

DATED 22nd November 2022

BARNSELY METROPOLITAN BOROUGH COUNCIL

And

J & K BUILDING SERVICES UK LTD

AGREEMENT

under Section 106 of the Town and Country Planning Act 1990 relating to land
to the rear of Lesmond Crescent, Middlecliffe, Barnsley, S72 0EZ.

,
Jason Field,
Head of Legal Services
Barnsley Metropolitan Borough Council
Town Hall, Barnsley, S70 2TA.

THIS DEED OF AGREEMENT is made the 22nd day of November
Two Thousand and Twenty Two

BETWEEN

(1) **BARNSELY METROPOLITAN BOROUGH COUNCIL** of Town Hall
Barnsley South Yorkshire S70 2TA ("the Council") of the first part, and

(2) **J & K BUILDING SERVICES UK LTD** (Co. Regn. No. 10406124) of 4
King Street, Horbury, Wakefield, WF4 5PH, ("the Owner") of the second part,

RECITALS

(1) The Council is the Local Planning Authority for the purposes of this Agreement for the area within which the land described in the First Schedule hereto ("the Land") is situated and is the Authority by whom the obligations contained in this Agreement are enforceable

(2) The Owner is the registered proprietor of the Land registered under Land Registry Title Numbers SYK539776 and SYK675002

(3) The Owner submitted the Applications to the Council seeking Planning Permission for the Development.

(4) The parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Agreement and agree that the obligations comply with regulation 122 of the Community Infrastructure Levy Regulations 2010.

NOW THIS DEED WITNESSETH AS FOLLOWS:-

DEFINITIONS

1 For the purposes of this Deed the following expressions shall have the following meanings

“the 1990 Act” means the Town and Country Planning Act 1990 (as amended)

Biodiversity Contribution means the sum of £16,750 (Sixteen thousand seven hundred and fifty pounds) to be applied by the Council towards biodiversity gain outside the Land in order to meet the Biodiversity Shortfall

Biodiversity Shortfall means the extent of biodiversity loss of 0.67 units arising from the Development as calculated in accordance with the DEFRA Biodiversity Metric which is not met as determined by the Council

“the Application” means the planning application with the reference number 2020/1473 submitted to the Council for the Development.

“the Commencement of Development” means the actual date upon which the Development is begun by the carrying out of any material operation as defined by Section 56(4) of the Town and Country Planning Act 1990 and “Commence Development” is to be construed accordingly

“the Development” means the development of the Land in accordance with the Planning Permission to construct 5no. dwellings (3no. two storey properties and 2no. bungalows) including garages and private drive.

“Index” means 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 any replacement or modification of such index in force from time to time.

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

“the Land” means the freehold land described in the First Schedule hereto against which this Agreement may be enforced.

“Occupation and Occupied”: means occupation for the purposes permitted by the Planning Permission from which the Development benefits 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 “Occupy” shall be construed accordingly.

“the Plan” means the plan annexed hereto

“the Planning Permission” means the planning permission to be granted pursuant to the Application.

CONSTRUCTION OF THIS DEED

2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.

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.

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 its statutory functions.

LEGAL BASIS

3. This Agreement is made pursuant to section 106 of the Town and Country Planning Act 1990 section 111 of the Local Government Act 1972 section 2 of the Local Government Act 2000 and all other enabling powers and is a planning obligation for the purposes of and as defined in the said Section 106 and the covenants restrictions and requirements imposed on the Owner herein are enforceable by the Council as the local planning authority against the Owner

COMMENCEMENT

4. The provisions of this Deed shall be conditional upon;
- 4.1 the grant of the Planning Permission, and
 - 4.2 the Commencement of the Development.

OWNER AND COUNCIL COVENANTS

5.1 The Owner covenants with the Council as set out paragraph 1.1 to 1.3 inclusive of the Second Schedule

5.2 The Council covenants with the Owner as set out in paragraph 1.4 of the Second Schedule

MISCELLANEOUS

6.1 The Owner shall pay to the Council on completion of this Deed the sum of £1000.00 (on which no VAT shall be payable) in respect of the legal costs of the Council incurred in the negotiation, preparation and execution of this Deed.

6.2 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999

6.3 This Deed shall be registrable as a local land charge by the Council.

6.4 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Council or by the Council from the Owner under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction shall be given on behalf of the Council by the Head of Planning and Building Control and any notices shall be deemed to have been properly served if sent by recorded delivery or special delivery to the principal address or registered office (as appropriate) of the relevant party.

6.5 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall upon receipt of a written request by the Owner effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.

6.6 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.

6.7 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 Land but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

6.8 Nothing in this Deed 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 (whether or not on appeal) after the date of this Deed.

permission is granted in respect of the application (and the Council is satisfied in its absolute discretion that no revised planning obligations are required as a result of such amendment) references to the Planning Permission in this Agreement shall be to both the Planning Permission and a new planning permission granted pursuant to Section 73 of the 1990 Act and this Agreement shall apply to and remain in full force in respect of that new planning permission without the need for a further agreement to be entered into pursuant to Section 106 of the 1990 Act.

6.14 Where any notice or confirmation is to be served on the Owner under the terms of this Agreement such notice or confirmation shall be sent to the address set out at the beginning of this deed or to such other address as the owner may notify the Council in writing.

7. CHANGE IN OWNERSHIP

The Owner covenants with the Council to provide to the Council within fifteen working days' written notice of any change in ownership of any of their interests in the Site (other than related to the disposal of a Dwelling) occurring before all the obligations under this Agreement have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation purchased by reference to a plan.

8. INDEXATION

The Biodiversity Contribution shall be increased by an amount equivalent to the increase in the Index from the date of the Planning Permission until the date on which such sum is payable.

9. INTEREST

If any payment under this Agreement is paid late Interest will be payable from the date payment is due to the date of payment

JURISDICTION

10. This deed is to be governed by and interpreted in accordance with the law of England

IN WITNESS whereof these presents have been duly executed as a Deed by the parties hereto the day and year first before written

FIRST SCHEDULE

All that land to the rear of Lesmond Crescent, Middlecliffe, Barnsley, S72 0EZ
and for the purpose of identification shown edged red on the Plan



LOCATION PLAN
 SCALE 1:1250 (A4)
 LAND TO THE REAR OF; LESMOND CRESCENT, MIDDLECLIFF. BARNSELY, SOUTH YORKSHIRE

SECOND SCHEDULE

1. The Owner covenants:

1.1 To pay the Biodiversity Contribution to the Council in accordance with the following phased stages;

1.2 To pay £8,375 (eight thousand three hundred and seventy five pounds) prior to the Commencement of Development and not to Commence the Development until the said contribution has been paid to the Council.

1.3 To pay the final instalment of £8,375 (eight thousand three hundred and seventy five pounds) prior to the Occupation of any dwellings on the Land and not to cause or permit any dwelling to be Occupied until the said final instalment has been paid to the Council.

1.4 That in the event the Biodiversity Contribution or any part thereof is not expended within 30 (thirty) years of the date of payment then the sum not expended plus interest accrued will be repaid to the Owner or to the Owner's nominee

THE COMMON SEAL of BARNSELY)
METROPOLITAN BOROUGH)
COUNCIL was hereunto affixed to this)
Deed in the presence of:-)

Executive director Core Services/
Legal Services Director /
Authorised Signatory

No. 577
IN REGISTER

EXECUTED as a DEED by)
J & K BUILDING SERVICES UK LTD)
)
acting by a Director:)

Director: ✓

In the presence of;

Witness Signature:

Witness Name:

Witness Address:

Witness Occupation: