

DATED

5th May

2021

BARNSELY METROPOLITAN BOROUGH COUNCIL

And

MALCOLM HENRY HARTLEY AND GEMMA LOUISE STOREY

AGREEMENT

under Section 106 of the Town and Country Planning Act 1990 relating to land
at 43, Barnsley Road, Brierley, Barnsley, S72 9JT,

Solicitor to the Council
Barnsley Metropolitan Borough Council
Town Hall,
Barnsley, S70 2TA.

THIS DEED OF AGREEMENT is made the
Two Thousand and Twenty One

6th day of May.

BETWEEN

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

(2) **MALCOLM HENRY HARTLEY** and **GEMMA LOUISE STOREY** of 43,
Barnsley Road, Brierley, Barnsley, S72 9JT. ("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 Freehold owner/registered proprietor of the Land registered under Land Registry Title Number SYK233499

(3) The Owner submitted the Application to the Council seeking Planning Permission for the Development.

(4) The parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Agreement and agree that the obligations comply with 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 planning Application with the reference number 2020/0520 submitted to the Council for the clearance of site and the erection of 3 no. Dwellings and provision of associated works.

“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 the Land in accordance with the Planning Permission

“Dwelling Units” means the apartments or other forms of residential accommodation to be created on the Land pursuant to the Planning Permission

“the Family Dwelling” means the Dwelling to be constructed on the Land on that part of the site shown edged green.

“the Garage Business” means the vehicle repair and maintenance business operated pursuant to a lawful development certificate dated 27th November 1980 granted under reference 80/1746/HR from the garage premises shown edged blue on the Plan

“the Land” means the freehold land described in the First Schedule hereto against which this Agreement may be enforced.

“Occupation and Occupied”: means occupation for the purposes permitted by the Planning Permission from which the Development benefits 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 and “Occupy” shall be construed accordingly.

“the Plan” means the plan annexed hereto

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

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 the local planning authority against the Owner

COMMENCEMENT

4 The planning obligation comprised in this Agreement shall not become effective until the following conditions are satisfied: -

4.1 the Planning Permission has been granted; and

4.2 except where otherwise stated in this Agreement, the Commencement of Development.

OWNER AND COUNCIL COVENANTS

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

MISCELLANEOUS

6.1 The Owner shall pay to the Council on completion of this Deed the sum of £1000.00 (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 Head of Planning and Building Control and any notices shall be deemed to have been properly served if sent by recorded delivery or special 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 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.

6.9 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.

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 43 Barnsley Road, Brierley, Barnsley, S72 9JT registered at HM Land Registry under Title Number SYK233499 and for the purpose of identification shown edged red on the Plan

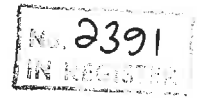
SECOND SCHEDULE

- 1 The Owner covenants with the Council;
- 2 Not to construct more than the Family Dwelling until the operation of the Garage Business has permanently ceased.
- 3 Once ceased in compliance with the obligation in paragraph 2 of this Second Schedule the Garage Business or any other business use shall not be resumed or started without the written consent of the Council
- 4 The Family Dwelling shall only be Occupied by Gemma Louise Storey, Adam John Storey, Billy Lomas and Jak Lomas until the Garage Business has permanently ceased whereupon this limitation on occupation shall no longer apply.
- 5 All other Dwellings permitted under the Planning Permission shall not be constructed or Occupied until the Garage Business has permanently ceased.

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

~~Executive director Core Services/~~
Legal Services Director /
Authorised Signatory


JASON FIELD




EXECUTED AS A DEED by



MALCOLM HENRY HARTLEY

in the presence of:-

Signature of witness.....


Name of witness..... EMMA JONES.....

Address of witness..... 48 FELKIRK VIEW SHAPTON S72 8PG.....

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EXECUTED AS A DEED by

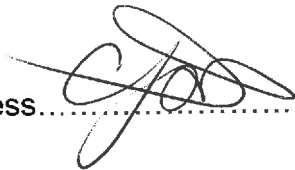


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GEMMA LOUISE STOREY

in the presence of:-

Signature of witness.....



Name of witness.....

EMMA JONES

Address of witness.....

18 FELKIRK VIEW SHAPTON ST2 8PG

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