

Date

12<sup>th</sup> November 2024

**(1) BARNSELY METROPOLITAN BOROUGH COUNCIL**

**AND**

**(2) BO HOMES (YORKSHIRE) LIMITED**

**DEED OF AGREEMENT**

Pursuant to s106 of the Town and Country Planning Act 1990 relating to land at 402 Pontefract Road, Lundwood, Barnsley, S71 5JZ

Application Reference: 2023/0731

DATED 12<sup>th</sup> November 2024

## **PARTIES**

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

(2) **BO HOMES (YORKSHIRE) LIMITED** (Company Registration Number: 13073732) of 57 Intake Lane, Barnsley S75 2HX (the "Owner").

## **BACKGROUND**

(A) By virtue of the 1990 Act the Council is the local planning authority for the area in which the Site is situated and by who the Planning Obligations hereby created are enforceable.

(B) The Owner is the proprietor of the freehold of the Site which is registered at the Land Registry under Title Number SYK243124.

(D) The Application was submitted to the Council for planning permission for the Development.

(E) The parties have agreed to enter into this Deed in order to secure (subject to the terms and conditions of this Deed) the planning obligations herein.

(F) The parties have given due consideration to the provisions of Regulation 122 of the Community Infrastructure Regulations 2010 (as amended) and agree the planning obligations it contains are: (i) necessary to make the Development acceptable in planning terms; (ii) directly related to the Development; and (iii) fairly and reasonably related in scale and kind to the Development.

## **AGREED TERMS**

### **1. DEFINITIONS AND INTERPRETATION**

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

#### **1990 Act**

the Town and Country Planning Act 1990 (as amended)

#### **Application**

The application for planning permission for the Development which was submitted to the Council and which was given reference number 2023/0731 by the Council.

**Biodiversity Contribution**

means the sum of £35,750 (thirty-five thousand seven hundred and fifty pounds) paid in accordance with Schedule 2 of this Deed and to be used by the Council in lieu of the provision of biodiversity net gain on the Site for the provision of biodiversity net gain outside the Site.

**Commencement of Development**

The date upon which the Development is begun by the carrying out on the Site pursuant to the Planning Permission of a material operation as specified in section 56(4) of the 1990 Act SAVE THAT for the purposes of this Deed the term "material operation" shall not include any operations undertaken in connection with or associated with demolition, site clearance, archaeological investigations, investigations for the purpose of assessing ground conditions, remediation works, environmental investigation, site and soil surveys, diversion and laying of services, erection of a contractor's work compound, erection of a site office, erection of Site access, erection of fencing to the site boundary and/or the temporary display of site notices or advertisements and Commence Development shall be construed accordingly;

**Default Interest Rate**

4% per annum above the base rate from time to time of the Bank of England.

**Development**

the development of the Site pursuant to the Planning Permission;

**Dwelling**

A residential unit that may be built on the Site pursuant to the Planning Permission and the term of Dwellings shall be construed accordingly;

**Expert**

a person of at least 15 years post qualification continual and continuing experience in the subject matter of the dispute.

**Index Linked**

Increased in accordance with the following formula:

(a) Amount payable = the payment specified in this Deed x (A/B)

(b) A = the figure for the Retail Price Index published by the Office for National Statistics that applied immediately preceding the date the payment is due; and

(c) B = the figure for the Retail Price Index published by the Officer for National Statistics that applied when that index was last published prior to the date of this Deed,

**National Planning Policy Framework / NPPF**

the National Planning Policy Framework (as redefined by any amendment, replacement or re-enactment thereof);

**Plan**

The plan annexed to this deed with drawing number 08 Rev B.

### **Planning Obligation**

The obligations and conditions and stipulations set out at Schedule 2 of this Deed and the term Planning Obligations shall be construed accordingly;

### **Planning Permission**

The outline planning permission that may be granted pursuant to the Application for the Development;

### **Site**

All that site known as land at 402 Pontefract Road, Lundwood, Barnsley, S71 5JZ registered under title number SYK243214 and shown edged red on the Plan;

### **Statutory Undertaker**

Any company corporation board or authority authorised by statute to carry out an undertaking for the supply of telephone or television communications, electricity, gas, water, or drainage and any authorised successor to any such undertaking and any company, corporation, board or authority of a similar or like nature;

### **Working Day**

Any day from Monday to Friday inclusive which is not Christmas Day, Boxing Day, Good Friday, Easter Monday or a Statutory Bank Holiday.

1.2 Reference in this Deed to any enactment shall be construed as a reference to that enactment as amended extended or re-enacted or repealed by or under any other enactment and shall include all instruments orders and regulations for the time being made, issued or given under that enactment.

1.3 Words importing one gender shall be construed as importing any gender and words importing the singular shall be construed as importing the plural and vice versa.

1.4 Any words denoting natural persons shall include legal persons and vice versa.

1.5 Reference to clauses paragraphs and schedules are references to clauses paragraphs and schedules to this Deed.

1.6 The expression Owner shall include their successors in title and assigns.

1.7 The expression Council shall include any successor authority to its statutory functions under the 1990 Act.

1.8 Where a party includes more than one person any obligations of that party shall be joint and several.

1.9 Clause headings shall not affect the construction of this Deed.

1.10 Any phrase introduced by the terms 'including' 'include' 'in particular' or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

## **2. STATUTORY BASIS**

2.1 The Deed secures planning obligations made pursuant to section 106 of the 1990 Act, s111 of the Local Government Act 1972, Section 1 of the Localism Act 2011 and any other enabling powers and is enforceable pursuant to section 106(3) of the 1990 Act against the Owner and any person deriving title to the Site (or any part or parts thereof) from the Owner as if that person had been an original covenanting party to this Deed (subject always to for the avoidance of any doubt to the terms and conditions of this Deed).

2.2 This Deed is enforceable by the Council as local planning authority for the purposes of the 1990 Act.

### **3. CONDITIONS PRECEDENT**

3.1 This Deed is conditional upon and does not become effect unless and until the Planning Permission is granted.

### **4. COVENANTS AND DECLARATIONS**

4.1 The Owner covenants with the Council to comply with the Planning Obligations in this Deed at Schedule 2.

4.2 The Council covenants with the Owner to comply with the obligations in this Deed at Schedule 3.

### **5. EXCLUSIONS AND RELEASE**

5.1 No person shall be bound by the terms of this Deed or be liable for the breach of any Planning Obligation:

5.1.1 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 prior to parting with such interest);

5.1.2 if it is a Statutory Undertaker which has an interest in any part of the Site for the purposes of its undertaking; or

5.1.3 if that party is an owner or occupier of an individual Dwelling (subject to any provisions in Schedules 2 or 5 which are intended to specifically bind an owner or occupier of an individual Dwelling);

5.2 If the Planning Permission:

5.2.1 expires before the Commencement of Development; or

5.2.2 is quashed by a court; or

5.2.3 is at any time revoked or modified (without the consent of the Owner),

this Deed shall determine and cease to have effect.

5.3 No obligation in this Deed shall be binding on or enforceable against any chargee or mortgagee from time to time who shall have the benefit of a charge or mortgage of or over any part of the Site unless and until such chargee or mortgagee has taken or entered into possession of the Site of part thereof in which case it shall also be bound by the covenants restrictions and obligations in this Deed as if it were a person deriving title from an original covenanting party.

5.4 No obligation in this Deed shall be binding or enforceable against any person who does not have an interest in the part of the Site to which the obligation relates.

### **6. REGISTRATION**

6.1 The Deed is a local land charge and shall be registered as such by the Council.

6.2 Following either:

6.2.1 the performance and satisfaction of all the Planning Obligations contained in this Deed; or

6.2.2 the determination of this Deed in accordance with Clause 5.2

the Council shall upon the written request of the Owner as soon as reasonably practicable affect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.

### **7. OWNERSHIP**

7.1 The Owner warrants that no person other than the Owner has any legal or equitable interest in any part of the Site.

### **8. NON-FETTER AND WAIVER**

8.1 Nothing in this Deed restricts or is intended to restrict the proper exercise at any time by the Council of any of its statutory powers functions or discretions.

8.2 No waiver (whether express 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 from acting upon any subsequent breach or default.

## **9 FUTURE PERMISSIONS**

9.1 Subject to 9.2 nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted before or after the date of this Deed.

9.2 In the event that any new planning permission(s) are granted by the Council derived from the Planning Permission pursuant to section 73 of the 1990 Act and unless otherwise agreed by the parties:

(a) the Planning Obligations in this Deed shall relate to and bind any subsequent planning permission(s) in respect of the Site granted pursuant to section 73 of the 1990 Act and the Site itself; and

(b) the definitions of Application, Development and Planning Permission in this Deed shall be construed to include reference to any such application under section 73 of the 1990 Act, the planning permissions granted thereunder and the development permitted by such subsequent planning permission(s)

PROVIDED THAT nothing in this clause shall fetter the discretion of the Council in determining any application(s) under section 73 of the 1990 Act or the appropriate nature and quantum of s106 obligations in so far as they are materially different to those contained in this Deed and required pursuant to a determination under section 73 of the 1990 Act whether by way of new deed or supplemental deed pursuant to s106 of the 1990 Act and FURTHER PROVIDED (for the avoidance of any doubt) that this clause 9.2 and the operation of it shall not ever require the duplication of any of the Planning Obligations in this Deed.

## **10. INTEREST**

If any sum or amount has not been paid to the Council by the date it is due then the sum payable shall attract interest on that sum or amount at the Default Interest Rate and such interest shall accrue on a daily basis for the period from the due date to and including the actual date of payment.

## **11. INDEXATION**

11.1 The Biodiversity Contribution payable to the Council shall be Index Linked.

11.2 Where reference is made in this Deed to an index, and that index ceases to exist or is replaced or rebased, then such reference shall be deemed to include any replacement or rebased index or, in the event the index is not replaced, to such alternative reasonably comparable index as the Council shall advise the Owner in writing.

## **12. VAT**

All payments given in accordance with this Deed shall be exclusive of any value added tax properly payable.

## **13. SEVERANCE**

If any provision in this Deed shall in whole or in part be held to be invalid, illegal or unenforceable under any enactment or rule of law such provisions shall to the extent required be severed from this Deed and shall not affect the validity or enforceability of the remaining provisions of this Deed.

#### **14. CHANGE OF OWNERSHIP**

The Owner agrees with the Council to give the Council written notice within 10 Working Days of any change in proprietorship of any of its interests in the Site occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (of a company or usual address if not) together with the area of the Site purchased by reference to a plan PROVIDED THAT this obligation shall not apply to a disposal of individual Dwellings.

#### **15. NOTIFICATION**

15.1 Any notice, request, demand or other written communication to be given or served under this Deed must be in writing and must be:

15.1.1 delivered by hand; or

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

15.2 Any notice, request, demand or other written communication to be given or served under this Deed must be sent to the relevant party as follows:

15.2.1 to the 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;

15.2.2 to the Owner at C/O Bury & Walkers LLP, Britannic House, Regent Street, Barnsley, S70 2EQ.

or as otherwise specified by the relevant party by notice in writing to each other party whether or not in accordance with Clause 15.

15.3 Any notice, request, demand or other written communication given or served in accordance with Clause 15.1 or Clause 15.2 shall be deemed to have been received:

15.3.1 if delivered by hand, on signature of a delivery receipt provided that if delivery occurs after 5.00pm on a Working Day, or on a day which is not a Working Day, the notice shall be deemed to have been received at 9.00am on the next Working Day; or

15.3.2 if sent by pre-paid first class post or other next working day delivery service, on the Working Day after posting.

15.4 A notice, request, demand or other written communication given under this Deed shall not be validly given if sent by e-mail.

15.4 This Clause 15 does not apply to the service of any proceedings or other documents in any legal action.

#### **16. DISPUTE RESOLUTION**

16.1 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Council under the terms of this Deed such agreement, approval, consent or expression of satisfaction shall not be unreasonably withheld or delayed.

16.2 Any dispute or disagreement arising under this Deed which has been identified by notice in writing by one party to the other(s) and which has not been resolved within 20 Working Days (or such other period as may be agreed) of the date of receipt by the other party(s) of such written notice may be referred at the instance of any party for determination by an Expert whose decision shall (except in cases of manifest error, error of law and/or fraud) be final and binding on the parties.

16.3 The following provisions and terms of appointment shall apply to such disputes or disagreements:-

16.3.1 the Expert shall be agreed between the parties or, in default of agreement within 10 Working Days (or such other period as may be agreed) of receipt of the notice in Clause 16.2 above, shall be appointed or identified by the following persons:

(a) in the case of disputes relating to land or valuation matters the President of the Royal Institution of Chartered Surveyors;

(b) in the case of disputes relating to planning or design matters the President of the Royal Town Planning Institute; or

(c) in the case of any other dispute the President of the Bar Council.

16.3.2 The Expert shall act as an Expert and not as an arbitrator

16.3.3 The Expert shall be required to give notice of their appointment to each of the parties (Expert's notice) and thereafter:

(a) the persons calling for the determination shall make written submissions to the Expert and the other parties within 20 Working Days (or such extended period as the Expert shall allow) of receipt of the Expert's Notice;

(b) the other parties shall have 20 Working Days from the date of receipt of such written submission (or such extended period as the Expert shall allow) to respond;

(c) the Expert may disregard any representations made out of this time; and

(d) the Expert may request further information or documentation and the parties shall comply with any requests by the Expert for further information or documentation within a reasonable time;

(e) to the extent not provided for by this clause the Expert may in their reasonable discretion depending upon the nature and complexity of the case determine such other procedures and/or directions to assist with the conduct of the determination as they consider just or appropriate including (to the extent considered necessary) instructing professional advisers to assist them in reaching their determination, varying any time limit or direction and/or setting new directions and either of their own volition or upon the application of any party.

16.3.4 the Expert shall make his decision within 20 Working Days (or such other reasonable period as the complexity of the matter may require) of the close of the period for submissions of written representations;

16.3.5 the Expert's decision shall be in writing and shall give reasons for the decision; and

16.3.6 each party shall bear its own costs (or as otherwise determined by the Expert) and the Expert's costs will be payable in the determination of the Expert.

16.4 If the Expert dies or becomes unwilling or incapable of acting, or does not deliver the decision within the time required by this clause then:

16.4.1 either party may apply to the relevant body as part Clause 16.3.1 to discharge the Expert and appoint a replacement Expert with the required expertise; and

16.4.2 This clause 16 shall apply to the new Expert as if there were the first Expert appointed.

## **17. THIRD PARTY RIGHTS**

No person who is not a party to this Deed may enforce any terms hereof pursuant to the Contracts (Rights of Third Parties) Act 1990 PROVIDED THAT this clause shall not affect any right of action of any person to whom this Deed has been lawfully assigned or becomes vested in law including those deriving title to the Site.

## **18. COSTS**

On or before the date of this Deed the Owner shall pay the reasonable legal costs of the Council incurred in the preparation, negotiation and completion of this Deed in the sum of one thousand pounds (£1,000) (no VAT payable).

## **19. JURISDICTION**

This Deed is governed by and interpreted in accordance with the law of England and Wales and the parties submit to the exclusive jurisdiction of the courts of England and Wales.

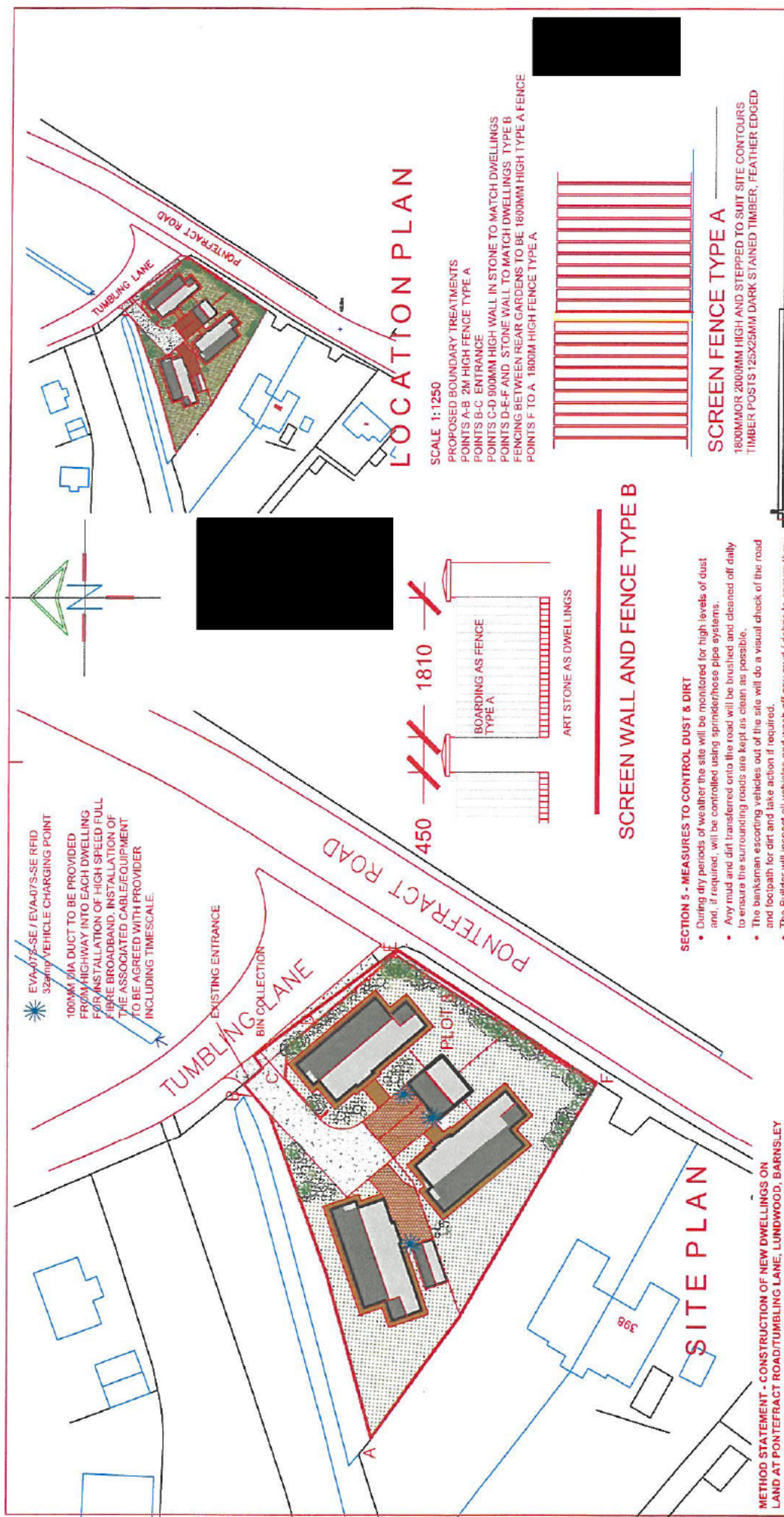
## **20. COUNTERPARTS**

This agreement may be executed in any number of counterparts, each of which constitutes a duplicate original, but all the counterparts together constitute the one agreement.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

**SCHEDULE 1**

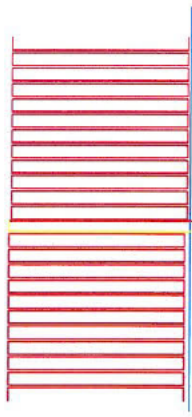
**THE PLAN**



# LOCATION PLAN

SCALE 1:1250

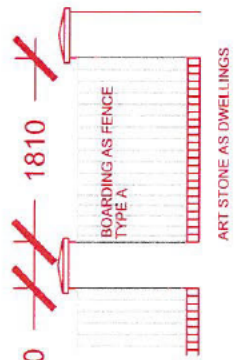
- PROPOSED BOUNDARY TREATMENTS
- POINTS A-B 2M HIGH FENCE TYPE A
  - POINTS B-C ENTRANCE
  - POINTS C-D 900MM HIGH WALL IN STONE TO MATCH DWELLINGS
  - POINTS D-E-F AND STONE WALL TO MATCH DWELLINGS TYPE B
  - FENCING BETWEEN REAR GARDENS TO BE 1800MM HIGH TYPE A FENCE
  - POINTS F TO A 1800MM HIGH FENCE TYPE A



## SCREEN FENCE TYPE A

1800MM OR 2000MM HIGH AND STEPPED TO SUIT SITE CONTOURS  
TIMBER POSTS 125x25MM DARK STAINED TIMBER, FEATHER EDGED

## SCREEN WALL AND FENCE TYPE B



BOARDING AS FENCE TYPE A  
ART STONE AS DWELLINGS

**White Agus**  
Architectural Services

OFFICE ONE  
34 VICTORIA ROAD,  
BARNESLEY,  
S70 2BU

Phone: 01226 206482  
Email: info@whiteagus.co.uk  
Web: www.whiteagus.co.uk

Project		Client	
RESIDENTIAL DEVELOPMENT AT 402 PONTEFRACT RD, LUNDWOOD BARNESLEY S71 5AZ		BC HOMES (YORKSHIRE) LTD	
Drawing Title	SITE PLAN	Date	JULY 2023
Scale	1:500 @ A3	Ref.	23-051
Drawn By	08	Dwg. No.	08
Checked By	B	Scale	1:500 @ A3

EVA-076-SE / EVA-075-SE RFID  
329mm VEHICLE CHARGING POINT

100MM DIA DUCT TO BE PROVIDED  
FROM HIGHWAY INTO EACH DWELLING  
FOR INSTALLATION OF HIGH SPEED FULL  
FIBRE BROADBAND. INSTALLATION OF  
THE ASSOCIATED CABLE/EQUIPMENT  
TO BE AGREED WITH PROVIDER  
INCLUDING TIMESCALE.

EXISTING ENTRANCE  
BIN COLLECTION

### METHOD STATEMENT - CONSTRUCTION OF NEW DWELLINGS ON LAND AT PONTEFRACT ROAD/TUMBLING LANE, LUNDWOOD, BARNESLEY

#### SECTION 1 - ACCESS TO SITE FOR CONSTRUCTION TRAFFIC:

Access to the site will be directly from the existing entrance from Tumbling Lane.

#### SECTION 2 - THE PARKING OF VEHICLES OF SITE OPERATIVES AND VISITORS

- Limited parking will be available within the curtilage of the site. If necessary, operatives and visitors will be directed to suitable 'on street' parking areas.

#### SECTION 3 - DEMARCATION OF THE SITE/SECURITY HOARDING

- The site area will be secured by a perimeter fence to prevent unauthorized access. Lockable gates to each site entrance to be secured at the end of each work day.

#### SECTION 4 - DELIVERIES TO SITE & THE LOADING AND UNLOADING OF PLANT & MATERIALS

- All deliveries to site shall be guided in by a banksman wearing a Hi Vis vest to ensure safe access on to site from the highway.
- Where possible all deliveries to be unloaded within the site.
- All deliveries leaving site shall be guided out by a banksman wearing a Hi Vis vest and ensuring safe departure, paying attention to members of the public and other traffic.

#### SECTION 5 - MEASURES TO CONTROL DUST & DIRT

- During dry periods of weather the site will be monitored for high levels of dust and, if required, will be controlled using sprayer/hose pipe systems.
- Any mud and dirt transferred onto the road will be brushed and cleaned off daily to ensure the surrounding roads are kept as clean as possible.
- The banksman escorting vehicles out of the site will do a visual check of the road and loopath for dirt and take action if required.
- The Builder will inspect all vehicles and wash off any mud / debris to ensure they are clean & safe before driving onto the public highway.

#### SECTION 6 - NOISE LEVELS DURING CONSTRUCTION

- Noise from plant will be kept to a minimum by using modern well maintained plant, incorporating appropriate silencers etc.
- Site operatives will be reminded of the importance of being considerate to neighbouring properties and members of the public during the course of their work, keeping noise to a minimum.

#### SECTION 7 - NEIGHBOURING PROPERTIES

- The site foreman will liaise with neighbouring properties to ensure a good working relationship.

#### SECTION 8 - STORAGE OF MATERIALS & PLANT ON SITE

- Materials will be stored on site in a safe and tidy manner
- Plant will have a designated parking area.
- Waste materials will be removed to a skip and taken off site to keep the site safe and looking tidy.



**SCHEDULE 2**  
**Biodiversity Contribution**

1. The Owner covenants with the Council as follows:

- (i) To pay the Biodiversity Contribution prior to Commencement of the Development.
- (ii) Not to Commence the Development unless and until the Biodiversity Contribution has been paid to the Council in full.

**SCHEDULE 3**  
**Council's Covenants**

1. The Council shall not apply the Biodiversity Contribution for any purpose other than for the purposes set out within this Deed.

EXECUTED as a DEED by the affixing of  
THE COMMON SEAL of BARNSLEY  
METROPOLITAN BOROUGH COUNCIL



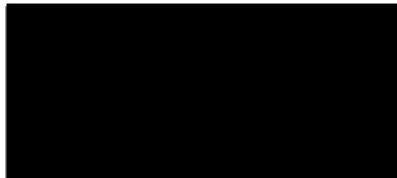
Authorised Sealing Officer



Mar 11 96  
IN REGISTER



Executed as a deed by BO HOMES  
(YORKSHIRE) LIMITED acting by [ LEE ],  
a director FORSTER



in the presence of a witness:

Signature of Director: \_\_\_\_\_

Signature of witness: \_\_\_\_\_

Name (in BLOCK CAPITALS): \_\_\_\_\_

Address: BURY & WALKERS LLP  
BRITANNIC HOUSE  
REGENT STREET, BARNSLEY  
SOUTH YORKSHIRE, S70 2EQ

