

**BOROUGH SECRETARY'S
DEPARTMENT**



LEGAL SERVICES DIVISION

To: Assistant Director, Planning and Transportation
(Fao: Dawn Bullen)

My Ref: JK/LH/PG/254/00210

Your Ref: DC/DB/2006/0008

Date: 29th June 2006

Enquiries to: John Kirkham

Ext: 2627

Rec:

Ack:

Section 106 Agreement - Application reference: 2006/0008
Residential Development at Park Street, Wombwell

Please find enclosed a copy of the Section 106 Agreement completed in respect of the above and dated 28th June 2006.

The agreement requires the developer to pay an open space contribution of £67,234 on commencement of the development.

Can Dawn please arrange for the Agreement to be noted in your Planning Register.

Could you please provide me with a copy of the planning permission when issued so that I can pass this to Land Charges.

John Kirkham
for the Borough Secretary.



BARNSELY
Metropolitan Borough Council

DATED 28th June 2006

(1) BARNSELY METROPOLITAN BOROUGH COUNCIL

and

(2) BEN BAILEY HOMES LIMITED

and

(3) MARTYN PATRICK BURKE

AGREEMENT

under Section 106 of the Town and Country Planning Act 1990 (as amended) relating to land and buildings on the south western side of Park Street, Wombwell, Barnsley in the County of South Yorkshire

A.C. Frostdick, LL.B. DipLG,
Borough Secretary,
Town Hall,
Barnsley S70 2TA.

THIS DEED OF AGREEMENT is made the 28th day of June two thousand and six

BETWEEN

- (1) **BARNESLEY METROPOLITAN BOROUGH COUNCIL** of Town Hall Barnsley South Yorkshire S70 2TA ("the Council") of the first part and
- (2) **BEN BAILEY HOMES LIMITED** (company registration number 1043597) of Elizabeth House, Cliff Street, Mexborough, South Yorkshire S64 9HQ ("the Developer") of the second part and
- (3) **MARTYN PATRICK BURKE** of Britannia House 29 Regent Court PO Box 30497 SMB Cayman Islands BWI ("the Owner") of the third part

RECITALS

- (1) The Council is the Local Planning Authority for the purposes of this Agreement for the area within which the Site is situated and is the authority by whom the obligations contained in this Agreement are enforceable.
- (2) The Owner has the freehold interests in the Site registered at HM Land Registry under Title Number SYK504157 and Title Number SYK504300 respectively.
- (3) The Developer has the benefit of the Development Agreement for the purchase of the Property.
- (4) The Council has under the provisions of the Local Government Act 1985 and the Town and Country Planning Act 1990 prepared and published the Unitary Development Plan ("the Development Plan") for the Council's area.
- (5) Having regard to the provisions of the Development Plan and to all other material considerations the Council has resolved to grant planning permission for the Development subject to the Developer and the Owner entering into this Agreement to make provision for regulating the Development and securing the matters herein referred to.



S. Wm.
S.W. Dalt

Date	Revisions	By	Job	Title		
			Park Street, Wombwell	Location Plan		
			Date	Drawn by	Scale	Drawing No.
			24.11.04	RB	1:1250	2361/31
						Revision
						—

Ben Bailey
HOMES LIMITED

Elizabeth House
Cliff Street, Mexborough
South Yorkshire, S64 9HQ
Tel: 01709 586261 Fax: 01709 570006

- (6) The Developer had submitted the Planning Application to the Council for permission to develop the Site for the purposes and in the manner described in the Planning Application
- (7) It is recommended by Policy H6 of the Development Plan (as amended) that new housing development should include provision for at least 15% of the gross site area as public open space and if on site provision is not possible or the Council deems that suitable off site provision would be acceptable a monetary payment equal to the estimated value of any shortfall in the provision should be made to the Council for the provision or extension of facilities elsewhere that can conveniently serve the development ("Open Space and Related Works Contribution").
- (8) The Developer and the Owner have agreed to make a contribution to the Council in lieu of public open space in accordance with the planning policies in the Development Plan.

NOW THIS DEED WITNESSETH AS FOLLOWS:-

Definitions and Interpretation

- 1.1 In this Agreement and for the purposes of the Recitals to this Agreement the following expressions shall where the context admits have the following meanings:

"Act" means the Town and Country Planning Act 1990 as amended

" Agreement" means this agreement;

"Commencement of the Development" means carrying out or beginning to carry out any material operation pursuant to the Planning Permission within the meaning of Section 56 of the Act but excluding a Preparatory Operation or the date specified in a notice served by the Developer

pursuant to clause 3.3 whichever is the earlier and
"Commence" shall have a corresponding meaning;

"Development" means the development permitted by the Planning
Permission;

"Development Agreement" means the agreement between the Owner and the
Developer dated 19 December 2005

"Local Planning Authority" means the Council acting in its capacity as the local
planning authority which expression shall include
where the context so admits its successors in title;

"Month" means calendar month;

**"Open Space and Related
Works Contribution"** means the sum of £67,234 (sixty-seven thousand,
two hundred and thirty four pounds);

"Plan" means the plan annexed and marked "Plan"
incorporated within this Agreement;

"Planning Application" means an application for planning permission in
respect of the Development (Reference Number
2006/0008) registered by the Council on or about **4
January 2006**

"Planning Permission" means a planning permission granted by the Local
Planning Authority pursuant to the Planning
Application substantially in the form of the
Recommendation Sheet annexed as Appendix 1
which expression shall include any amendment or
modification to the said planning permission;

"Preparatory Operation"

means

- (a) an operation or item of work of or ancillary to:
 - (i) archaeological investigations; or
 - (ii) demolition; or
 - (iii) site clearance; or
 - (iv) site or soil investigations; or
 - (v) site remediation works; or
 - (vi) its laying of services;
- (b) temporary works including the erection of temporary fencing and hoardings;

"Site"

means the land and buildings on the south western side of Poole Street, Wombwell, Barnsley, shown edged red on the Plan;

- 1.2 Words including the singular shall include the plural and vice versa and words importing the masculine gender shall include the feminine gender and vice versa
- 1.3 Any reference to a statute statutory instrument or order shall be deemed to include reference to any further statute for the time being in force amending replacing or supplementing such statute and any regulations directions consents orders or instruments made thereunder and all provisions and conditions referred to therein
- 1.4 Any reference to the Site shall include each and every part of it.
- 1.5 The clause headings to this Agreement are for reference only and shall not affect the construction of this Agreement

- 1.6 References in this Agreement to clauses relate to the relevant provisions in respect of this Agreement
- 1.7 The expressions "the Council", "the Developer" and "the Owner" shall include their successors in title and assigns
- 1.8 If any clause of paragraph or sub-clause of this Agreement or any part thereof shall be void or being voidable is avoided or is otherwise unenforceable this shall not effect the operation of any other provision of this Agreement provided that it is severable therefrom.
- 1.9 Obligations undertaken by a party which comprises more than one person shall be deemed to be made by them jointly and severally.
- 1.10 Words importing persons include firms, companies and bodies corporate and vice versa.

Enabling Provisions

2. This Agreement is made pursuant to Section 106 of the Town and Country Planning Act 1990 and all other powers enabling and enactments which may be relevant for the purpose of giving validity hereto and is a planning obligation for the purposes of and as defined in the said Section 106 and the covenants herein contained on the part of the Developer and the Owner are entered into with the intent that the same bind the land and buildings comprising the Site and shall be enforceable by the Council without limit of time not only against the Developer and the Owner but also against their successors in title and any person corporate or otherwise claiming through or under them an interest or estate in the land comprising the Site or any part or parts thereof as if that person had also been an original covenanting party in respect of the interest or estate for the time being held by it.

Developer's and Owner's Covenants

- 3 The Developer and Owner **COVENANT** with the Council as follows:
 - 3.1 the Owner and 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.
 - 3.2 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
 - 3.3 The Developer will serve on the Council fourteen days prior written notice of the Commencement of the Development
 - 3.4 The Developer shall indemnify the Owner for any losses costs claims demands and expenses caused as a result of any breach of the terms of this Agreement

Covenants by the Council

4. The Council as Local Planning Authority covenants with the Owner and Developer to issue the Planning Permission promptly and in any event within seven days of the date of this Agreement.

General

5. It is agreed and declared as follows:

- 5.1 No party or successor in title of a party shall be liable for any breach of a covenant contained in this Agreement after it has parted with its interest in the Site 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 and for the avoidance of doubt the Developer shall have no further liability under this Agreement in the event that the Development Agreement or any lease or licence granted under it is determined.
- 5.2 If the Planning Permission shall expire before the Commencement of the Development or shall at any time be revoked or otherwise modified by any statutory procedure without the consent of the Owner and Developer this Agreement shall forthwith determine and cease to have effect
- 5.3 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 one relating to the Development granted pursuant to the Planning Application) granted (whether or not on appeal) after the date of this Agreement
- 5.4 The Council will upon the written request of the Developer at any time after the obligations of the Developer under this Agreement have been fulfilled issue written confirmation thereof and thereafter cancel all related entries in the register of local land charges
- 5.5 This Agreement is a local land charge and may be registered as such by the Council
- 5.6 No delay or omission on the part of any party to this Agreement in exercising any right, power or remedy provided by law or under this Agreement shall:
- (i) impair such right, power or remedy; or
 - (ii) operate as a waiver thereof.
- 5.7. The single or partial exercise of any right, power or remedy provided by law or under this Agreement shall not preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

- 5.8 The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers and remedies provided by law.
- 5.9 The covenants on the part of the Owner and Developer shall not be enforceable against individual purchasers lessees or mortgagees of dwellings approved pursuant to the Planning Permission for the Development or against statutory undertakers in relation to any parts of the Site acquired by them for electricity stations gas governor stations or pumping stations.

Interest on overdue payments

- 6 If any payment due under any of the provisions of this Agreement is not made on or before the date on which it is due ('the Due Date') the party from whom it was due shall at the same time as making the payment pay to the other party interest at 3 per cent per annum above the median base rate of Barclays Bank plc as at the Due Date for the period starting with the Due Date and ending with the date on which payment of the sum on which interest is payable is made.

Notice

7. Any notice given pursuant to this Agreement shall be in writing and shall be sufficiently given to any party if sent in a letter by recorded delivery addressed to that party at the address of that party set out at the head of this Agreement (or any alternative address notified by that party in accordance with this clause) and any notice so given shall be deemed unless the contrary is proved to have been effected at the time at which the letter would be delivered in the ordinary course of post

Legal Expenses

- 8 The Developer shall pay to the Council on the execution of this Agreement the Council's reasonable costs incurred in the preparation and settlement of this Agreement in the sum of £250

Third Party Rights

9. Any person who is not a party to this agreement shall have no rights under the Contract (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

Consents

10. Any consent or approval required of or by any party under this agreement:
- 10.1 must be obtained before the act or event to which it applies is carried out or done;
 - 10.2 is to be effective only when such consent or approval is given in writing;
 - 10.3 shall not be unreasonably withheld or delayed.

Coming into effect

11. This Agreement shall be delivered and shall come into effect upon the date of its execution by the parties.

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 BARNESLEY)

METROPOLITAN BOROUGH)

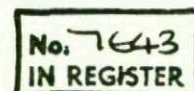
COUNCIL was hereunto affixed to)

this Deed in the presence of:-

Borough Secretary

S. Blane

AUTHORISED
SIGNATORY



EXECUTED as a deed (but not delivered)
until the date hereof) by **BEN BAILEY**)
HOMES LIMITED by the affixing of its)
common seal in the presence of:)

Director

S. Wm.

Director/Secretary

S. W. Daulton

EXECUTED as a deed (but not delivered)
until the date hereof) by **MARTYN**)
PATRICK BURKE in the presence of:)

Witness

EXECUTED as a deed (but not delivered)
until the date hereof) by **BEN BAILEY**)
HOMES LIMITED by the affixing of its)
common seal in the presence of:)

Director

Director/Secretary

EXECUTED as a deed (but not delivered)
until the date hereof) by **MARTYN**)
PATRICK BURKE in the presence of:)



M. P. BURKE

Witness **VALRIE V. GRIFFITHS**
1548 SHAMROCK ROAD.
SAVANNAH, GEORGETOWN
GRAND CAYMAN

V. V. Griffiths

Appendix 1
Recommendation Sheet

RECOMMENDATION SHEET

App. No 2006/0008

Applicant:

Ben Bailey Homes Ltd
Elizabeth House
Cliff Street
Mexborough
S Yorks
S64 9HQ

Agent:**Description:**

Erection of 51 dwellings and conversion
of 'The Grange' into 12 apartments.

Location:

Land off Park Street (MP Burke site and
The Grange)
Wombwell
Barnsley
S Yorks
(between 76-82 Park Street)

Outline:**Recommendation: Approve with Conditions****Conditions:**

- 1 The development hereby permitted shall be begun before the expiration of 3 years from the date of this permission.
Reason: In order to comply with the provision of Section 91 of the Town and Country Planning Act 1990.
- 2 The development hereby approved shall be carried out strictly in accordance with the plans and specifications as approved unless prior written consent has been given by the Local Planning Authority to any variation:
Reason: In the interests of the visual amenities of the locality and in accordance with UDP Policy BE6, Design Standards.
- 3 The development hereby approved shall be carried out in strict accordance with the amended plans and specifications that follow unless prior written consent has been given by the Local Planning Authority to any minor variation:

Site Layout 2361/01 Rev C received 24 March 2006

Sewer Layout received 2361/PSL received 26 January 2006

1.8m High Screen Fence (2005 specification) received 27 February 2006

1.8m High Pier and Panel Wall with Fence (2005 specification) received 27 February 2006

Landscape Layout 2361/11 Rev A received 24 March 2006

Signed**Date****Committee****Delegated****Signed****Principle Planning Officer****Date****Signed****Development Control Manager****Date****Sub-Committee****Section****Date**

Woodland, Hedgerows and Trees and GS22A.

- 12 All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which die within a period of 5 years from the completion of the development, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with other of similar size and species, unless the Local Planning Authority give written consent to any variation.
Reason: In the interests of the visual amenities of the locality.
- 13 Prior to the commencement of development, existing trees on site (except those shown to be removed on the approved plan) shall be protected by a chestnut pale and scaffold fence erected around the trees' canopies to British Standard 5837. Thereafter no excavations, tipping or storage of materials shall take place within the fenced area.
Reason: To safeguard existing trees, in the interests of the visual amenity.
- 14 All on-site vehicular areas shall be hard surfaced and drained in an approved manner prior to the development being brought into use, to prevent mud/debris from being deposited on the public highway to the detriment of road safety.
REASON: In the interests of road safety.
- 15 Pedestrian intervisibility splays, having the dimensions 2 m x 2 m, shall be safeguarded at the drive entrance/exit such that there is no obstruction to visibility at a height exceeding 600 mm above the nearside channel level of the adjacent highway.
REASON: In the interests of road safety.
- 16 The parking/manoeuvring facilities, indicated on the submitted plan, shall be provided prior to the development being brought into use and shall be retained for that sole purpose at all times.
REASON: In the interests of road safety.
- 17 Visibility splays, having the dimensions 2.4 m x 90 m shall be safeguarded at the junction of Park Street with the access road, such that there is no obstruction to visibility and forming part of the adopted highway.
REASON: In the interests of road safety.
- 18 Development shall not commence until arrangements have been entered into, to secure such works to mitigate the effect of the development and such works shall be completed prior to the development being brought into use. Such works shall comprise of:-

a) Provision of 2 m wide footway along the entire site frontage

Signed

Date

Committee

Delegated

Signed

Principle Planning Officer

Date

Signed

Development Control Manager

Date

Sub-Committee

Section

Date

Reason: For the avoidance of doubt as amendments have been submitted during the course of processing the application and in accordance with UDP Policy BE6, Design Standards.

- 4 No development shall take place until full details of the proposed external materials have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

Reason: In the interests of the visual amenities of the locality and in accordance with UDP Policy BE6, Design Standards.

- 5 The development shall proceed in accordance with the approved proposed ground levels, finished floor levels of all dwellings and associated structures and road levels as shown on drawing number 2361/SECTION.

Reason: To safeguard the amenities of the residents of 76 Park Street in accordance with UDP Policy H8A and SPG2.

- 6 Prior to the commencement of development, report endorsed by a competent engineer experienced in ground contamination, shall be submitted to the local Planning Authority for approval. The reports shall, amongst other matters, address the following:-

1. Detailed Quantified Risk Assessment regarding both human and controlled water receptors, to assess the exposure risks to the contamination that exist on the site.

2. Remediation Method Statement to show how the remediation objectives will be achieved.

3. The subsequent validation that the site has been satisfactorily remediated and that the development of the site can be safely undertaken and occupied.

The development shall thereafter be undertaken in full accordance with the submitted reports.

Reason: To protect the environment and ensure the site is suitable for the proposed use.

- 7 Prior to the commencement of any development details of how the surface water discharges to the public sewer will be restricted to the level of run-off (i.e same point(s) and rate(s) of discharge from the previous use of the site) will be submitted to and approved by the Local Planning Authority.

Reason: To demonstrate that the site can be suitably drained

- 8 The site shall be developed with separate systems of drainage for foul and surface water.

Reason: In the interests of satisfactory drainage.

- 9 A detailed management plan for the landscaped areas around the Grange and details of the management company who will maintain the areas shall be submitted to and approved by the Local Planning Authority prior to the occupation of any of the Grange apartments.

Reason: To ensure the maintenance of open space within the site.

- 10 The boundary treatment shown on the approved plans shall be completed before any adjacent buildings are occupied. Development shall be carried out in accordance with the approved details and shall thereafter be retained.

Reason: In the interests of the visual amenities of the locality and the amenities of occupiers of adjoining property and in accordance with U.D.P. Policy BE6, Design Standards.

- 11 No hedges or trees on the site (except those shown to be removed on the approved plan), or their branches or roots, shall be lopped, topped, felled, or severed.

Reason: To safeguard existing trees/hedges, in the interests of the visual amenities of the locality and in accordance with UDP Policies GS22,

- b) Relocation/provision of any necessary street furniture including signs, lighting columns etc
 - c) Any necessary alterations to drainage
 - d) Any necessary alterations to lining and Traffic Regulation Orders
- REASON: In the interests of road safety.

- 19 Development shall not commence until details of measures to prevent mud/debris from being deposited to the public highway to the detriment of road safety, have been submitted to and approved in writing by the Local Planning Authority, and such measures shall be retained for the entire construction period.
REASON: In the interests of road safety.
- 20 Development shall not commence until details of all areas for the parking of all employees' vehicles, the storage of building materials and plant have been submitted and approved in writing by the Local Planning Authority and such facilities shall be retained for the entire construction period.
REASON: In the interests of road safety.
- 21 Development shall not commence until details of the siting of the sales cabin and parking for staff and customers visiting the site, have been submitted and approved in writing by the Local Planning Authority and such facilities shall be retained for the entire construction period.
REASON: In the interests of road safety.
- 22 Prior to any works commencing on-site, a condition survey (including structural integrity) of the highways to be used by construction traffic shall be carried out in association with the Local Planning Authority. The methodology of the survey shall be approved in writing by the Local Planning Authority and shall assess the existing state of the highway. On completion of the development a second condition survey shall be carried out and shall be submitted for the written approval of the Local Planning Authority, which shall identify defects attributable to the traffic ensuing from the development. Any necessary remedial works shall be completed at the developers expense in accordance with a scheme to be agreed in writing by the Local Planning Authority.
REASON: In the interests of road safety.
- 23 Vehicular and pedestrian gradients within the site shall not exceed 1:12 to ensure safe and adequate access.
REASON: In the interests of road safety.
- 24 Development shall not commence until details of the means of access for construction traffic have been submitted to and approved in writing by the Local Planning Authority and such an access shall be retained for the entire construction period.
REASON: In the interests of road safety.

Reason(s) for Granting Permission
DecPolicy_table

Informative(s)

1	The decision to grant planning permission has been taken having regard to the
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policies and proposals in the Barnsley Unitary Development Plan set out below and to all relevant material considerations, including Supplementary Planning Guidance:

UDP Policy H8A - Residential Developments

UDP Policy GS22A - Trees

UDP Policy T2A - Access and road layouts

SPG2 - The Design and Layout of Residential Development

SPG9 - Trees

SPG32 - Parking

The site lies within a Housing Policy Area wherein residential development is acceptable in principle.

The application will secure improvements to the access and also give the Council the opportunity to discontinue the commercial use of the site.

The proposals provide adequate separation between the new development and existing dwellings in accordance with UDP Policy H8A and SPG2.

The overall design and layout is acceptable.

The proposals provide sufficient separation from the protected trees.

This informative is only intended as a summary of the reason for granting planning permission. For further details on the decision please refer to the application file, by contacting 01226 772593.

Signed

Date

Committee

Delegated

Signed

Principle Planning Officer

Date

Signed

Development Control Manager

Date

Sub-Committee

Section

Date