

27TH OCTOBER
DATED ~~27/10/17~~ 2017

BARNSELY METROPOLITAN BOROUGH COUNCIL (1)

and

AMARI HOMES LIMITED (2)

DEED OF VARIATION

**in connection with an Agreement and Planning Obligation made under Section 106 and Section
106A of the Town and Country Planning Act 1990 (as amended)
relating to land adjacent to Windmill Avenue Grimethorpe, Barnsley S72 2AN**

THIS DEED is made the 27th day of October

2017

BETWEEN: -

- (1) **BARNSELY METROPOLITAN BOROUGH COUNCIL** of Town Hall, Barnsley, South Yorkshire S70 2TA ("Council") of the first part; and
- (2) **AMARI HOMES LIMITED** (Company No. 010373284) whose registered office is situated at Birley Halifax Road Thurgoland Sheffield S35 7AL. ("Owner") of the second part

1 DEFINITIONS

1.1 In this **DEED** the following words and expressions shall have the meanings set out below:

"Deed" means this deed;

"Land" means all that land adjacent to Windmill Avenue Grimethorpe, Barnsley in the county of South Yorkshire, shown for identification purposes only edged red on the Plan to the Section 106 Agreement;

"Section 106 Agreement" means the agreement dated 22nd June 2016 and made pursuant to Section 106 of the 1990 Act between (1) Barnsley Metropolitan Borough Council; (2) David William Barlow;

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

1.2 Where the context so requires:

1.2.1 save as is otherwise varied by this Deed, all the words and expressions beginning with capital letters in this Deed shall have the same meanings ascribed to them in the Section 106 Agreement, as varied by the Supplemental Agreement, and shall be construed accordingly;

- 1.2.2 the singular includes the plural and vice versa and words importing the masculine gender only include the feminine gender and extend to include a corporation sole or aggregate;
- 1.2.3 references to any party shall include the successors in title to that party;
- 1.2.4 where a party includes more than one person any obligations of that party shall be joint and several;
- 1.2.5 any covenant by the Owner not to do any act or thing shall be deemed to include a covenant not to cause permit or suffer the doing of that act or thing; and
- 1.2.6 references to clauses paragraphs and schedules are references to clauses paragraphs and schedules to this Deed and are for reference only and shall not affect the construction of this Deed.

2 RECITALS

- 2.1 The Council is the local planning authority for the purposes of the 1990 Act for the area within which the Land is situated and is the authority by whom the obligations hereby created are enforceable.
- 2.2 This Deed is supplemental to the Section 106 Agreement and varies the Section 106 Agreement only to the extent set out in this Deed.
- 2.3 The Owner is the registered proprietor with absolute title of the Land registered at the Land Registry under title number SYK626851.
- 2.4 The Council and the Owner have agreed that the Section 106 Agreement, shall be varied as set out in clause 3.3 below and the parties have agreed to enter into this Deed in order to vary the terms of the Section 106 Agreement accordingly.
- 2.5 The Owner has agreed to enter into this Deed so as to create planning obligations in favour of the Council pursuant to Section 106 and Section 106A of the 1990 Act and to be bound by and observe and perform the covenants agreements conditions and stipulations hereinafter contained.

3 OPERATIVE PROVISIONS

- 3.1 This Deed is made pursuant to Section 106 and 106A of the 1990 Act and all other powers so enabling and is a planning obligation for the purposes thereof and the covenants contained herein shall bind the Land with the intent that it shall bind the interests of the Owner and its successors in title to each and every part of the Land and its assigns as provided in these clauses and in the clauses of the Section 106 Agreement.
- 3.2 The planning obligations comprised in this Deed shall not become effective until the condition precedent in clause 4 of the Section 106 Agreement has been satisfied.
- 3.3 The parties hereto hereby mutually agree to vary and supplement the terms of the Section 106 Agreement, so that the Section 106 Agreement shall from today be read and construed as amended and detailed in the First Schedule to this Deed.

4 IT IS HEREBY AGREED AND DECLARED AS FOLLOWS:

- 4.1 This Deed shall be construed as one with the Section 106 Agreement.
- 4.2 The provisions of the Section 106 Agreement continue to be enforceable by the Council and to bind the Land in all respects save for as varied by this Deed, but for the avoidance of doubt the alterations and amendments hereby made shall to the extent only that they are material supersede specific provisions to the contrary in the Section 106 Agreement (as varied by this Deed) and the Section 106 Agreement and this Deed shall always be read together (*mutatis mutandis*) with the latter to that extent predominating.
- 4.3 No party shall be liable for breach of a covenant contained in this Deed after having parted with all interest in the Land or the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest.
- 4.4 A person who is not a party to this Deed has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term hereof provided that this clause shall not affect any right of action of any person to whom this Deed is lawfully assigned or in whom it becomes vested in law.
- 4.5 The planning obligations hereby created by this Deed shall be registered as a Local Land Charge.

- 4.6 The Owner shall pay to the Council on or before the date of completion of this Deed the Council's reasonable and proper legal costs of £500 incurred in the negotiation, preparation and execution of this Deed, which includes all disbursements incurred in connection with the preparation, completion and registration of this Deed.

FIRST SCHEDULE

Amendments to the Section 106 Agreement

1 The definition of “**Application**” at clause 1 of the Section 106 Agreement shall have the following additional words added to the end of that definition:

“and / or the planning application submitted to the Council for the erection of two semi-detached dwellings and one block of three townhouses and known to the Council by reference 2016/0666”

2 The words “within the locality of the Land” within the definition of “**Green Space Contribution**” at clause 1 of the Section 106 Agreement shall be replaced with the words “within one mile of the boundary of the Land”

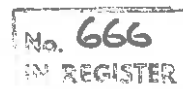
IN WITNESS whereof the parties have executed this Deed the day and year first before written

EXECUTED AS A DEED by affixing the
COMMON SEAL of **BARNSELY**
METROPOLITAN BOROUGH COUNCIL

in the presence of: *ck*

Garry K.

Core Services Executive Director /
Legal Services Director /
Authorised Signatory



A. Cook

SIGNED as a DEED by
Amari Homes Limited
Acting by One Director Alexander Cook

In the presence of: *Stephen Peach*

Signature of Witness *S Peach*

Name of witness *STEPHEN PEACH*

Address of witness *92, MELBOURNE RD*
STOCKSBRIDGE
SHEFFIELD
S36 1EF

