

DATED 18th November 2019

BARNSELY METROPOLITAN BOROUGH COUNCIL

and

BDW TRADING LIMITED

DEED OF VARIATION

Pursuant to Section 106 and Section 106A of the Town and Country Planning Act 1990 (as amended) relating to development on land to the south east of Dearne Hall Road and 1 and 3 Claycliffe Road, Barnsley

THIS DEED OF VARIATION is made the
Thousand and Nineteen

18th

day of November, Two

BETWEEN

- (1) **BARNSELY METROPOLITAN BOROUGH COUNCIL** of Town Hall, Barnsley, South Yorkshire, S70 2TA ("the Council") of the first part and
- (2) **BDW TRADING LIMITED** of (CRN: 3018173) whose registered office is situate at Barratt House, Cartwright Way, Forest Business Park, Bardon Hill, Coalville LE67 1UF ("the Owner") of the second part

RECITALS

- (1) This Deed of Variation is supplemental to an agreement entered into pursuant to Section 106 of the Town and Country Planning Act 1990 dated 23rd January 2014 between (1) the Council and (2) Hallam Land Management and (3) Commercial Estates Projects Limited ("the Original Section 106 Agreement").
- (2) The Owner is now the registered proprietor with Title Absolute of the Site which is registered under title number SYK640828.
- (3) The Owner was granted outline planning permission under planning application number 2013/0280 to redevelop the Site ("Outline Permission") and was subsequently granted a reserved matters permission for the Land under planning application 2015/0891.
- (4) The Owner has subsequently submitted an application for full planning permission under planning application number 2019/0011 for the substitution of house types on 59 plots associated with the Outline Permission ("2019 Application").

- (5) This Deed of Variation seeks to amend the Original Section 106 Agreement to ensure that the obligations set out in it pertain to the planning permission granted pursuant to the 2019 Application.
- (6) Any words or phrases which are defined in the Original Section 106 Agreement and which appear in this Deed of Variation shall have the same meaning as are associated to them in the Original Section 106 Agreement unless a contrary intention appears from this Deed of Variation.

NOW THIS DEED WITNESSETH AS FOLLOWS:-

1 Variation

- 1.1 It is hereby agreed between the parties to this Deed of Variation that the Original Section 106 Agreement is varied in the manner set out in the Schedule to this Deed of Variation and the Original Section 106 Agreement shall remain in full force and effect and the amendments contained in this Deed of Variation shall take effect as if they were included in the Original Section 106 Agreement.
- 1.2 This Deed of Variation is made pursuant to the statutory provisions and in consideration of the covenants contained herein and for the avoidance of doubt it is agreed and declared that the said covenants are ones to which section 111 of the Local Government Act 1972, Section 106 and Section 106A of the Town and Country Planning Act 1990 and all other powers so enabling are to apply.
- 1.3 This Deed of Variation contains planning obligations made pursuant to Section 106 and varied pursuant to Section 106A of the Town and Country Planning Act 1990 which are enforceable by the Council and shall bind that part of the Land which is registered under Land Registry title number SYK640828.

- 1.4 The provisions of this Deed of Variation shall have immediate effect upon the completion of this Deed

2. Governing Law

This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

3. Contractual Rights of Third Party

No term of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a third party.

4. Costs

The Owner shall pay to the Council on completion of this Deed the reasonable legal costs of the Council for the sum of £500 incurred in the negotiation preparation and execution of this Deed.

Schedule

The parties hereby mutually agree to vary and supplement the terms of the Original Section 106 Agreement so that the Original Section 106 Agreement shall from and including the date of this Deed of Variation be read and construed as follows:

1. Clause 1 of the Original Section 106 Agreement shall be amended so as to delete the definition of Development and substitute an amended definition of "Development" which shall read:

“means the development of the Site with residential development with associated public open space, landscaping and link road pursuant to the Original Planning Permission and the 2019 Planning Permission.”

2. Clause 1 the Original Section 106 Agreement shall be amended so as to include a new definition of “2019 Application” which shall read:

“means the application with reference 2019/0011 for full planning permission submitted to and validated by the Council on 7 March 2019 for the substitution of house types on 59 plots associated with the Application and reserved matters 2015/0891.”

3. Clause 1 the Original Section 106 Agreement shall be amended so as to include a new definition of “2019 Planning Permission” which shall read:

“means the full planning permission subject to conditions granted pursuant to the 2019 Application.”

4. Clause 1 the Original Section 106 Agreement shall be amended so as to include a new definition of “Original Planning Permission” which shall read:

“means the outline planning permission subject to conditions to be granted pursuant to the Application”

5. Clause 1 of the Original Section 106 Agreement shall be amended so as to include a new definition of “Planning Permission” which shall read: “means the Original Planning Permission and the 2019 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:-)

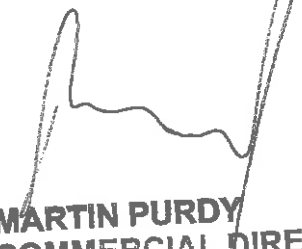


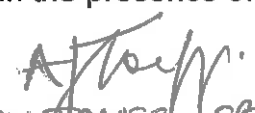
Director of Legal and Governance/Authorised Signatory



No. 1761
IN REGISTER

SIGNED and **DELIVERED** as a **DEED** (but not delivered until the date hereof) by

[**D. HUDSON**]) 
as the Attorney in the name of)
BDW TRADING LIMITED in exercise of the)
power conferred upon them by a Power of Attorney)
dated 20 July 2018 in the presence of:-

MARTIN PURDY
COMMERCIAL DIRECTOR

Witness signature: 

Name: NR ANDREW JAMES CBFT

Address: 41 COSWELL LANE, YEMTON
LEEDS LS19 7WE

Occupation: ARCHITECTURAL TECHNICIAN.
SVR.