

Dated 24th January 2017

SECTION 106

PARTIES:

- (1) **BARNSELY METROPOLITAN BOROUGH COUNCIL** of Town Hall, Barnsley, South Yorkshire, S70 2TA ("the Council")
- (2) **JAGUAR & WORTLEY DEVELOPMENTS LIMITED** (CRN: 08733656) whose registered office is situate at 201 High Street, Ecclesfield, Sheffield, S35 9XB ("the Owner")
- (3) **BDW TRADING LIMITED** (Company Registration No: 6308173) whose registered office is situate at Barratt House, Cartwright Way, Forest Business Park, Bardon Hill, Leicestershire, LE67 1UF ("the Developer") of the third part.

BACKGROUND

- (1) The Council is the local planning authority for the purposes of the Act for the area in which the Site is situated.
- (2) On 2 December 2014 the Council granted outline planning permission under reference number 2013/1007 for residential development for up to 41 dwellings including means of access on land off New Road/Lidgett Lane, Tankersley, Barnsley, S75 3AE ("the Tankersley Land"). A Section 106 Agreement dated 27 November 2014 secured planning obligations in connection with planning permission 2013/1007.
- (3) A further application has been submitted to the Council under section 73 of the Town and Country Planning Act 1990 to vary condition 3 of the planning permission granted by the Council under reference 2013/1007 ("the Second Application") and this Second Application is known to the Council by reference 2016/0952.
- (4) The Owner is the freehold proprietor of the Site and the Site incorporates both the Tankersley Land and the Affordable Housing Sale Land. The Owner's interest in the Tankersley Land is registered under Land Registry title number SYK378237 and their interest in the Affordable Housing Sale Land is registered under Land Registry title numbers SYK468450 and SYK44464.
- (4) The Developer has an interest in the Tankersley Land by way of an option agreement dated 23 June 2016 and made between the Owner and the Developer.
- (5) The Council has required the Owner to enter into this Agreement to secure the following planning obligations pursuant to the Second Application:
 - Payment of the Education Contribution in the sum of £126,918
 - Payment of the Public Open Space Contribution which shall be determined on the approval of Reserved Matters Consent pursuant to the Planning Permission;
 - The provision of the South Yorkshire Annual Travel Passes or the provision of bicycles for occupiers of the dwellings to be constructed on the Tankersley Land; and
 - The provision of ten dwellings of Affordable Housing to be provided off-site pursuant to the Birdwell Planning Permission.
 - The provision of three dwellings of Affordable Housing on the Tankersley Land.
 - The payment of an Affordable Housing Contribution of £38,352.07

1. DEFINITIONS

Act

the Town and Country Planning Act 1990.

Additional Tankersley Affordable Housing Units	means three additional 2 bedroom dwellings of Affordable Housing that shall be provided on the Tankersley Land following the granting by the Council of a Reserved Matters Consent (with the location of the Additional Affordable Housing Units to be approved under the Reserved Matters Consent)
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Additional Tankersley Affordable Housing Commuted Sum	means in the event that paragraph 4.1.7 of Schedule 1 is applicable the sum of £220,056 (two hundred and twenty thousand and fifty six pounds) to be used by the Council in lieu of the provision of Affordable Housing on the Site for the provision of Affordable Housing (which may include works to bring private sector properties into use for the provision of Affordable Housing) or improvements to existing Affordable Housing within the administrative area of the Council
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Affordable Housing

means subsidised housing that will be available to persons who cannot afford to rent or buy on the open market and which has the same meaning given to it in annex 2 of the National Planning Policy Framework as published by the Department for Communities and Local Government 2012.

Affordable Housing Contribution	means the sum of £38,352.07 (thirty eight thousand three hundred and fifty two pounds and seven pence) to be used by the Council in lieu of the provision of Affordable Housing on the Site for the provision of Affordable Housing (which may include works to bring private sector properties into use for the provision of Affordable Housing) or improvements to existing Affordable Housing within the administrative area of the Council
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Affordable Housing Tankersley Commuted Sum

means the sum of £733,520.70 (seven hundred

	and thirty three thousand five hundred and twenty pounds and seventy pence pence) to be used by the Council in lieu of the provision of Affordable Housing on the Site for the provision of Affordable Housing (which may include works to bring private sector properties into use for the provision of Affordable Housing) or improvements to existing Affordable Housing within the administrative area of the Council.
Affordable Housing Commuted Sum Calculation	the sum shall be calculated by reference to the difference between the open market value of the applicable Affordable Housing Units at the time the relevant Affordable Housing Units are sold and the estimated lump sum payment that would have been paid to the Owner by a Registered Provider in respect of the Affordable Housing Units.
Affordable Housing Sale Land	means the land shown edged red on Plan 3 annexed hereto.
Affordable Housing Tankersley Units	means ten dwellings to be built on the Affordable Housing Sale Land pursuant to the Birdwell Planning Permission, the plot locations to be agreed in writing with the Council to be used solely for the purpose of Affordable Housing.
Application	means the application that was submitted to the Council for outline planning permission on the Tankersley Land under reference number 2013/1007.
Birdwell Planning Permission	means the planning permission (known by Council reference number B/02/0986/WB) for the construction of forty one residential dwellings on the site of the former Rockingham Colliery, off Sheffield Road, Birdwell, Barnsley and granted by the Council under the decision notice dated 30 December 2002.
Commencement of Development	means the actual date upon which the Tankersley 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" shall be construed accordingly.

Council's Approved List

means the following Registered Providers: Berneslai Homes Limited; South Yorkshire Housing Association Limited; Yorkshire Housing Association Limited; Guinness Northern Counties Limited; Equity Housing Group Limited; Leeds and Yorkshire Housing Association Limited; Chevin Housing Association Limited; and Wakefield and District Housing Limited or such other Registered Provider(s) that may be agreed in writing between the Owner and the Council from time to time.

Drainage Authority

means Yorkshire Water Services Limited.

Education Contribution

means the sum of £126,918 (one hundred and twenty six thousand nine hundred and eighteen pounds) to be paid by the Owner to the Council as its contribution towards the provision of and or improvement to secondary school educational facilities within a reasonable distance from the boundary of the Site

First Occupier

means the first occupier for residential purposes of each Market Sale Unit excluding all subsequent occupations and reference to "**First Occupation**" shall be construed accordingly.

Highway Authority

means Barnsley Metropolitan Borough Council.

Index

means All Items Index of Retail Prices issued by the Office of National Statistics or any index replacing it.

Interest

means interest at 4% above the base lending rate of Barclays Bank plc from time to time.

Market Sale Units

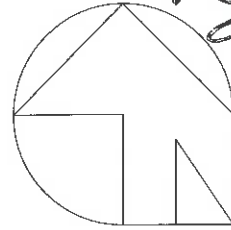
means the dwellings to be constructed on that part of the Tankersley Land in accordance with the Planning Permission excluding the Additional Tankersley Affordable Housing Units.

Necessary Consents

means planning permission building regulation approval and any other requisite consents permissions or licences required for the relevant development to be completed

Occupation or Occupied	means occupation for of the Market Sale Units for the purposes permitted by Planning Permission but not including occupation by personnel engaged in construction, fitting out, decoration or occupation for marketing or display or occupation in relation to security operations.
Pilley Green Section 106 Agreement	means the section 106 agreement dated 27 th November 2014 relating to the Pilley Green Land pursuant to planning permission reference 2013/1006
Pilley Green Land	means the land off Pilley green Tankersley Barnsley within title SYK378237 shown edged red on Plan 2 attached
Plan 1	means the plan attached and so marked
Plan 2	means the plan attached and so marked
Plan 3	means the plan attached and so marked
Planning Permission	means a planning permission to be granted pursuant to the Second Application
Practical Completion	means certification by the Owner's architect that the relevant works are: (a) completed so that the relevant affordable housing can be used for the purpose for which they were designed and that all relevant planning conditions have been discharged; and (b) fitted out so that they are ready and available for occupation.
Public Open Space Contribution	means the sum of the contribution to 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. The Public Open Space Contribution shall be applied towards the provision or

Plan 1 ~~Map~~



21.6m
level



Gang K

Client the Wortley Group

Scale 1:250 on A3

Dwg No

13/09/01

Date July 2013

Job proposed residential development
New Road, Pilley

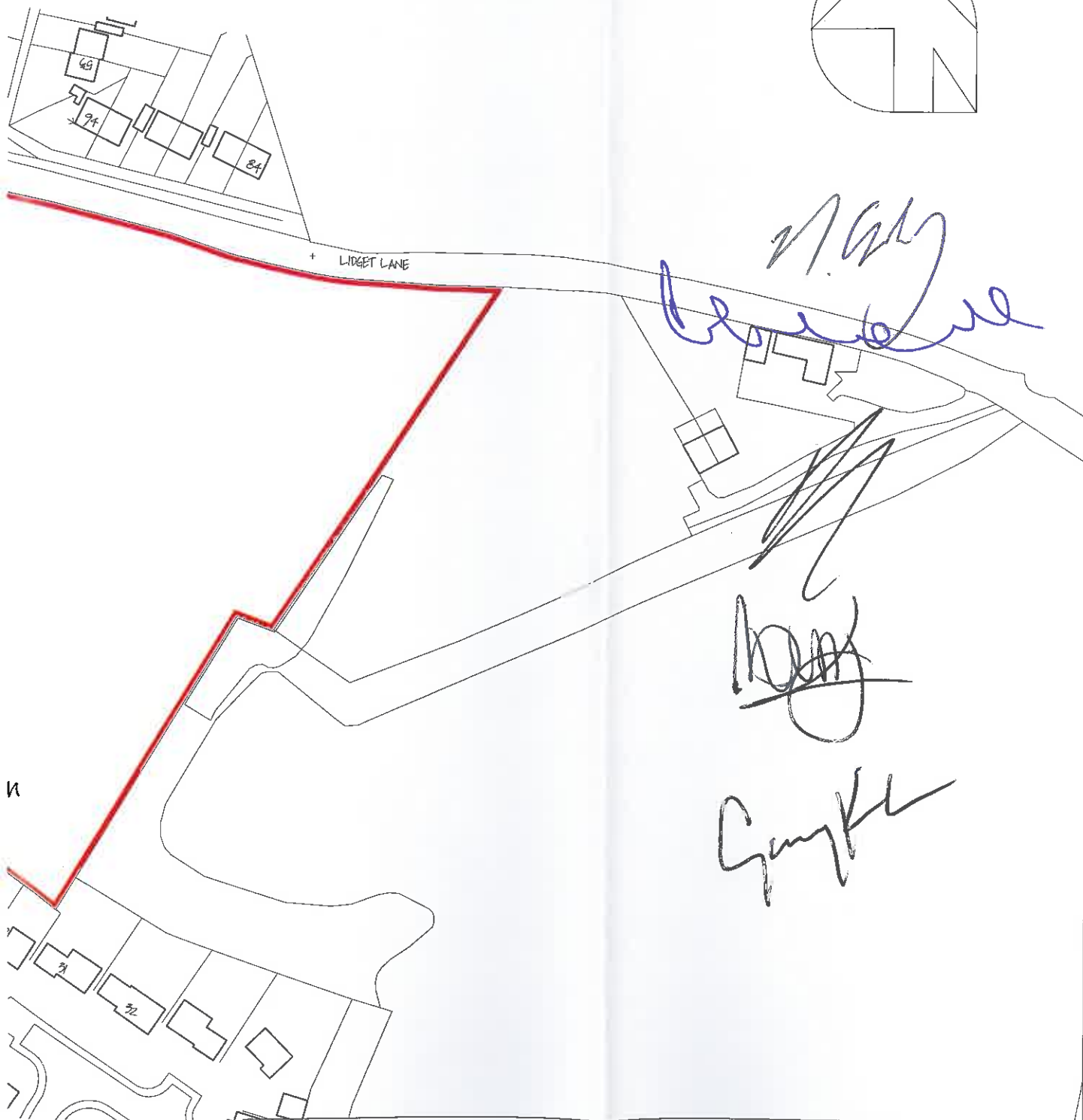
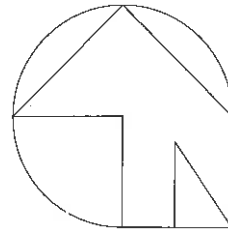
MPJ DESIGN ASSOCIATES Ltd
4 CHURCH STREET
BARLBOROUGH
CHESTERFIELD, S43 4EP

Title Location Plan

tele: 01246 819259
mob: 07841 353141
martynpjones@btinternet.com



Plan 2



Client the Wortley Group

Scale 1:250 on A3

Dwg No

13/092-01

Date July 2013

Job proposed residential development
Lidget Lane, Pilley

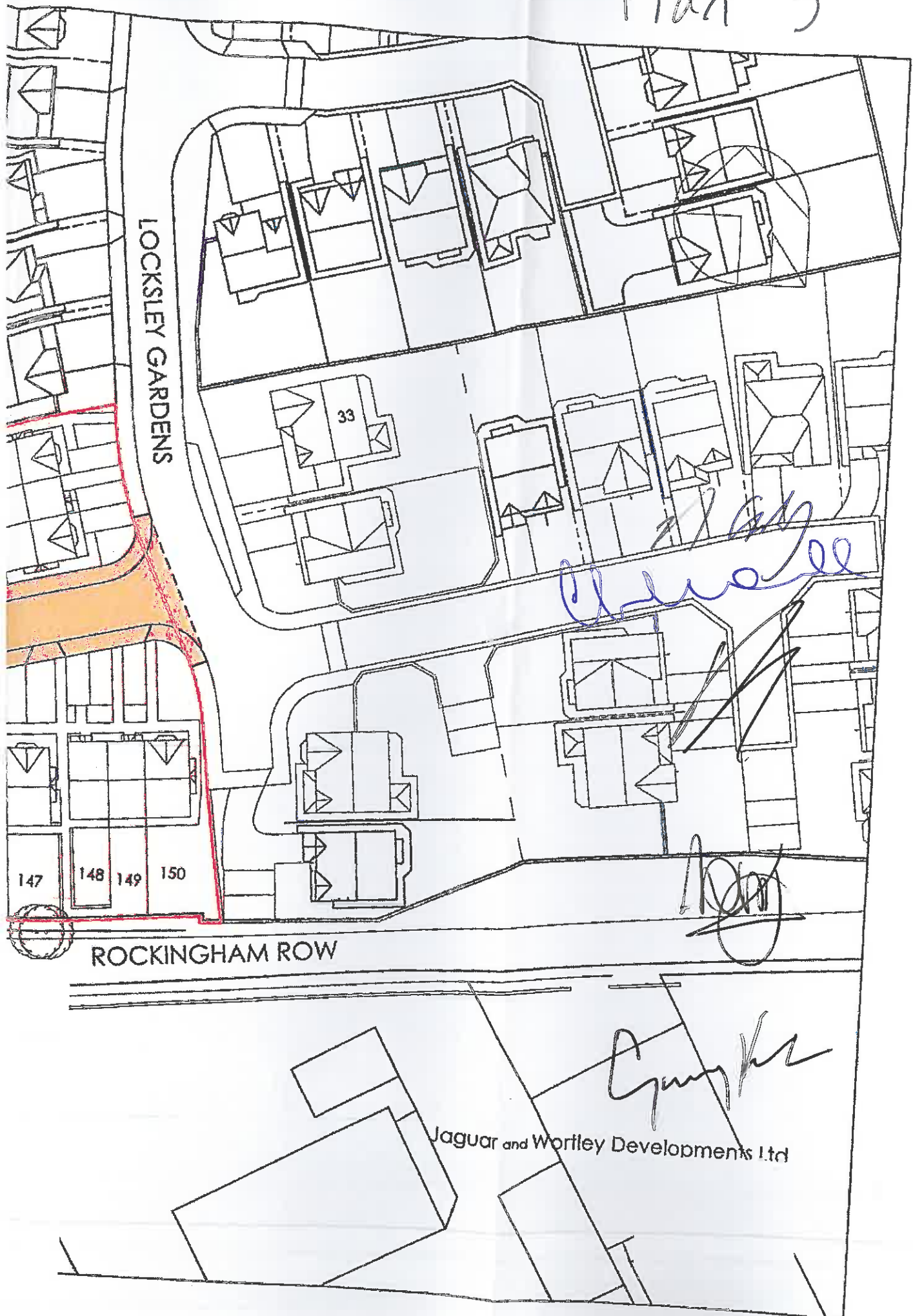
MPJ DESIGN ASSOCIATES Ltd
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CHESTERFIELD. S43 4EP

Title Location Plan

tele: 01246 819259
mob: 07841 353141
martynpJones@btinternet.com



Plan 3



improvement of existing public open space within the administrative area of the Council.

Reasonable Endeavours

means it is agreed by the parties that the party under such obligation shall not thereby be required to take proceedings (including any appeal) in any court public inquiry or other hearing but subject thereto such party shall be bound to attempt to fulfil the relevant obligation(s) by the expenditure of such effort and / or sums of money and the engagement of such professional or other advisers as in all the circumstances (including any adverse commercial implications to the party to perform such obligation) may be reasonable.

Registered Provider

means a registered provider as defined by the Housing and Regeneration Act 2008 (or as redefined by any amendment, replacement or re-enactment of such Act) and registered under the provisions of the Housing and Regeneration Act 2008 or any company or other body approved by the Homes and Communities Agency for receipt of social housing grant as may be proposed by the Owner and approved by the Council.

Reserved Matters Consent

means any approval of reserved matters consent which may be granted pursuant to the Planning Permission.

Roadway

means the roadway on the Affordable Housing Sale Land coloured brown on Plan 3 annexed hereto.

Second Application

means the application for variation of condition 3 of outline planning permission 2013/1007 (residential development for up to 41 dwellings including means of access) to increase the maximum number of residential properties to 56 units, which is known to the Council by the reference 2016/0952.

Section 106 Agreement dated
27 November 2014

means the section 106 agreement dated 27 November 2014 between (1) the Council and (2) the Owner which secured planning obligations in connection with the Site pursuant to the Application

Service Media	means the pipes wires cable gullies channels and other conduits to be installed on the Affordable Housing Land.
Site	means the Tankersley Land and the Affordable Housing Sale Land land shown edged red on Plans 1 and 3 annexed hereto.
South Yorkshire Annual Travel Pass	means the Travel Master Annual Pass valid for all buses, trams and trains for 12 months from the date of issue by the South Yorkshire Passenger Transport Executive for its South Yorkshire Zone or any successor annual travel pass and reference to " South Yorkshire Annual Travel Passes " shall be construed accordingly.
Tankersley Development	means the residential development on the Site referred to in this agreement as the Tankersley Land in accordance with the Planning Permission
Tankersley Land	means the land off New Road/Lidgett Lane Tankersley Barnsley, S75 3AE, being comprised in Title SYK378237 and shown edged red on Plan 1 annexed hereto.
Transfer	means a transfer on sale of the Affordable Housing Tankersley Units and/or Additional Affordable Housing Tankersley Units to a Registered Provider appearing on the Council's Approved List and 'Transferred' shall be construed accordingly
Working Day	means a weekday (Saturdays, Sundays and public holidays excepted) and reference to 'Working Days' shall be construed accordingly.

2. INTERPRETATION

- 2.1 Where in this Agreement 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 Agreement.
- 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 severally 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 Agreement shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the Council the successors to its respective statutory functions.
- 2.7 The headings and contents list are for reference only and shall not affect construction. Where this 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 Agreement.

3. LEGAL BASIS

- 3.1 This Agreement is made pursuant to Section 106 of the Act Section 111 of the Local Government Act 1972 and Section 2 of the Local Government Act 2000 and all other statutory provisions.
- 3.2 The covenants, restrictions and requirements imposed upon the Owner under this Agreement create planning obligations on the Site pursuant to Section 106 of the Act and are enforceable by the Council as local planning authority against the Owner.

4. CONDITIONALITY

This Agreement is conditional upon:

- (i) the grant of the Planning Permission; and
- (ii) the Commencement of Development.

save for the provisions of Clauses 7, 10, 11 and 15 and any other relevant provisions which shall come into effect immediately upon completion of this Agreement.

5. OWNER'S AND DEVELOPER'S COVENANTS

- 5.1 The Owner covenants with the Council in the form set out in Schedule 1.
- 5.2 The Developer acknowledges that its interest in the Tankersley Land will be bound by the planning obligations set out in Schedule 1 to this Agreement.

6. COUNCIL'S COVENANTS

The Council covenants with the Owner in the form set out in Schedule 2 to this Agreement.

7. MISCELLANEOUS

- 7.1 The Owner shall pay to the Council on completion of this Agreement the reasonable legal costs of the Council incurred in the negotiation and execution of this Agreement of £1500.
- 7.2 No provisions of this Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 7.3 This Agreement shall be registrable as a local land charge by the Council.
- 7.4 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Council under the terms of this Agreement 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 Council by the Head of Planning, Building Control and Sustainability Development Services of the Council; 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.
- 7.5 Following the performance and satisfaction of all the obligations contained in this Agreement the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.
- 7.6 Insofar as any clause or clauses of this Agreement are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.
- 7.7 This Agreement shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development.
- 7.8 No person shall be liable for any breach of any of the planning obligations or other provisions of this Agreement after it shall have parted with its entire interest in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 7.9 This Agreement shall not be enforceable against owner-occupiers or tenants of dwellings constructed pursuant to the Planning Permission nor any purchaser or lessee of any land or building for the provision of utilities nor against those deriving title from them.
- 7.10 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Agreement.

- 7.11 Nothing contained or implied in this Agreement shall prejudice or affect the rights discretions powers duties and obligations of the Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority.
- 7.12 For the avoidance of doubt the Owner confirms and agrees that payment of the Education Contribution under this Section 106 Agreement does not discharge the obligation on the Owner to pay the Education Contribution under the Pilley Green Section 106 Agreement.

8. WAIVER

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

9. CHANGE IN OWNERSHIP

- 9.1 The Owner agrees to give the Council at least two months written notice of any intended change in ownership of any of its interests in the Site (other than any sale or lease of a Market Sale Unit or land or building for the provision of utilities) occurring before the obligations under this Agreement as to the provision of the Affordable Housing Tankersley Units on the Affordable Housing Sale Land pursuant to the Birdwell Planning Permission have been discharged. Such notice shall give details of any intended transferee's full name and registered office (if a company or usual address if not) together with the area of the Site to be purchased by reference to a plan and the estimated date of transfer.
- 9.2 The Owner shall (unless otherwise agreed with the Council in writing during the period of two months specified in clause 9.1 above) transfer to any transferee of the Tankersley Land the freehold interest in the relevant part of the Affordable Housing Sale Land with any necessary rights and other provisions or make such other arrangements with the transferee so as to enable such transferee to supply the Affordable Housing Tankersley Units on the Affordable Housing Sale Land pursuant to the Birdwell Planning Permission (including retaining the Affordable Housing Sale Land and constructing the Affordable Housing Tankersley Units themselves and selling the same to a Registered Provider).
- 9.3 The Owner shall in any case notify the Council in writing immediately when the transfer of any part of the Site is completed and such notice shall give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site purchased by reference to a plan.

10. INDEXATION

Any sum referred to in Schedule 1 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.

11. INTEREST

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

12. VAT

All consideration given in accordance with the terms of this Agreement shall be exclusive of any value added tax properly payable.

13. DISPUTE PROVISIONS

- 13.1 In the event of any dispute or difference arising between the parties to this Agreement in respect of any matter contained in this Agreement such dispute or difference shall be referred 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 regard to 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.
- 13.2 In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to Clause 13.1 or as to the appropriateness of the professional body then such question may be referred by either part to the president for the time being of the Law Society for him to appoint a solicitor to determine the dispute such solicitor acting as an expert and his decision shall be final and binding on all parties in the absence of manifest error and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties in equal shares.
- 13.3 Any expert howsoever appointed shall be subject to the express requirement that a decision was reached and communicated to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty-eight working days after the conclusion of any hearing that takes place or twenty-eight working days after he has received any file or written representation.
- 13.4 The expert shall be required to give notice to each party requiring them to submit to him within ten working days of notification of his appointment written submissions and supporting material and the other party will be entitled to make a counter written submission within a further ten working days.

14. JURISDICTION

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

15. DELIVERY

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

SCHEDULE 1

COVENANTS BY THE OWNER

1. Education Contribution

- 1.1 Within 28 days of the Commencement of Development the Owner shall pay the Education Contribution to the Council.
- 1.2 Upon payment of the Education Contribution the Council shall confirm in writing to the Owner that its obligations under this paragraph 1 have been complied with.

2. Public Open Space Contribution

To pay the Public Open Space Contribution to the Council in the following instalments:

- 2.1 25% of the Public Open Space Contribution to be paid prior to the Commencement of Development.
- 2.2 25% of the Public Open Space Contribution to be paid prior to Occupation of the 10th Market Sale Unit constructed on the Tankersley Land pursuant to the Planning Permission.
- 2.3 25% of the Public Open Space Contribution to be paid prior to Occupation of the 20th Market Sale Unit constructed on the Tankersley Land pursuant to the Planning Permission.
- 2.4 25% of the Public Open Space Contribution to be paid prior to Occupation of the 30th Market Sale Unit constructed on the Tankersley Land pursuant to the Planning Permission.
- 2.5 Upon payment of each contribution the Council shall acknowledge receipt and upon payment of the final contribution the Council shall confirm in writing to the Owner that its obligations under this paragraph 2 have been complied with.

3. South Yorkshire Annual Travel Pass

- 3.1 On the date of the sale of a Market Sale Unit to the First Occupier the Owner shall offer in writing to the First Occupier of that dwelling:-
 - 3.1.1 to supply, or to procure the supply of, at the Owner's expense a single South Yorkshire Annual Travel Pass for the twelve month period from the date of sale ; or
 - 3.1.2 to supply a bicycle or bicycles up to the value of the cost of the purchase of the South Yorkshire Annual Travel Pass on the condition that the type/model of the bicycle or bicycles shall be approved by the First Occupier.

- 3.2 In the event that the First Occupier accepts the offer made by the Owner under clause 3.1 above, the Owner shall provide or procure the provision of a South Yorkshire Annual Travel Pass or bicycle or bicycles to that First Occupier within 25 days of receiving notification of acceptance from that First Occupier.
- 3.3 The Owner shall notify the Council in writing when they have provided South Yorkshire Annual Travel Passes or bicycle or bicycles to the First Occupiers of all of the Market Sale Units and shall provide the Council with appropriate evidence verifying that they have complied with clauses 3.1 and 3.2 above.
- 3.4 Upon provision of the South Yorkshire Annual Travel Pass or bicycle or bicycles to the First Occupier of each of the dwellings constructed pursuant to the Planning Permission the Council shall confirm in writing to the Owner that its obligations under this paragraph 3 have been complied with.

4. Affordable Housing Provisions

4.1 Tankersley Land

- 4.1.1 Not more than 50% of the Market Sale Units shall be Occupied unless and until

(a) the Affordable Housing Tankersley Units have been Transferred to a Registered Provider appearing on the Council's Approved List on terms that accord with the Homes and Communities Agency's funding requirements current at the date of this Agreement or the Affordable Housing Tankersley Commuted Sum has been paid to the Council

AND

(b) the Additional Tankersley Affordable Housing Units have been Transferred to a Registered Provider appearing on the Council's Approved List on terms that accord with the Homes and Communities Agency's funding requirements current at the date of this Agreement or the Additional Tankersley Affordable Housing Commuted Sum has been paid to the Council

AND

(c) the Affordable Housing Contribution has been paid to the Council

- 4.1.2 The Owner shall construct the Additional Tankersley Affordable Housing Units at its own expense; in a good and workmanlike manner and in accordance with all Necessary Consents.

- 4.1.3 The Owner shall use their Reasonable Endeavours to market the relevant Additional Tankersley Affordable Housing Units to a Registered Provider appearing on the Council's Approved List and will promptly upon agreeing heads of terms for a Transfer of the Additional Tankersley Affordable Housing Units to the relevant Registered Provider inform the Council of the identity of the Registered Provider appearing on the Council's Approved List ("**the Initial Registered Provider Transfer Terms**").

- 4.1.4 The Owner will thereafter use all Reasonable Endeavours to exchange contracts with the Registered Provider specified by the Owner for the sale of the Additional Tankersley Affordable Housing Units and will keep the Council informed on the Owner's progress.
- 4.1.5 If the proposed sale does not proceed in accordance with the Initial Registered Provider Transfer Terms the Owner will continue to use Reasonable Endeavours to Exchange contracts with an alternative Registered Provider appearing on the Council's Approved List and will keep the Council informed of the Owner's progress.
- 4.1.6 The Additional Tankersley Affordable Housing Units shall not be used other than for Affordable Housing.
- 4.1.7 If the Additional Tankersley Affordable Housing Units have not been contracted for sale to the Registered Provider within nine calendar months of the date of Practical Completion of the Additional Tankersley Affordable Housing Units or such later date agreed in writing by the Council then subject to the Council confirming in writing that the Owner has complied with the obligations in paragraphs 4.1.2 to 4.1.6 above the Owner shall pay the Additional Tankersley Affordable Housing Commuted Sum to the Council and shall thereafter be free to dispose of the Additional Tankersley Affordable Housing Units on the open market free from the restrictions within this clause 4.1.

4.2 The Affordable Housing Sale Land

4.2.1 The Owner shall construct the Affordable Housing Tankersley Units and any necessary infrastructure required to ensure that the Affordable Housing Tankersley Units are completed in a good and workmanlike manner and in accordance with all Necessary Consents including

- (a) entering into any necessary agreements and the grants or reservations of rights
- (b) site preparation including remediation as necessary and laying the tarmac base course for the Roadway and installing Service Media for foul and surface water drainage and gas water electricity and other utilities
- (c) entering into an Agreement under section 38 Highways Act 1980 to secure the satisfactory construction and subsequent adoption of the Roadway
- (d) entering into (if required by the Drainage Authority) an Agreement under section 104 Water Industry Act 1991 for adoption of such foul or surface water drainage on the Affordable Housing Sale Land as is adoptable by Yorkshire Water Services Limited.

4.2.3 The Owner shall use his Reasonable Endeavours to market the relevant Affordable Housing Tankersley Units to a Registered Provider appearing on the Council's Approved List and will promptly upon agreeing heads of terms for a Transfer of the Affordable Housing Tankersley Units to the relevant Registered Provider inform the Council of the identity of the Registered Provider appearing on the Council's Approved List ("**the Initial Registered Provider Transfer Terms**").

- 4.2.4 The Owner will thereafter use all Reasonable Endeavours to exchange contracts with the Registered Provider specified by the Owner for the sale of the Affordable Housing Tankersley Units and will keep the Council informed on the Owner's progress.
- 4.2.5 If the proposed sale does not proceed in accordance with the Initial Registered Provider Transfer Terms the Owner will continue to use Reasonable Endeavours to Exchange contracts with an alternative Registered Provider appearing on the Council's Approved List and will keep the Council informed of the Owner's progress.
- 4.2.6 The Affordable Housing Tankersley Units shall not be used other than for Affordable Housing.
- 4.2.7 If the Affordable Housing Tankersley Units have not been contracted for sale to the Registered Provider within nine calendar months of the date of Practical Completion of the Affordable Housing Tankersley Units or by the date of Occupation of 50% of the Market Sale Units the Owner shall pay the Affordable Housing Tankersley Commuted Sum to the Council and shall thereafter be free to dispose of the Affordable Housing Tankersley Units on the open market free from the restrictions within this clause 4.2 and if any Affordable Housing Tankersley Units have at such date been sold to a Registered Provider the sum that shall payable to the Council shall be calculated in accordance with the Affordable Housing Commuted Sum Calculation in respect of those Affordable Housing Tankersley Units not already sold to a Registered Provider.
- 4.2.8 The Owner shall pay the Affordable Housing Contribution prior to Occupation of 50% of the Market Dwellings

SCHEDULE 2

Covenants by the Council

1. **Education Contribution, Public Open Space Contribution, Affordable Housing Contribution and Affordable Housing Commuted Sum**

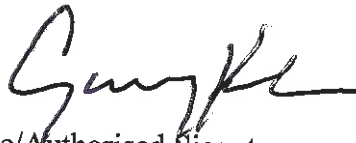
The Council covenants with the Owner to use all sums received from the Owner under the terms of this Agreement for the purposes specified in this Deed and shall repay any sums not expended or committed in fulfilment of the purpose within 10 years from the date of payment or in the case of the Public Open Space Contribution of the date of payment of the final instalment.

2. **Issue of Planning Permission**

Within three Working Days following the date of completion of this Agreement the Council covenants to issue the Planning Permission.

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

THE COMMON SEAL of)
BARNSLEY METROPOLITAN)
BOROUGH COUNCIL was)
hereunto affixed to this Deed in the)
presence of:-)



Director of Legal and Governance/Authorised Signatory

PRB 25/10/16 M.n 38



EXECUTED AS A DEED by)
JAGUAR & WORTLEY)
DEVELOPMENTS LIMITED)
acting by:)




Director

Director/Secretary

EXECUTED as a DEED by)

BDW TRADING LIMITED acting by)

its attorneys [D. COE] and)

[A. DONALD]

in the presence of:



Witness name: G. LLOYD

Address:

Occupation: LAND MANAGER

Barratt & David Wilson Homes
Faynham House
2 Capital Close
Morley
Leeds
LS27 0WH