

DATED 10th August 2022

BARNSELY METROPOLITAN BOROUGH COUNCIL

And

JOHN DAVID WHITE

And

LLOYDS BANK PLC

A G R E E M E N T

under Section 106 of the Town and Country Planning Act 1990
relating to land at White Bakers Ltd, Charles Street, Worsbrough
Bridge, Barnsley, S70 5AF.

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

THIS DEED OF AGREEMENT is made the ^{10th} day of **August**
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) **JOHN DAVID WHITE** of 3 Cutts Field View, Royston, Barnsley, South Yorkshire S71 4EN ("the Owner") of the second part, and
- (3) **LLOYDS BANK PLC** (Co. Regn. No. 2065) of Pendeford Securities Centre, Pendeford Business Park, Wobaston Road, Wolverhampton WV9 5HZ ("the Mortgagee") 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 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 SYK474937, SYK335731, SYK423745, SYK490924 and SYK408860 subject to the charges in favour of the Mortgagee set out in the charges register of each of the said titles
- (3) The Owner submitted the Applications to the Council seeking Planning Permission for the Development.
- (4) The Mortgagee enters into this agreement for the purposes and as limited by clause 10 of the Agreement

(5) 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)

"the Application" means the planning application with the reference number 2020/1339 submitted to the Council to construct one pair of semi-detached dwellings and associated works

"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 other than operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosures, the display of site notices or advertisements and other than any works to assist in the improvement of the operational nature of the existing site including but not limited to the laying of a culvert and tidying the boundary areas and "Commence Development" is to be construed

accordingly.

"the Development" means the development of the Land in accordance with the Planning Permission

"Dwelling Units" means the apartments or other forms of residential accommodation to be created on the Land pursuant to the Planning Permissions

"Index" means the 12 (twelve) 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;

"Interest" means interest at 4 per cent above the base lending rate of Barclays Bank Plc from time to time or should this rate cease to exist such other bank lending rate as the Council may reasonably nominate

"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.

“Replacement Premises” means the premises detailed in the approved Replacement Premises Report

“Replacement Premises Report” means a written report of the premises which the Owner proposes to locate its bakery business to within the administrative district of the Council comprising the following details; (i) the address, the floorspace and a plan of the premises (ii) the property interest which is proposed to be secured in the said premises. (iii) the date which the Owner proposes to secure the property interest.

Sustainable Travel Contribution means the sum of £9,750 (nine thousand seven hundred and fifty pounds) to be applied towards the improvement or enhancement of sustainable travel in accordance with the Councils Supplementary Planning Document (SPD) on Sustainable travel adopted by the Council in November 2019.

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 planning provisions comprised in this Deed are conditional

upon the Planning Permission been granted and the Commencement of the Development.

OWNER AND COUNCIL COVENANTS

5.1 The Owner covenants with the Council as set out paragraph 1 to 3 inclusive of the Second Schedule

5.2 The Council covenants with the Owner as set out in paragraph 4 of the Second Schedule

MISCELLANEOUS

6.1 The Owner shall pay to the Council on completion of this Deed the fixed 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 and the Council hereby acknowledges receipt of the same.

6.2 The Council confirms that the requirements of Regulation 122 of the Community Infrastructure Levy 2010 relating to the planning obligations herein are satisfied.

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

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

6.5 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.

6.6 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.

6.7 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.

6.8 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.

6.9 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.

6.10 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.

6.11 No person shall be liable for any breach of the planning obligations and other provisions of this Deed if:

- (a) they shall be an occupier or tenant of any dwelling or a purchaser of any dwelling; or
- (b) it is a Statutory Undertaker which has an interest in any part of the Land for the purpose of its undertaking.

6.12 No person shall be bound by any obligations, rights and duties contained in this Deed and/or be liable for any breach of a covenant and/or obligation contained in this Deed after they shall have parted with all interest in the Land or the part in respect of which such obligation relates or such breach occurs but without prejudice to liability of covenant arising prior to parting with their interest.

6.13 Nothing contained in this Deed shall give, or be construed as giving, any rights, privileges, powers or enforceability other than to the Council and to the specific person executing this Deed as the Owner and their respective successors (if any) as defined in this Deed and the provisions of the Contracts (Rights of Third Parties) Act 1999 and any benefits or rights which could arise from it are expressly excluded to the intent that no other third party within the meaning of that Act shall have any rights of enforcement in respect of any matter contained in this Deed.

6.14 This Deed shall cease to have effect (in so far as it has not already been complied with) if the Planning Permission shall be revoked or otherwise withdrawn or (without the consent of

the Owner) it is modified by any statutory procedure or expires prior to the Commencement of the Development and in accordance with clause 6.5 the Council shall forthwith effect the cancellation of all entries made in the register of Local Land Charges in respect of this Deed.

6.15 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 or approval 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 6.16 and 6.17 to the determination of a person ("Expert").

6.16 Any reference to an Expert in accordance with clause 6.15 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).

6.17 Each of the parties to the dispute referred to an Expert pursuant to clause 6.16 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.

6.18 In the event that an application is made pursuant to Section 73 of the 1990 Act for an amendment to the Planning Permission and planning 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.

8 Any sum payable under this deed by the Owner remaining unpaid six months following the date hereof shall be increased by an amount equivalent to the increase in the Index from the date hereof until the date on which such sum is payable.

INTEREST

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

MORTGAGEE CONSENT

10 The Mortgagee acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Land shall be bound by the obligations contained in this Deed and that

the security of the mortgage over the Land shall take effect subject to this Deed PROVIDED THAT the Mortgagee shall otherwise have no liability under this Deed and the provisions in this Deed shall not be binding on the Mortgagee of the whole or any part of the Land or any persons or bodies deriving title through the Mortgagee or Receiver unless it takes possession of the Land in which case it too will be bound by the obligations as if it were a person deriving title from the Owner.

DECLARATIONS

11 The parties agree that:

nothing in this deed constitutes a planning permission or an obligation to grant planning permission; and

nothing in this deed grants planning permission or any other approval, consent or permission required from the Council in the exercise of any other statutory function.

NOTICES

12. 1 Any notice to be given under this deed must be in writing and must be:

(a) delivered by hand; or

(b) sent by pre-paid first class post or other next working day delivery service.

12.2 Any notice to be given under this deed must be sent to the relevant party as follows:

(a) to the Council at Head of Planning, and Building Control at Barnsley Metropolitan Borough Council, Westgate Plaza One, PO Box 600, Barnsley, S70 9EZ, quoting

the Application reference number 2020/1339

(b) to the Owner at 3 Cutts Field View, Royston, Barnsley,
S71 4EW

or as otherwise specified by the relevant party by notice in writing to each other party.

12.3 Any notice given in accordance with clause 11.1 and clause 11.2 will be deemed to have been received:

(a) if delivered by hand, on signature of a delivery receipt or at the time the notice or document is left at the address provided that if delivery occurs before 9.00 am on a Working Day, the notice will be deemed to have been received at 9.00 am on that day, and if delivery occurs after 5.00 pm on a Working Day, or on a day which is not a Working Day, the notice will be deemed to have been received at 9.00 am on the next Working Day; or

(b) if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Working Day after posting.

12.4 A notice given under this deed shall not be validly given if sent by e-mail.

12.5 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

VALUE ADDED TAX

13 All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly

payable

GOVERNING LAW

14. 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.

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

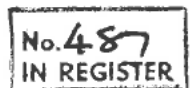
All that land known as Land at White Bakers Ltd., Charles Street, Worsbrough Bridge, Barnsley, S70 5AF. and for the purpose of identification shown edged red on the Plan

SECOND SCHEDULE

1. The Owner shall not Commencement Development until it has submitted to the Council the Replacement Premises Report and the Council has given its approval to the Report in writing.
2. No Dwellings shall be Occupied until the Owner has Occupied the Replacement Premises and has submitted to the Council evidence that the property interest detailed in the Replacement Premises Report has been secured by the Owner.
3. The Owner covenants to pay the Sustainable Travel Contribution to the Council prior to the Occupation of any Dwelling Units and without prejudice to this there is to be no Occupation of any Dwelling Units until the Sustainable Travel Contribution is paid to the Council
4. The Council covenants to repay the Sustainable Travel Contribution to the Owner upon written request if the Contribution has not been expended or committed to be expended within 10 years from its receipt by the Council.
5. The Council covenants to grant the Planning Permission as soon as reasonably practicable following the date of this Deed.
6. The Council covenants that it shall promptly provide written confirmation of the discharge of the obligations contained in this Deed following the payment of the Sustainable Travel Contribution to the Council.

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



EXECUTED AS A DEED

JOHN DAVID WHITE

In the presence of

Witness Signature:

Witness Name:

Witness Address:

Witness Occupation:

Classification: Limited

EXECUTED as a DEED by

)

LLOYDS BANK PLC

)

)

acting by:

)

EXECUTED AS A DEED

SARAH BOOTH

BY CASE HANDLER

Director:

Director/Secretary