

DATED

4th July

2018

BARNSELY METROPOLITAN BOROUGH COUNCIL (1)

-and-

LEEDS AND YORKSHIRE HOUSING ASSOCIATION LIMITED (2)

AGREEMENT

under Section 106 of the Town and Country Planning Act 1990 (as amended)

relating to land at Catherine's Walk Athersley, Barnsley S71 3TP

THIS AGREEMENT (signed as a deed) is made the 4th day of July 2018

BETWEEN: -

- (1) **BARNSELY METROPOLITAN BOROUGH COUNCIL** of Smithies Lane Depot, Smithies Lane, Barnsley S71 1NL ("Council") of the first part; and
- (2) **LEEDS AND YORKSHIRE HOUSING ASSOCIATION LIMITED** a registered society under the Co-operative and Community Benefit Societies Act 2014 (Registration Number 14238R) of 2 Shire Oak Road Leeds LS6 2TN (hereinafter referred to as "the Owner")

1 DEFINITIONS AND INTERPRETATION

1.1 In this Agreement the following expressions shall have the following meanings:

DEFINITIONS

GENERAL DEFINITIONS

"1990 Act"	means the Town and Country Planning Act 1990 as amended;
"Affordable Housing"	means subsidised housing that will be available to persons who cannot afford to rent or buy housing generally on the open market and which has the same meaning given to it in annex 2 of the National Planning Policy Framework;
"Affordable Housing Unit"	Means any individual Dwelling (whether house, bungalow or apartment) constructed on the Property
"Chargee"	means any mortgagee or chargee of the Owner 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;
"Commencement of Development"	means the date upon which the Development shall commence by the carrying out on the Land pursuant to the Planning Permission of a material operation as specified in Section 56(4) of the 1990 Act Save That the term " <i>material operation</i> " shall not include operations in connection with any work of or associated with demolition site clearance

remediation works environmental investigation site and soil surveys erection of contractors work compound erection of site office erection of fencing to site boundary and reference to **"Commence Development"** shall be construed accordingly;

"Development"

means the development of the Land in accordance with the Planning Permission;

"Dwellings"

means the 54 residential units that may be built on the Land as part of the Development and reference to **"Dwelling"** shall be construed accordingly;

"Education Contribution"

means the sum of £110,040.00 (one hundred and ten thousand and forty pounds) Index Linked to be paid by the Owner to the Council as its contribution towards the provision of and/or improvement to primary school educational facilities that serve pupils living in St Helen's Ward ;

"Head of Planning and Building Control Services"

means the Head of Planning and Building Control Services of the Council for the time being or such other officer of the Council nominated by him or her for the purposes of this Agreement;

"Index"

means the 12 month percentage change in the All Items Retail Price Index published by the Office for National Statistics contained in the Monthly Digest of Statistics (or contained in any official publication substituted therefore) or such other index as may from time to time be published in substitution therefore;

"Index Linked"

means such increase to sum or sums payable to the Council under this Agreement on an annual basis or pro rata per diem from the date of this Agreement to the date of payment based upon the specified Index last published before the date of the decision to approve the grant of Planning Permission or any publication substituted for it;

"Interest Rate"	means interest at four per cent above the base rate of the Bank of England from time to time and in every case compounded on the first day of June and December in each year;
"Land"	means all that land at Catherine's Walk Athersley Barnsley shown for identification purposes only edged red on Plan 1;
"National Planning Policy Framework"	means the National Planning Policy Framework as published in March 2012 by the Department for Communities and Local Government (or any future guidance or initiative that replaces or supplements it);
"Occupation" and "Occupy"	means occupation for the purposes permitted by the Planning Permission 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 the expression "Occupants" shall be construed accordingly;
"Plan 1"	means the plan attached to this Agreement and marked "Plan 1";
"Planning Permission"	means the planning permission for residential development of up to 54 Dwellings given the planning reference number 2017/1539;
"Protected Tenant"	means 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; or (b) has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Housing Unit; or (c) has been granted a shared ownership lease by a

Registered Provider (or similar arrangement where a share of the Affordable Housing Unit is owned by the tenant and a share is owned by the Registered Provider) in respect of a particular Affordable Housing Unit and the tenant has subsequently purchased from the Registered Provider all the remaining shares so that the tenant owns the entire Affordable Housing Unit;

"Registered Provider"

means a registered provider as defined by the Housing and Regeneration Act 2008 (or as redefined by any amendment, replacement or re-enactment of such Act) and registered under the provisions of the Housing and Regeneration Act 2008 or any company or other body approved by the Homes and Communities Agency for receipt of social housing grant approved by the Council;

"Statutory Undertaker"

means any company corporation board or authority at the date of this Agreement authorised by statute to carry on an undertaking for the supply of telephone and television communications electricity gas water or drainage and any authorised successor to any such undertaking;

"Working Day"

means a weekday (Saturdays, Sundays and public holidays and the days between Christmas Day and New Year's Day excepted) and reference to "Working Days" shall be construed accordingly.

1.2 Where the context so requires:

- 1.2.1 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;
- 1.2.2 References to any party in this Agreement shall include the successors in title and assigns of that party and in the case of the Council shall include any successor local planning authority exercising planning powers under the 1990 Act;

- 1.2.3 Where a party includes more than one person any obligations of that party shall be joint and several;
- 1.2.4 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;
- 1.2.5 A reference to an Act of Parliament refers to the Act as it applies at the date of this Agreement and any later amendment or re-enactment of it and any regulations or statutory instrument made under it;
- 1.2.6 References to clauses paragraphs and schedules are references to clauses paragraphs and schedules to this Agreement and are for reference only and shall not affect the construction of this Agreement; and
- 1.2.7 Clause headings are for reference only and shall not affect the construction of this Agreement.

2. RECITALS

- 2.1 By virtue of the 1990 Act the Council is the local planning authority for the purposes of this Agreement for the area in which the Land is situated and is the Authority by whom the planning obligations hereby created are enforceable.
- 2.2 The Owner is entitled to be registered as the registered proprietor with absolute title of the Land registered at HM Land Registry under Title Number SYK545109.
- 2.4 The Council would not grant planning permission for the Development unless the planning obligations contained herein were entered into by the Owner.
- 2.5 The Owner by entering into this Agreement does so to create planning obligations in respect of the Land and each part of it in favour of the Council pursuant to Section 106 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 Agreement is a planning obligation made in pursuance of Section 106 of the 1990 Act and to the extent that the covenants in this Agreement are not made under Section 106 of the 1990 Act they are made under Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other powers so enabling.

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

3.2.1 the Planning Permission has been granted; and

3.2.2 (except where stated otherwise in this Agreement) the Commencement of Development.

3.3 Subject to clause 3.2: -

3.3.1 The Owner hereby covenants with the Council that the Land shall be permanently from the date hereof bound by and subject to the restrictions and provisions regulating the Development and use thereof specified in the First Schedule and the Developer acknowledges that its interest in the Land will be bound by the planning obligations in the First Schedule; and

3.4 It is agreed and declared as follows: -

3.4.1 No party shall be bound by the terms of this Agreement or be liable for the breach of any covenants restrictions or obligations contained in this Agreement: -

(i) occurring after he or it has parted with his or its 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);

(ii) if he shall be an individual occupier or tenant of any of the Dwellings or a purchaser of an individual Dwelling;

(iii) if it is a Statutory Undertaker which has an interest in any part of the Land for the purposes of its undertaking.

3.4.2 Any dispute arising between the parties as to their respective rights duties or obligations or as to the failure of the Council to give or confirm its consent where required under this Agreement or as to any other matter or thing arising out of or connected with the subject matter of this Agreement or any failure to agree upon any matter may be referred in accordance with clauses 3.4.3 and 3.4.4 to the determination of a person ("Expert").

3.4.3 Any reference to an Expert in accordance with clause 3.4.2 shall be to a reputable person unconnected to any of the parties hereto and experienced in matters to which

the subject matter of the dispute relates and who shall be agreed between the parties to the dispute or appointed on the application of any party to the dispute made at any time by the President of the Law Society and the decision of the Expert shall be final and binding upon the parties to the dispute and the parties hereby agree to act in accordance with the decision (save for manifest error).

- 3.4.4. Each of the parties to the dispute referred to an Expert pursuant to clause 3.4.3 shall be entitled to submit to the Expert representations and cross representations with such supporting evidence as they shall consider necessary and the Expert shall have regard thereto in making his decision which he shall deliver in writing as expediently as possible and the reference to him shall include authority to determine in what manner all the costs of the referral (whether incurred by the parties to the dispute or the Expert himself) shall be paid.
- 3.4.5 Where any notice or confirmation is to be served on the Council under the terms of this Agreement such notice or confirmation shall be sent to Head of Planning and Building Control Services at Barnsley Metropolitan Borough Council, Westgate Plaza One, PO Box 600, Barnsley, S70 9EZ, quoting the Application reference number 2017/1539.
- 3.4.6 If the Planning Permission shall expire before the Commencement of Development or shall at any time be modified (without the consent of the Owner) or revoked this Agreement shall terminate and cease to have effect and the Council shall upon written request remove any entry relating to this Agreement from the Register of Local Land Charges.
- 3.4.7 Nothing in this Agreement shall be construed as restricting the exercise by the Council of any power or discretion exercisable by it under the 1990 Act or under any other Act of Parliament nor prejudicing or affecting the Council's rights powers duties and obligations in any capacity as a local or public authority.
- 3.4.8 The obligations hereby created shall be registered as a Local Land Charge.
- 3.4.9 No person who is not a party to this Agreement may enforce any terms hereof pursuant to the Contracts (Right of Third Parties) Act 1999 provided that this clause shall not affect any right of action of any person to whom this Agreement has been lawfully assigned or becomes vested in law.

- 3.4.10 Nothing in this Agreement 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 after the date of this Agreement.
- 3.4.11 The Owner shall pay to the Council its reasonable legal fees of £1000 incurred in the preparation negotiation and completion of this Agreement.
- 3.4.12 Wherever this Agreement requires the approval agreement determination or consent of the Council or the Owner such approval agreement determination or consent is not to be unreasonably withheld or delayed.
- 3.4.13 If the Council does not receive payment of any money due under this Agreement on the due date the Owner will pay interest on the money concerned to the Council at the Interest Rate from the due date until the date of actual receipt by the Council provided that this sub-clause shall not prejudice any other right or remedy of the Council for the recovery of any money due.

IN WITNESS whereof the parties hereto have executed this Agreement on the day and year first before written

FIRST SCHEDULE
("the Owner's Covenants")

The Owner hereby covenants with the Council: -

1. AFFORDABLE HOUSING

Affordable Housing Provision

1.1 The Dwellings shall not be used or Occupied other than as Affordable Housing and further this obligation shall not be binding on:

1.1.1 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 charges;

1.1.2 any Chargee provided that the Chargee shall have first complied with the obligations at paragraph 1.2 of this Schedule; or

1.1.3 any purchaser from a mortgagee of an individual Dwelling pursuant to any default by the individual mortgagor.

1.2 A Chargee shall prior to seeking to dispose of any Dwelling pursuant to any default under the terms of its mortgage or charge give not less than 30 Working Days prior notice to the Council of its intention to dispose and:

1.2.1 in the event that the Council responds within 30 Working Days from receipt of the notice indicating that arrangements for the transfer of the Dwellings 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 subject to the proviso at the end of this paragraph 1.2;

1.2.2 if the Council does not serve its response to the notice served under paragraph 1.2.1 of this Schedule within 30 Working Days then the Chargee shall be entitled to dispose of the Dwellings free of the restrictions set out in paragraph 1.1 above;

1.2.3 if the Council or any other person cannot within 30 Working Days of the date of service of its response under paragraph 1.2.1 of this Schedule secure such transfer then provided that the Chargee shall have complied with its obligations under paragraph 1.2 of this Schedule the Chargee shall be entitled to dispose free of the

restrictions set out in paragraph 1.1 above and the obligations in paragraph 1.1 shall no longer be binding on the Property.

PROVIDED THAT at all times the rights and obligations in this paragraph 1.2 shall not require the Chargee to act contrary to its duties under the charge or mortgage and that the Council must have regard and give due consideration to protecting the interest of the Chargee in respect of moneys outstanding under the charge or mortgage.

2. EDUCATION CONTRIBUTION

- 2.1 To pay to the Council upon Commencement of Development the Education Contribution as Index linked.

IN WITNESS whereof the parties hereto have executed this Deed 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:-)

Executive Director Core Services/

Legal Services Director/

Authorised Signatory

PRB 20/2/18 MW 106



EXECUTED as a Deed by
Affixing the Common Seal of
LEEDS AND YORKSHIRE
HOUSING ASSOCIATION
LIMITED

)
)
)
)
)

Authorised Signatory

Authorised Signatory

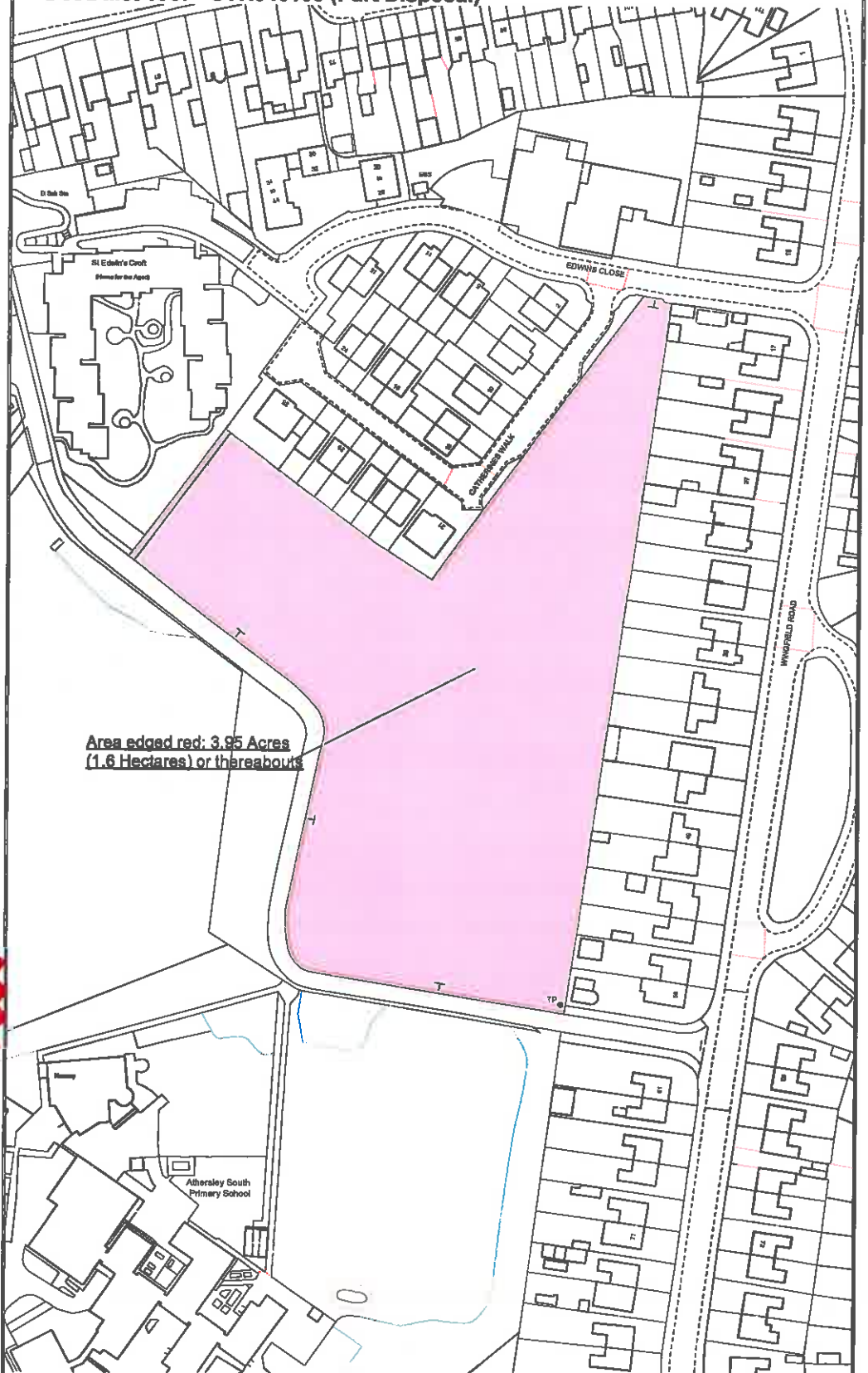


**PLAN REFERRED TO:
ATHERSLEY SOUTH**

Deed Met 1957 - SYK545109 (Part Disposal)



Telegraph Pole:
A right to use, maintain, renew and
services connected thereto



Area edged red: 3.95 Acres
(1.6 Hectares) or thereabouts



[Handwritten signatures in blue ink]



Strategic Property and Procurement/Asset Management
PO Box 634, Barnsley, S70 9GG

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Scale 1: 1,250

Plan No: ELH347.A

Date: 20/09/2017

