

DATED

4TH JANUARY

~~2020~~

2021

KM

UNILATERAL UNDERTAKING PURSUANT TO
SECTION 106 OF THE TOWN AND COUNTRY PLANNING ACT 1990

relating to

Land at 99 Jebb Lane, Haigh, Barnsley S75 4BT

Richard Moore (1)

and

Coutts & Co (2)

to

BARNSELY METROPOLITAN DISTRICT COUNCIL (3)

Planning Application 2020/0686

THIS DEED is made on

4th JANUARY

~~2020~~

2021

KM

GIVEN BY:

- (1) Richard Moore of 99 Jebb Lane, Haigh, Barnsley S75 4BT ("**Landowner**"); and
- (2) Coutts & Company (an unlimited company) registered with company number 00036695 with registered office address at 440 Strand, London WC2R 0QS ("**Mortgagee**")

TO:

- (3) Barnsley Metropolitan District Council of Town Hall, Barnsley, South Yorkshire, S70 2TA ("**the Council**"); and

BACKGROUND

- (A) For the purposes of the 1990 Act, the Council is the local planning authority for the area within which the Site is located and the person who is entitled to enforce the obligations contained in this Deed.
- (B) The Landowner is the freehold owner of the Site subject to the Mortgage.
- (C) The Mortgagee is the registered proprietor of the Mortgage pursuant to a charge dated 4 June 2019.
- (D) The Application for the Development was submitted to the Council on behalf of the Landowner.
- (E) The Parties have agreed to enter into this Deed with the intention that the obligations contained in this Deed bind the Site and may be enforced by the Council against the Landowner and all successors in title.

OPERATIVE PROVISIONS

1. INTERPRETATION

- 1.1 In this Deed, the following words and expressions have the following meanings:

"1990 Act"

means the Town and Country Planning Act 1990;

"Application"

means the application submitted to the Council on 29 June 2020 and validated on 3 August 2020 for the Development on the Site which was given reference 2020/0686;

“Commencement of Development”

means the date on which the Development commences 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 other than operations consisting of site clearance, the construction of any temporary means of access required for construction purposes, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse grounds conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and “Commencement” and “Commenced” and cognate expressions will be interpreted in accordance with this definition and “Commence”, “Commences”, “Commencement” shall be construed accordingly;

“Development”

means the erection of the proposed single storey extension to dwelling and erection of detached garage on the Site pursuant to the Planning Permission;

“Lawful Development Certificate”

means the certificate granted by the Council on 5 June 2020 with reference 2020/0364 relating to the construction of a detached garage on the Site in accordance with a plan with reference 101-23-06;

“Mortgage”

means a charge over the Site dated 4 June 2019 and registered on 11 June 2019;

"Occupation"

means the occupation of any part of the Development on the Site for any purpose permitted by the Planning Permission but not including occupation by a person or persons engaged in construction or fitting out or security operations and **"Occupy"** and **"Occupied"** shall be construed accordingly;

"Original Consent"

means the prior approval granted by the Council on 4 June 2020 with reference 2020/0378 relating to the erection of a single storey rear extension extending 6.56m beyond the rear wall of the dwellinghouse, 2.71m to eaves and 3.1m in overall height;

"Parties"

means the Landowner and the Mortgagee and **"Party"** shall mean either one of them;

"Plan"

means the plan entitled "Site Plan & Location Plan" with drawing number/reference 101-23 09 attached to the First Schedule of this Deed;

"Planning Permission"

means full planning permission granted by the Council pursuant to the Application for the Development;

"Site"

means all that land registered at HM Land Registry with title numbers SYK295163 and SYK567812 which is known as shown edged red on the Plan;

"Working Day"

means any day other than a Saturday or Sunday or a public holiday in England and Wales.

1.2 In this Deed:

- 1.2.1 the clause and paragraph and Schedule headings do not affect their interpretation;
- 1.2.2 words importing the singular meaning where the context so admits include the plural meaning and vice versa;
- 1.2.3 unless otherwise indicated, references to clauses and Schedules are to clauses of and Schedules to this Deed and references in a Schedule to a Part or paragraph are to a Part or paragraph of that Schedule;
- 1.2.4 references to any statute or statutory provision include references to:
 - 1.2.4.1 all Acts of Parliament and all other legislation having legal effect in the United Kingdom as directly or indirectly amended, consolidated, extended, replaced or re-enacted by any subsequent legislation; and
 - 1.2.4.2 any orders, regulations, instruments or other subordinate legislation made under that statute or statutory provision;
- 1.2.5 references to the Site include any part of it and references to the Development include any part of it;
- 1.2.6 any words following the terms "including", "include", "in particular", "for example" or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;
- 1.2.7 any covenant not to do any act or thing includes a covenant not to permit or allow or cause or suffer or procure the doing of that act or thing.

2. **EFFECT OF THIS DEED**

- 2.1 This Deed is made pursuant to section 106 of the 1990 Act. To the extent that they fall within the terms of section 106 of the 1990 Act, the covenants restrictions and obligations contained in this Deed are planning obligations for the purposes of section 106 of the 1990 Act which bind the Site and are enforceable by the Council against the Landowner and all successors in title.
- 2.2 References to any Party in this Deed include the successors in title of that Party. In addition, references to the Council include any successor local planning authority exercising planning powers under the 1990 Act.

- 2.3 The Landowner agrees that the planning obligations in this Deed are compliant with regulation 122 of the Community Infrastructure Levy Regulations 2010 in its form in force as at the date of this Deed and section 106 of the 1990 Act.
- 2.4 If any provision in this Deed is in whole or in part held to any extent to be illegal, invalid or unenforceable it shall be severed from this Deed to the extent required but the legality, validity and enforceability of the remainder of the Deed is unaffected and in the event of any such severance the Parties shall negotiate in good faith in order to agree the terms of a mutually acceptable and satisfactory alternative provision in place of the provision so severed.
- 2.5 With the exception of any development pursuant to either the Original Consent or the Lawful Development Certificate which is restricted in accordance with the terms of the Second Schedule of this Deed, nothing in this Deed shall prevent development under any other permission (other than the Planning Permission) whether or not granted after the date of this Deed.
- 2.6 No person will be liable for any breach of the terms of this Deed occurring after the date on which they part with their interest in the Site or the part of the Site in respect of which such breach occurs, but they will remain liable for any breaches of this Deed occurring before that date.
- 2.7 No provision of this Deed is intended to be enforceable under the Contracts (Rights of Third Parties) Act 1999 by anyone other than the Parties to this Deed and their successors in title.

3. **LEGAL EFFECT**

- 3.1 This Deed is conditional upon and will take effect on the date of the grant of Planning Permission but the Landowner's obligations in the Second Schedule are also conditional upon and will not take effect until the Commencement of Development.

4. **OBLIGATIONS OF THE LANDOWNER**

- 4.1 Subject to clause 3.1 the Landowner agrees with the Council to comply with the obligations set out in the Second Schedule.

5. **TERMINATION OF THIS DEED**

- 5.1 This Deed shall forthwith determine and cease to have effect if the Planning Permission shall be quashed revoked or otherwise withdrawn or (without the consent of the Landowner) it is modified by any statutory procedure (except any modification pursuant to section 96A of the 1990 Act) or expires prior to the Commencement of Development.

6. **NOTICES**

- 6.1 Any notice, demand or any other communication served under this Deed will be effective only if delivered by hand or sent by first class post, pre-paid or recorded delivery.
- 6.2 Any notice, demand or any other communication to be served on the Landowner is to be sent to the address set out at the beginning of this Deed or to such other address as one Party may notify in writing to the others at any time as its address for service.
- 6.3 Subject to clause 6.4 unless the time of actual receipt is proved, a notice, demand or communication sent by the following means is to be treated as having been served:
- 6.3.1 if delivered by hand, at the time of delivery;
- 6.3.2 if sent by pre-paid first class post, on the second Working Day after posting; or
- 6.3.3 if sent by recorded delivery, at the time delivery was signed for.
- 6.4 If a notice or any other communication is served after 4.00 pm on a Working Day, or on a day that is not a Working Day, it is to be treated as having been served on the next Working Day.
- 6.5 Notwithstanding clauses 6.1 to 6.4, where proceedings have been issued in the Courts of England and Wales, the provisions of the Civil Procedure Rules must be complied with in respect of the service of documents in connections with those proceedings.

7. **MORTGAGEE'S CONSENT**

The Mortgagee acknowledges and declares that this Deed has been entered into by the Landowner with its consent and that the Site shall be bound by the obligations contained in this Deed **PROVIDED THAT** the Mortgagee shall otherwise have no liability under this Deed unless it takes possession of the Site in which case it too will be bound by the obligations as if it were a person deriving title from the Landowner.

8. **JURISDICTION**

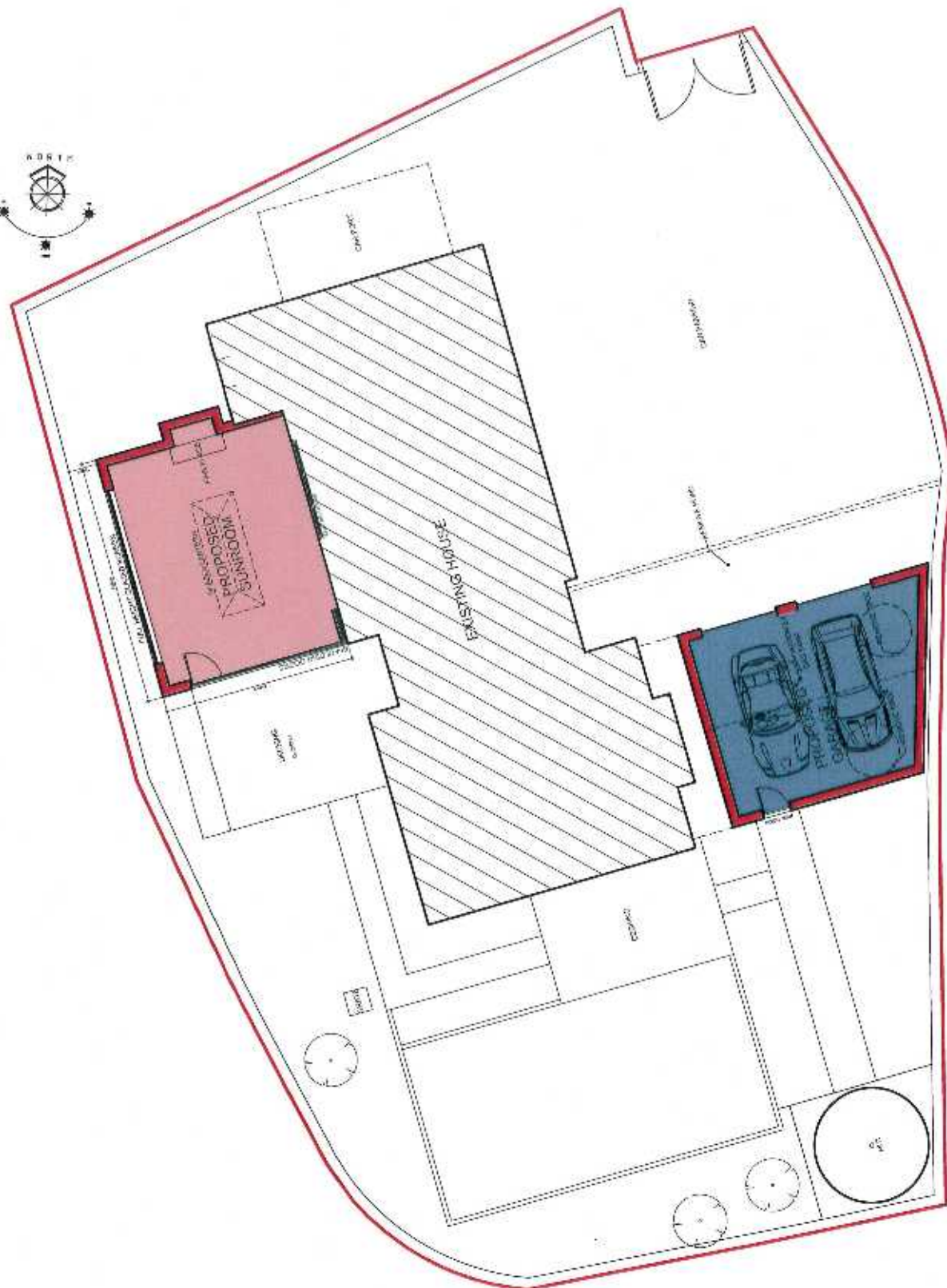
This Deed is to be governed by and interpreted in accordance with the law of England and Wales.

9. **EXECUTION**

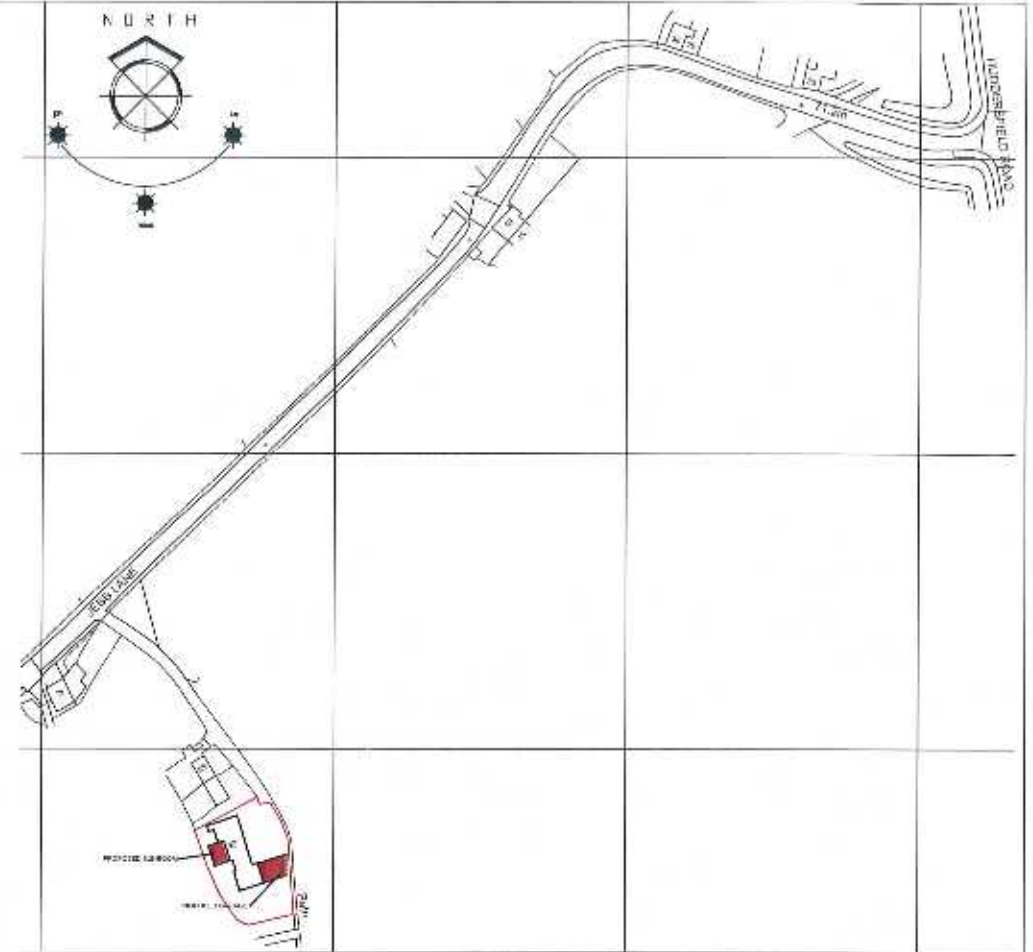
This document is executed as a deed and it is delivered on the date set out above.

FIRST SCHEDULE

PLAN/DRAWING: THE SITE



SITE PLAN SCALE 1:100



LOCATION PLAN SCALE 1:1250

Exhibited as a Deed for and on behalf
 Coutts & Company by its lawful attorney
 Signature _____
 Print Name PETER HALLETT
 Print Title MANAGER - CHARGED SECURITIES

Richard Moore
RICHARD MOORE

In the presence of
 Signature of witness _____
 Print name of witness HARIA MCGILLO
 Print address of witness TRINITY QUAY I
DOWN STREET BRISTOL
BS2 0PE



1. THE DRAWING AND THE COMPANIES AND ENTITIES THEREIN ARE THE PROPERTY OF NYP ARCHITECTURAL SERVICES LTD. REGISTERED IN ENGLAND AND SHALL BE KEPT IN CONFIDENCE AND NOT BE USED IN CONNECTION WITH ANY OTHER PROJECT.
 2. CONTRACTORS AND SUB-CONTRACTORS MUST CHECK AND ACCEPT ALL DIMENSIONS BEFORE BEGINNING ANY WORK ON SITE.
 3. CONTRACTORS ARE RESPONSIBLE FOR OBTAINING THE PERMISSION OF ANY NEIGHBOUR DISCOVERED ON THIS DRAWING OR OTHERWISE THIS DRAWING AND ANY OTHER RELATED DOCUMENTS SHALL BE USED UNDER THE EXCLUSIVE FORM OF CONTRACT IN RESPECT OF THE WORK.
 4. ALL DIMENSIONS MUST BE TO BE USED FROM THIS DRAWING. IT IS NOT TO BE USED FOR ANY OTHER PURPOSE.

Notes



Revisions					
Date	Suffix	Description	Date	Suffix	Description

NYP ARCHITECTURAL SERVICES LIMITED					
88, Knowle Way, Barnsley, S70 2LJ. Tel: 01225 200968. E-mail: info@nyp.co.uk / sales@nyp.co.uk					
Project	99 JEBB LANE HAGH, BARNSELEY S75 4BT		Client	MR R MOORE	
Drawing No.	PROPOSAL SITE PLAN & LOCATION PLAN		Date	JUNE 2020	Scale AS INDICATED
Ref.	101-23	Dwg. No.	09	Rev.	

SECOND SCHEDULE

LANDOWNER'S OBLIGATIONS

1. The Landowner covenants with the Council as follows:

- 1.1 From Commencement not to carry out any material operation specified in section 56(4) of the 1990 Act:
 - (a) which implements or is pursuant to the Original Consent; or
 - (b) which constitutes development that is in accordance with the plan with reference 101-23-06 which is referred to in the Lawful Development Certificate

SAVE FOR any works of Development which are authorised by the Planning Permission where such works or parts thereof are also authorised, capable of being authorised or presumed lawful by virtue of either the Original Consent or the Lawful Development Certificate in addition to the Planning Permission, and for the avoidance of doubt in such event such works will be and will remain authorised by the Planning Permission accordingly and shall not be prohibited or restricted under the terms of this Deed.

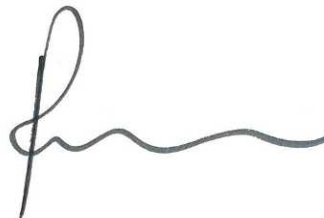
- 1.2 From Commencement, not to object, if the Council make an order under section 97 of the 1990 Act in relation to the Original Consent, to the order facilitating the confirmation of the order pursuant to section 99 of the 1990 Act and for the avoidance of doubt the Landowner's right to object to any such order prior to Commencement remains unaffected.

IN WITNESS of the above the Parties have executed this Deed as a deed and the same has been delivered by them or on their behalf on the above date.

Executed as a deed by)

RICHARD MOORE)

in the presence of)



Witness:

(Signature)

J. Dub

(Name)

JAMES DUB

(Address)

21 LAKESIDE DRIVE

FEATHERSTONE

WF7 5RE

(Occupation)

PROJECT DRAUGHTSMAN

EXECUTED AS A DEED by)



)

PETER HALLET

as attorney for Coutts & Co)

in the presence of:



Signature of witness

MARIA MERINO

Name of witness

TRINITY QUAY

AVON STREET BRISTOL

BS2 0PT

Address of witness

ASSOCIATE CHARGED SECURITIES

Occupation of witness