot

gyl



Gangher

AUTHORISED
SIGNATORY

Plan 2

Wiborn

cup

HONEYWELL LANE

PROPOSED
PLAY AREA

Ten

1. This plan is a preliminary plan and is not to be used for any purpose other than for the purpose of illustrating the proposed development.

Ganghri
AUTHORISED SIGNATORY

B	2011/14	10/11/14	Approved for use for the purpose of illustrating the proposed development.
A	2011/14	10/11/14	Approved for use for the purpose of illustrating the proposed development.
N	2011/14	10/11/14	Approved for use for the purpose of illustrating the proposed development.

Client
 Barnsley College

PROPERTY DESIGN
 Barnsley College Housing Development Sites

Project
 Barnsley College Housing Development Sites

Project Title
 The Fleets - Proposed Layout Plan

Drawn by	SM	Date	27/08/14
Checked by	SD	Date	27/08/14
Approved by	AR	Date	27/08/14
Drawn by	SM	Date	27/08/14
Checked by	SD	Date	27/08/14
Approved by	AR	Date	27/08/14
Drawn by	SM	Date	27/08/14
Checked by	SD	Date	27/08/14
Approved by	AR	Date	27/08/14

Plan 3 *Ed. book* of *all*



“Public Open Space Commuted Sum” means a contribution that shall be paid by the Owner and shall be applied by the Council to provide or improve open space projects within the administrative ward or any location that is used or likely to be used by those affected by the development or living in the new development. The sum of the contribution shall be calculated in accordance with the Council’s Supplementary Planning Document “Open Space Provision on New Housing Development” as adopted in March 2012 (or any further Policy that supersedes it and the Council shall notify the Owner of the sum following the date of the Council’s approval of the Reserved Matters Consent

“Public Open Space Land” means the area of functional publicly accessible greenspace and / or open space on the land fronting Honeywell Lane as shown edged red on Plan 2

“Public Open Space Scheme” means a written scheme relating to the construction and implementation of the LEAP and associated hard and soft landscaping (**“the Public Open Space”**) to be provided by the Owner on the Public Open Space Land in accordance with paragraph 4 of the Second Schedule

“Working Day” means a weekday (Saturdays, Sundays and public holidays and the days between Christmas Day and New Year’s Day excepted) and reference to **“Working Days”** shall be construed accordingly.

CONSTRUCTION OF THIS DEED

2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.

2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.

2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.

2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise.

2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.

2.6 References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council the successors to its statutory functions.

LEGAL BASIS

3 This Agreement is made pursuant to section 106 of the Town and Country Planning Act 1990 section 111 of the Local Government Act 1972 section 2 of the Local Government Act 2000 and all other enabling powers and is a planning obligation for the purposes of and as defined in the said Section 106 and the covenants restrictions and requirements imposed on the Owner herein are enforceable by the Council as local planning authority against the Owner.

COMMENCEMENT

4 The provisions of this Deed shall have immediate effect upon the completion of this Deed other than the obligations in Clauses 5 which shall have effect upon the Commencement of Development.

OWNER AND COUNCIL COVENANTS

5 The Owner covenants with the Council as set out in the Second Schedule.

MISCELLANEOUS

6.1 The Developer shall pay to the Council on completion of this Deed the sum of £1,000 (on which no VAT shall be payable) in respect of the legal costs of the Council incurred in the negotiation, preparation and execution of this Deed.

6.2 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.

6.3 This Deed shall be registrable as a local land charge by the Council.

6.4 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Council or by the Council from the Owner under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction shall be given on behalf of the Council by the Assistant Director of Planning and Regulatory Services and any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party.

6.5 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall upon receipt of a written request by the Owner effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.

6.6 Insofar as any clause or clauses 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.

6.7 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Land but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

6.8 This Deed shall not be enforceable against owner-occupiers or tenants of dwellings constructed pursuant to the Planning Permission nor against those deriving title from them nor any statutory undertaker which has an interest in any of the Land for the purposes of its undertaking.

6.9 Nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.

6.10 No waiver (whether expressed or implied) by the Council of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

6.11 This Deed is governed by and interpreted in accordance with the law of England and Wales.

INDEXATION

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

INTEREST

8 If any payment due by the Owner under this Deed is paid late, Interest will be payable from the date payment is due to the date of payment.

EXPERT DETERMINATION

9 In the event of any dispute or conflict arising between the parties to this Deed in respect of any valuations under paragraph 2.6 of this Deed either party may refer such dispute or difference to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in

England with such matters as may be in dispute and such person shall act as an expert whose decision shall be final and binding on the parties in the absence of manifest error and any costs shall be payable by the parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the parties in equal shares.

IN WITNESS whereof these presents have been duly executed as a Deed by the parties hereto the day and year first before written.

FIRST SCHEDULE

All that land at Carrington Avenue, Barnsley, S75 1BW, which for the purpose of identification is shown edged red on Plan 1; all that land fronting Honeywell Lane, which for the purpose of identification is shown edged red on Plan 2; and all that land at the Fleets, which for the purpose of identification is shown edged red on Plan 3.

SECOND SCHEDULE

The Owner covenants with the Council to observe and perform the following obligations:

Football Pitches to be constructed under planning permission 2014/0823

- 1 The Owner shall notify the Council prior to First Occupation and not Occupy any of the Dwellings until the two football pitches permitted under the planning permission known to the Council under reference 2014/0823 have been constructed under the said planning permission and have been made available for community use.

Playing Fields Improvement Works

- 2 The Owner shall notify the Council prior to First Occupation and not Occupy any of the Dwellings until the Playing Fields Improvement Works have been completed to the Council's satisfaction and the Council has confirmed its approval in writing to the Owner.

Playing Pitches Contribution

- 3 Within 28 days of the Commencement of Development the Owner shall pay the Playing Pitches Contribution to the Council.

Public Open Space

4 Provision of Public Open Space Scheme

4.1 Prior to the Commencement of Development the Owner shall submit to the Council for approval details of a Public Open Space Scheme and shall not Commence Development until details of the Public Open Space Scheme have been approved by the Council.

4.2 Within 40 Working Days of the Council receiving from the Owner the Public Open Space Scheme the Council will notify the Owner in writing of its approval of the Public Open Space Scheme or will acting reasonably provide in writing its proposed amendments to the proposed Public Open Space Scheme pursuant to which the Owner shall acting reasonably submit a revised Public Open Space Scheme incorporating those amendments as are reasonable and accepted.

4.3 The Owner shall complete the Public Open Space in accordance with the approved Public Open Space Scheme prior to First Occupation and not Occupy any Dwellings until the Public Open Space has been completed to the Council's reasonable satisfaction with the LEAP being made available for public use.

4.4 Following the implementation of the Public Open Space Scheme, the Owner shall thereafter maintain or procure the maintenance of the Public Open Space Land in perpetuity and allow the public access to the area on foot at all time.

4.5 The Owner shall allow the public access to the Public Open Space Land on foot at all times PROVIDED THAT this shall be subject to the following provisions:

4.5.1 access shall be subject to such requirements as may from time to time be imposed by the Owner having regard to overriding reasons of safety, security and prudent building management PROVIDED THAT such requirements and regulations shall not be imposed without the Council's prior approval such approval not to be unreasonably withheld or delayed.

4.5.2 access may be denied by the Owner for the maintenance, repair, cleansing or renewal of the Public Open Space Land subject to the Council's prior approval such approval not to be unreasonably withheld or delayed.

4.5.3 direct access to the Public Open Space Land shall be provided to the public via Honeywell Lane.

5 Public Open Space Commuted Sum

The Owner shall notify the Council prior to First Occupation and not Occupy any of the Dwellings until the Public Open Space Commuted Sum has been paid to the Council.

THE COMMON SEAL of BARNESLEY)

METROPOLITAN BOROUGH)

COUNCIL was hereunto affixed to this)

Deed in the presence of:-)

Director of Legal and Governance / Authorised Signatory



EXECUTED AS A DEED AND DELIVERED

(but not until the date hereof) with the Common
Seal of **BARNESLEY COLLEGE** in the presence
of:-

Governor / Authorised Signatory

Governor / Authorised Signatory