

**BOROUGH SECRETARY'S
DEPARTMENT**



LEGAL SERVICES DIVISION

To: Alexandra Cotton, Planning & Transportation
✱ Elaine Ward, Planning & Transportation
Lloyd Downer, Strategic Housing
Shaun Wright, Neighbourhood Services
Barbara Wilson, Highways & Engineering

My Ref: JF/DH/PG/254/00001 Your Ref:

Date: 11 November 2009 Enquiries to: Jason Field

Ext: 2651

Land at Park Street, Wombwell, Barnsley
Planning Application No: 2009/1039 - Section 106 Agreement

I confirm that the Section 106 Agreement has been completed and the permission can be issued. In summary, the terms of the Agreement are as follows:

Public Open Space

The Developer is to pay £76,692 upon commencement of development to the Council. The Council is to spend this money on improvements to existing open spaces in the Wombwell area.

Affordable Housing

No market housing can be occupied until there is a signed contract between the Developer and a housing association.

No more than 50% of market housing can be occupied until the affordable housing has been constructed and transferred to a housing association.

The construction standards and sizes for the affordable housing are set out in paragraph 3 of the Second Schedule.

The price that the Developer has to sell the affordable housing to the housing association is determined by paragraph 6.

The long stop position (if no transfer of the affordable housing to a housing association occurs within two years of practical completion of the construction of the affordable housing) is that the Developer can sell the affordable housing as

market housing but he must pay the Council between 50% to 65% of the open market value of those houses upon sale (depending on the unit type).

If the calculation of the affordable housing requirement does not produce a whole number a further payment is required under paragraph 10 of the Second Schedule for the part unit that would be required.

Travelmaster Pass

The Developer has to provide a South Yorkshire Travelmaster ticket to an adult occupier of each of the dwellings when they are occupied.

Interest

If any payment is paid late then interest is payable on that in accordance with Clause 15 of the Agreement.

Jason Field
for the Borough Secretary

DATED THIS 30th DAY OF October 2009

BARNSLEY METROPOLITAN BOROUGH COUNCIL (1)

GLADEDALE (SOUTH YORKSHIRE) LIMITED (2)

BANK OF SCOTLAND PLC (3)

Agreement pursuant to Section 106 of the
Town and Country Planning Act 1990
relating to the proposed development of
land at Park Street, Wombwell,
Barnsley, South Yorkshire

THIS AGREEMENT is made the 30th day of October
BETWEEN:-

2009

- (1) BARNSELY METROPOLITAN BOROUGH COUNCIL of Town Hall Barnsley South Yorkshire S70 2TA ("the Council")
- (2) GLADEDAL (SOUTH YORKSHIRE) LIMITED (Company No. 1043597) whose registered office is at Ashley House Ashley Road Epsom Surrey KT18 5AZ ("the Developer")
- (3) BANK OF SCOTLAND PLC (Scot. Co. Regn. No. SC327000) of The Mound Edinburgh EH1 1YZ ("the Mortgagee")

1 **RECITALS**

- 1.1 The Council is the Local Planning Authority for the purposes of the Planning Act for the area within which the Site is situated.
- 1.2 The Developer is registered as the proprietor of the Site at the Land Registry under Title Numbers SYK504300 and SYK504157
- 1.3 The Mortgagee has a legal mortgage over the Site dated 20 August 2007
- 1.4 The Application has been submitted to the Council and this Agreement is entered into pursuant to that Application

NOW THIS DEED WITNESSES AS FOLLOWS:

2. **DEFINITIONS**

- 2.1 In this Agreement the following expressions shall have the following meanings respectively:

"Affordable Housing"- subsidised housing (as defined in the Council's Planning Advice Note 34 and in the Department of Communities Planning Policy Statement 3) that will be available to persons who cannot afford to rent or buy housing generally available on the open market

"Affordable Housing Units- that part of the Development comprising 25% of the residential units to be constructed on the Site together with one car parking space for each residential housing unit comprising 20% Intermediate Affordable Housing units and 80% Social Rented Housing units and as provided for in the Second Schedule and situate in locations on the Site agreed by the Council as part of the Developers' Planning Application

“Chargee”- any mortgagee or chargee of the Registered Provider of Social Housing or the successors in title to such mortgagee or chargee or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925

“Chargee’s Duty”-the tasks and duties set out in paragraph 5 of the Second Schedule to this Agreement

“Preparatory Operation” means any demolition or clearance works carried out on the development site prior to the implementation of the Planning Permission

“Commencement of the Development” – the carrying out of a material operation as defined in Section 56(4) of the Planning Act

“the Development” - the development of the Site pursuant to the Planning Application

“Interest” means interest at 4% per cent above the base lending rate of Barclays Bank Plc from time to time.

“Intermediate Affordable Housing” – has the meaning given to it in Annex B of Planning Policy Statement 3 or any future guidance that replaces it

“Open Market Value” has the same meaning as the definition of 'Market Value' in Practice Statement 3.2 of the Royal Institution of Chartered Surveyors' Appraisal and Valuation Standards or other guidance replacing that Statement

“Market Housing Units”- that part of the Development which is general market housing for sale on the open market and which is not Affordable Housing

“Plan 1” - the plan attached to this Agreement and marked Plan 1

“the Planning Act” - the Town and Country Planning Act 1990 (as amended at the date of this Agreement)

“the Planning Application” - the application to the Council for full planning permission for the construction on the Site of residential dwellings under application reference 2009/1039

“the Planning Obligations” – the obligations arising pursuant to Clause 5 of this Agreement

“the Planning Permission” - the grant of planning permission pursuant to the Planning Application and the subsequent grant of planning approval

“Practical Completion”- the issue of a certificate of practical completion by the Developer’s architect or in the event that the Development is constructed by a party other than the Developer the issue of a certificate of practical completion by that other party’s architect

“Protected Tenant” – any tenant who:

- a) has exercised the right to acquire pursuant to the Housing Act 1996 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Housing Unit
- b) has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Housing Unit
- c) has been granted a shared ownership lease by a Registered Provider of Social Housing (or similar arrangement where a share of the Affordable Housing Unit is owned by the tenant or a share is owned by the Registered Provider of Social Housing) in respect of a particular Affordable Housing Unit and the tenant has subsequently purchased from the Registered Provider of Social Housing all the remaining shares so that the tenant owns the entire Affordable Housing Unit

“Registered Provider of Social Housing”- means a registered provider of social housing as defined in Part 2 of the Housing and Regeneration Act 2008 (“the 2008 Act”) who is registered with the regulator of social housing called the Office for Tenants and Social Landlords in the 2008 Act, referred to as the Regulator of Social Housing in other enactments or instruments, and known as the Tenant Services Authority pursuant to section 3 of the Housing Act 1996 (“the 1996 Act”) or section 116 of the 2008 Act and has not been removed from the register pursuant to section 4 of the 1996 Act or section 118 of the 2008 Act and who is approved by the Council (such approval not to be unreasonably withheld or delayed)

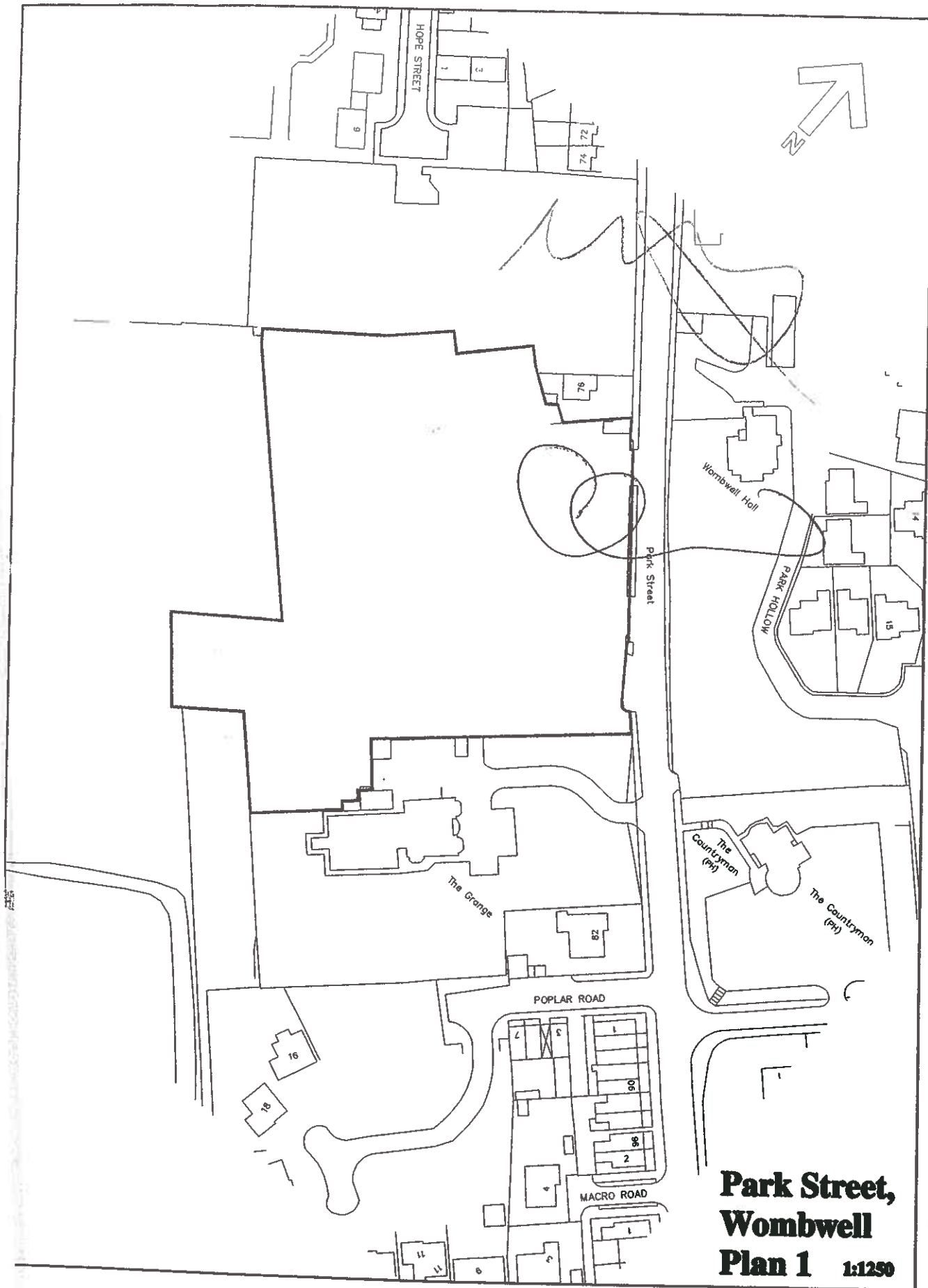
“the Site” - the land and premises on the South Western side of Park Street Wombwell Barnsley shown edged in red on Plan 1.

“Open Space and Related Works Contribution” means the sum of £76,692.00 (Seventy six thousand six hundred and ninety two pounds)

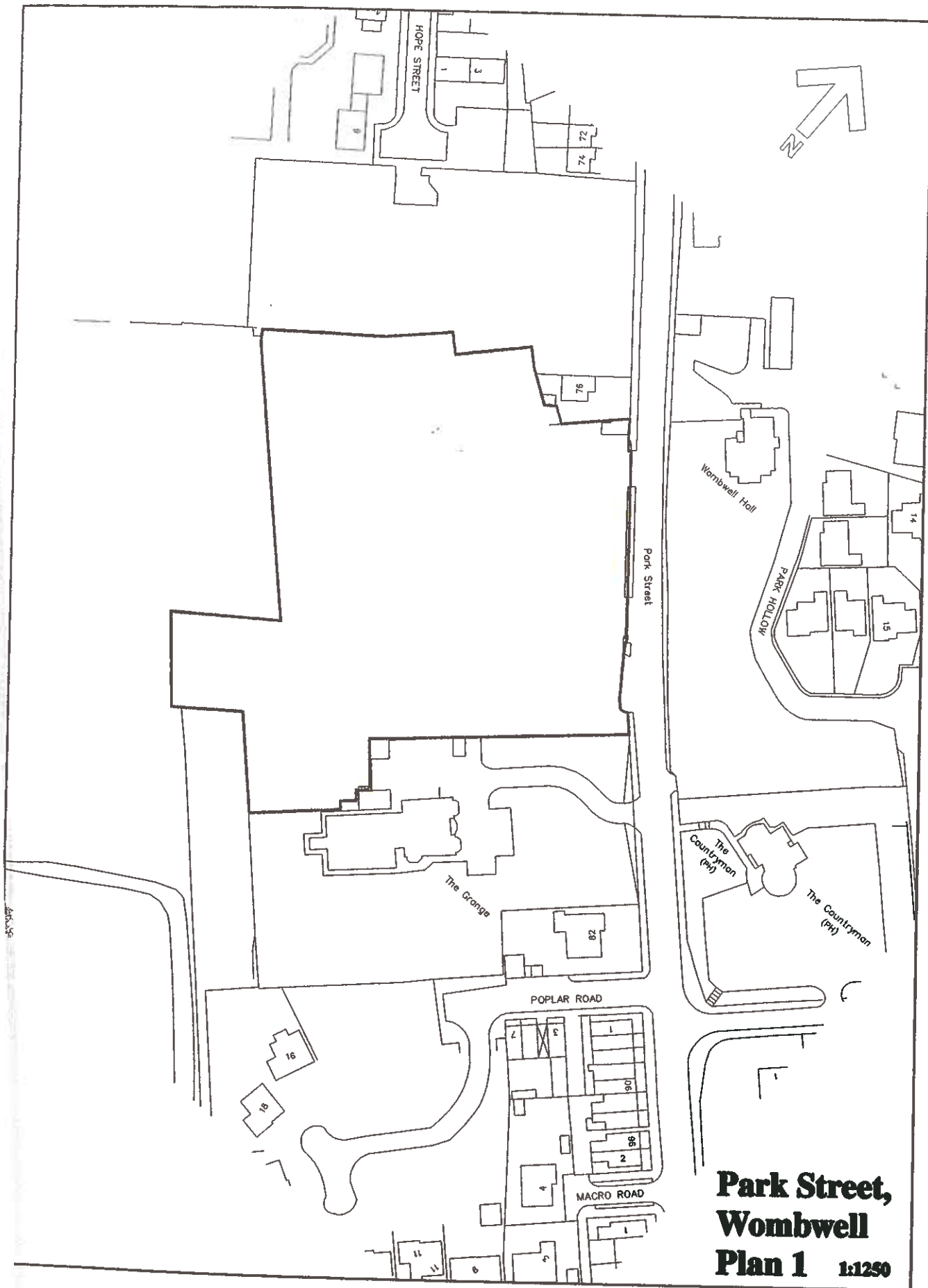
“Social Rented Housing”- has the meaning given to it in Annex B of Planning Policy Statement 3 or any future guidance that replaces it

“Travel Master Pass” means the Travel Pass referred to in the Third Schedule

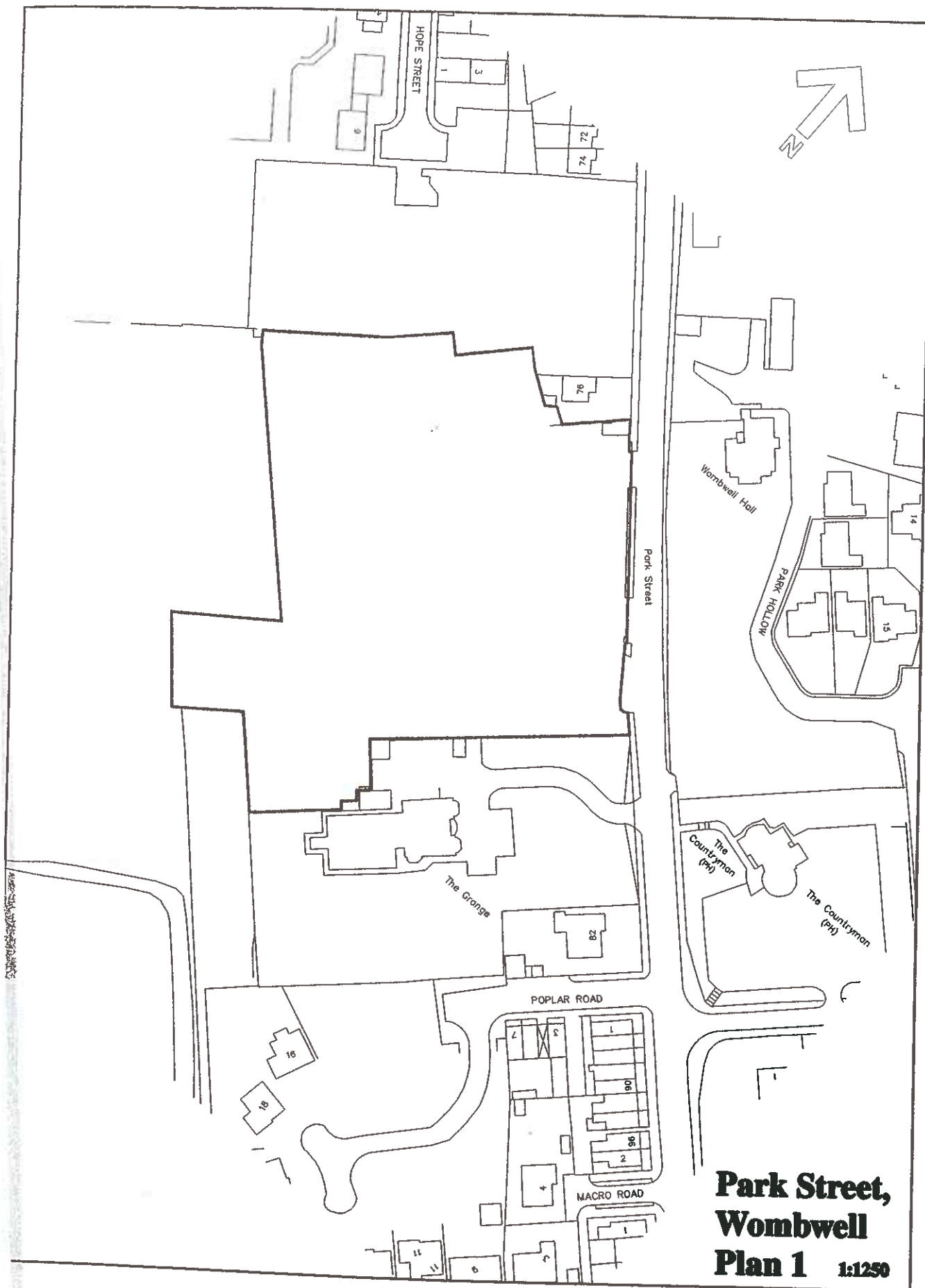
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed 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.



**Park Street,
Wombwell
Plan 1 1:1250**



**Park Street,
Wombwell
Plan 1 1:1250**



- 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 their respective statutory functions.

3 **STATUTORY POWERS**

This Agreement is made pursuant to Section 106 of the Planning Act (and is a planning obligation for the purposes of that Section) section 111 of the Local Government Act 2000 section 2 of the Local Government Act 2000 and all other enabling powers and the Council is the Local Planning Authority by which the provisions of this Agreement are intended to be enforceable

4 **MISCELLANEOUS**

If the Planning Permission is quashed or is revoked or otherwise withdrawn or (without the consent of the Developer) is modified by any statutory procedure or expires before the Development has been implemented this Agreement shall cease to have effect (except as regards any part of the Development which has by then been implemented)

5 **PLANNING OBLIGATIONS**

The Developer hereby covenants with the Council to observe and perform its obligations pursuant to the First Second and Third Schedule to this Agreement

6 **MORTGAGEE CONSENT**

The Mortgagee acknowledges and declares that this Deed has been entered into by the Developer with its consent and that the Site shall be bound by the obligations contained in this Deed and that the security of the mortgage over the Site shall take effect subject to this Deed PROVIDED THAT the Mortgagee shall otherwise have no liability under this Deed unless it takes possession of the Site in which case it too will be bound by the obligations as if it were a person deriving title from the Developer

7 **EXTENT OF LIABILITY**

- 7.1 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 Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 7.2 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

8 **CONFIRMATION OF PERFORMANCE OR DISCHARGE**

The Council will upon written request of the Developer at any time after the Planning Obligations have been performed or otherwise discharged issue written confirmation of such performance or discharge and thereafter effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Agreement

9 **REGISTRATION AS LOCAL LAND CHARGE**

This Agreement is a Local Land Charge and shall be registered as such by the Council

10 **DISPUTE OR DIFFERENCES**

If the parties are unable to agree upon the determination of any sum or monetary obligation due from one party to another in connection with this Agreement, the dispute or difference shall be settled by an expert to be appointed by agreement between the parties or, in default of agreement, by the President of the Royal Institute of Chartered Surveyors, such person to act as expert and not as arbitrator and his decision to be binding on the parties.

11 **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

Save as expressly provided none of the provisions of this Agreement are intended or will operate to confer any benefit (pursuant to the Contracts (Rights of Third Parties) Act 1999) on a person who is not named as a party to this Agreement other than (where the context so permits) the successor in title of the named parties other than a Registered Provider of Social Housing

12 **WAIVER**

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

13 **VALIDITY**

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.

14 **LEGAL FEES**

The Developer shall pay to the Council on completion of this Deed the legal costs of the Council incurred in the negotiation, preparation and execution of this Deed.

15 **INTEREST**

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

16 **DELIVERY**

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

IN WITNESS whereof this Agreement has been duly executed as a Deed by the parties hereto the day and year first above written

THE FIRST SCHEDULE

Provision of Public Open Space

The Developer hereby covenants with the Council that

1. the Developer will pay the Open Space and Related Works Contribution to the Council on Commencement of the Development PROVIDED THAT the Council shall apply and appropriate the Open Space and Related Works Contribution to be spent on improvements to existing open spaces in the Wombwell Area
2. without prejudice to any other remedies available to the Council, the Commencement of the Development shall not take place nor shall any action whatsoever be taken on the Site pursuant to the Planning Permission excluding a Preparatory Operation unless and until the Open Space and Related Work Contribution has been paid in full to the Council
3. The Developer will serve on the Council fourteen days prior written notice of the Commencement of the Development

THE SECOND SCHEDULE

Affordable Housing

The Developer hereby covenants with the Council that

1. The Developer shall use all reasonable endeavours to enter into a contract to sell the Affordable Housing Units to a Registered Provider of Social Housing prior to the commencement of the Development and subject as hereinafter provided no Market Housing Units shall be occupied until the Developer have entered into such contract
2. No more than 50% of Market Housing Units shall be occupied until all the Affordable Housing Units have been constructed in accordance with the Planning Permission and this Schedule and transferred to a Registered Provider of Social Housing in accordance with this Agreement
3. The Affordable Housing Units shall be constructed to
 - 3.1 an equally high standard and quality as the Market Housing Units and must achieve the design standards set out in the Council's Policy Planning Advice Note 34 "Affordable Housing in New Residential Developments" and be constructed to a minimum of level 3 code for sustainable homes standard and satisfy related policy

documents including the Housing Corporation's Design and Quality Standard April 2007 and any successor guidance from the Homes and Communities Agency

3.2 to at least an equivalent size to the Market Housing Units, unless otherwise agreed by the Council

4. The Affordable Housing Units shall not be used for any purposes other than Affordable Housing save that this obligation shall not be binding on:

4.1 any Protected Tenant or any mortgagee or chargee of the Protected Tenant or any person deriving title from the Protected Tenant or any successor in title thereto and their respective mortgagees and chargees; or

4.2 any Chargee provided that the Chargee shall have first complied with the Chargee's Duty ;or

4.3 any purchaser from a mortgagee of an individual Affordable Housing Unit pursuant to any default by the individual mortgagor

5. The Chargee shall prior to seeking to dispose of the Affordable Housing Units pursuant to any default under the terms of its mortgage or charge give not less than six months' prior notice to the Council of its intention to dispose and:

5.1 in the event that the Council responds within six month from receipt of the notice indicating that arrangements for the transfer of the Affordable Housing Units can be made in such a way as to safeguard them as Affordable Housing then the Chargee shall co-operate with such arrangements and shall use its best endeavours to secure such transfer

5.2 if the Council does not serve its response to the notice served under paragraph 5 within two months then the Chargee shall be entitled to dispose free of the restrictions set out in this Schedule

5.3 if the Council or any other person cannot within six months of the date of service of its response under paragraph 5.1 secure such transfer then provided that the Chargee shall have complied with its obligations under paragraph 5 the Chargee shall be entitled to dispose free of the restrictions set out in this Schedule

PROVIDED THAT at all times the rights and obligations in this paragraph 5 shall not require the Chargee to act contrary to its duties under the charge or mortgage and that the Council must give full consideration to protecting the interest of the Chargee in respect of monies outstanding under the charge or mortgage

6. The Developer shall endeavour to sell the Affordable Housing Units to a Registered Provider of Social Housing PROVIDED THAT the Social Rented Housing units shall be transferred at a price that enables the Registered Provider of Social Housing to charge rent levels consistent with the Homes and Communities Agency target rents without the need for further subsidy from the Registered Provider of Social Housing or elsewhere and which shall in any event shall be at a price at least 65% below Open Market Value AND the Intermediate Affordable Housing units shall be transferred at a price equivalent to three times the median income for Barnsley or 50% of the Open Market Value whichever is the lower

- 7 If no transfer of the Affordable Housing Units to the Registered Provider of Social Housing has occurred within twenty four calendar months of the date of Practical Completion of all the Affordable Housing Units and the Developer have produced evidence in writing to the reasonable written satisfaction of the Council that they have made all reasonable endeavours to secure a transfer of the Affordable Housing Units to a Registered Provider of Social Housing then the Developer will be free to offer such dwellings for sale on the open market free from the obligations in this Schedule but the provisions of paragraphs 8 and 9 below shall apply
- 8 In the event that the Developer is free to offer the Affordable Housing Units for sale on the open market pursuant to the provisions of paragraph 7 above the Developer shall upon such event pay to the Council 50% of the Open Market Value of the Intermediate Housing Units and 65% of the Open Market Value of the Social Rented Housing Units and any Affordable Housing Balancing Commuted Sum that may have been due under paragraph 10 of this Schedule such Open Market Value to be determined at the date the Developer are first free to offer the Affordable Housing Units for sale on the open market
- 9 The Open Market Value of the Affordable Housing Units shall be determined in the first instance by agreement between the Developer and the Council and in default of such agreement by expert determination in accordance with Clause 10 (Dispute or Differences) of this Agreement.
- 10 If the definition of Affordable Housing Units produces numbers of affordable housing dwellings that are not whole numbers the Developer shall be obliged in any transfer under this Schedule to transfer only whole numbers of Social Rented Housing and Intermediate Affordable Housing and upon transfer to pay to the Council an additional commuted sum for the remainder to be determined by the following formula:

Z multiplied by A

Plus

Z multiplied by B = £ ("the Affordable Housing Balancing Commuted Sum")

Where $Z = X \text{ divided by } Y$

X is the total open market price of the Affordable Housing Units minus the total price the Registered Provider of Social Housing is paying for the Affordable Housing Units.

Y is the number of Affordable Housing units to be transferred.

A is the percentage of a whole Social Rented Unit due under the Affordable Housing definition but not transferred as a result of this clause and B is the percentage of a whole Intermediate Housing Unit due under the Affordable Housing definition but not transferred as a result of this clause

and if the parties fail to agree the Affordable Housing Balancing Commuted Sum this amount is to be determined by expert determination in accordance with 10 dispute or differences of this Agreement

THE THIRD SCHEDULE

Travel Master Pass

The Developer shall provide one annual South Yorkshire Travel Master ticket to the first adult occupier of each of the dwellings constructed on the land upon completion of the transfer of that dwelling to the purchaser thereof or in the case of the Affordable Housing Units as the Registered Provider of Social Housing may direct.

EXECUTED as a Deed by)
BARNSELY METROPOLITAN BOROUGH)
COUNCIL in the presence of:)


Authorised Signatory

No. 727
IN REGISTER

EXECUTED as a Deed by)
GLADEDALE (SOUTH YORKSHIRE))
LIMITED acting by its)
Director and Secretary or by two Directors:)

Director

Secretary

EXECUTED as a Deed by
BANK OF SCOTLAND PLC
in the presence of:

)

)

A handwritten signature in blue ink, consisting of a large, stylized initial 'B' followed by a series of connected loops and a long horizontal stroke.

Authorised Signatory