

DATED 20th Dec 2016

**BARNSELY METROPOLITAN BOROUGH COUNCIL (1)**

**and**

**PERSIMMON HOMES LIMITED (2)**

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**DEED OF VARIATION**

**in connection with an Agreement and Planning Obligation made under Sections 106 and 106A of  
the Town and Country Planning Act 1990 (as amended)  
relating to land off Barnsley Road, Wombwell, Barnsley**

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**WALKER MORRIS**

Kings Court  
12 King Street  
LEEDS  
LS1 2HL  
Tel: 0113 2832500  
Fax: 0113 2459412  
Ref: PPV/PER.78-1618

THIS DEED is made the 20th day of December

2016

BETWEEN: -

- (1) **BARNSELY METROPOLITAN BOROUGH COUNCIL** of Town Hall, Barnsley, South Yorkshire S70 2TA ("**Council**") of the first part; and
- (2) **PERSIMMON HOMES LIMITED** (Company No. 04108747) whose registered office is situated at Persimmon House, Fulford, York YO19 4FE ("**Owner**") of the second part.

## 1 DEFINITIONS

1.1 In this DEED the following words and expressions shall have the meanings set out below:

"Deed" means this deed;

"Land" means all that land off Barnsley Road, Wombwell, Barnsley, in the county of South Yorkshire, shown for identification purposes only edged red on Plan 1 to the Section 106 Agreement;

"Section 106 Agreement" means the agreement dated 27 March 2014 and made in pursuance of Section 106 of the 1990 Act between (1) the Council; (2) Reginald Benjamin Rimington Wilson; and (3) Persimmon Homes Limited, as varied by the Supplemental Agreement;

"Supplemental Agreement" means the deed of variation to the Section 106 Agreement dated 26 March 2015 and made between (1) the Council and (2) Persimmon Homes Limited; and

"1990 Act" means the Town and Country Planning Act 1990 (as amended).

1.2 Where the context so requires:

1.2.1 save as is otherwise varied by this Deed, all the words and expressions beginning with capital letters in this Deed shall have the same meanings ascribed to them in the Section 106 Agreement, as varied by the Supplemental Agreement, and shall be construed accordingly;

- 1.2.2 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;
- 1.2.3 references to any party shall include the successors in title to that party;
- 1.2.4 where a party includes more than one person any obligations on that party shall be joint and several;
- 1.2.5 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; and
- 1.2.6 references to clauses paragraphs and schedules are references to clauses paragraphs and schedules to this Deed and are for reference only and shall not affect the construction of this Deed.

## **2 RECITALS**

- 2.1 The Council is the local planning authority for the purposes of the 1990 Act for the area within which the Land is situated and is the authority by whom the obligations hereby created are enforceable.
- 2.2 This Deed is supplemental to the Section 106 Agreement, as varied by the Supplemental Agreement, and varies the Section 106 Agreement and Supplemental Agreement only to the extent set out in this Deed.
- 2.3 The Owner is the registered proprietor with absolute title of the Land following a transfer dated 27 February 2015 and is successor in title to Reginald Benjamin Rimington Wilson, as now registered at the Land Registry under title number SYK625891.
- 2.4 To this end, Reginald Benjamin Rimington Wilson is not a party to this Deed.
- 2.5 The Owner has submitted Application 2016/1141 (as defined in clause 3.3) to the Council. Application 2016/1141 is an application under section 73 of the 1990 Act seeking to vary the layout and plans applied to the Planning Permission, as previously varied by Application 2015/0084 (as defined in clause 3.3) and as referenced in Condition 2 attached to the Planning Permission.

- 2.6 The Council is minded to encourage the Development but would have been unwilling to approve or conditionally approve Application 2016/1141 in the absence of this Deed. The purpose of this Deed is to ensure that the obligations contained within the Section 106 Agreement (as varied by the Supplemental Agreement) shall also apply to any development undertaken under a planning permission granted by the Council pursuant to Application 2016/1141.
- 2.7 The Council has agreed with the Owner that the Section 106 Agreement, as varied by the Supplemental Agreement, shall be varied as set out in clause 3.3 below and the parties have agreed to enter into this Deed in order to vary the terms of the Section 106 Agreement (as varied by the Supplemental Agreement) accordingly.
- 2.8 The Owner has agreed to enter into this Deed so as to create planning obligations in favour of the Council pursuant to Section 106 and Section 106A 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 Deed is made pursuant to Section 106 and 106A of the 1990 Act and all other powers so enabling and is a planning obligation for the purposes thereof and the covenants contained herein shall bind the Land with the intent that it shall bind the interests of the Owner and their successors in title to each and every part of the Land and their assigns as provided in these clauses and in the clauses of the Section 106 Agreement, as varied by the Supplemental Agreement.
- 3.2 The planning obligations comprised in this Deed shall not become effective until the condition precedent in clause 3.2 of the Section 106 Agreement has been satisfied.
- 3.3 The parties hereto hereby mutually agree to vary and supplement the terms of the Section 106 Agreement, as varied by the Supplemental Agreement, so that the Section 106 Agreement shall from today be read and construed as follows:-
- 3.3.1 The definition of "Application" at clause 1.1 of the Section 106 Agreement, as varied by the Supplemental Agreement, shall be deleted and replaced with the following:

**“Application”** means:

1. the application reference number 2013/0866 and registered by the Council on 13 August 2013 for residential development for 220 dwellings with access from Barnsley Road, associated car parking and landscaping ("**Application 2013/0866**"); and / or (as appropriate)
2. Application 2015/0084; and / or (as appropriate)
3. Application 2016/1141.'

3.3.2 The following new definition be inserted into clause 1.1 of the Section 106 Agreement, as varied by the Supplemental Agreement, between the definitions of "Application 2015/0084" and "Chargee":

**"Application 2016/1141"** means the application reference number 2016/0084 and registered by the Council on 6 October 2016 for variation of condition 2 of application 2013/0866 (Residential development of 220 dwellings) to allow variation of the plans approved and enable substitution of dwellings, provision of a retaining wall, embankment works, and provision of parking spaces for existing residents and as shown on Drawing WOM-2013:O1V.'

3.3.3 The definition of "Planning Permission" at clause 1.1 of the Section 106 Agreement, as varied by the Supplemental Agreement, shall be deleted and replaced with the following:

**"Planning Permission"** means:

1. the planning permission granted by the Council on 3 April 2014 pursuant to Application 2013/0866 substantially in the form of the draft annexed in the Third Schedule ("**Planning Permission 2013/0866**"); and / or (as appropriate)
2. the planning permission granted by the Council on 22 April 2015 pursuant to Application 2015/0084; and / or (as appropriate)
3. a planning permission to be granted by the Council pursuant to Application 2016/1141.'

3.3.4 For the avoidance of doubt, all existing references to Application and Planning Permission in the Section 106 Agreement and Supplemental Agreement are to be construed in accordance with the above.

**4 IT IS HEREBY AGREED AND DECLARED AS FOLLOWS: -**

- 4.1 This Deed shall be construed as one with the Section 106 Agreement (as varied by the Supplemental Agreement).
- 4.2 The provisions of the Section 106 Agreement (as varied by the Supplemental Agreement) continue to be enforceable by the Council and to bind the Land in all respects save for as varied by the Supplemental Agreement and by this Deed, but for the avoidance of doubt the alterations and amendments hereby made shall to the extent only that they are material supersede specific provisions to the contrary in the Section 106 Agreement (as varied by the Supplemental Agreement and this Deed) and the Section 106 Agreement (as varied by the Supplemental Agreement) and this Deed shall always be read together (*mutatis mutandis*) with the latter to that extent predominating.
- 4.3 No party shall be liable for breach of a covenant contained in this Deed after having parted with all 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.
- 4.4 A person who is not a party to this Deed has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term hereof provided that this clause shall not affect any right of action of any person to whom this Deed is lawfully assigned or in whom it becomes vested in law.
- 4.5 The planning obligations hereby created by this Deed shall be registered as a Local Land Charge.
- 4.6 The Owner shall pay to the Council on or before the date of completion of this Deed the Council's reasonable and proper legal costs of £500.00 (Five Hundred Pounds) incurred in the negotiation, preparation and execution of this Deed, which includes all disbursements incurred in connection with the preparation, completion and registration of this Deed.

IN WITNESS whereof the parties have executed this Deed the day and year first before written

**EXECUTED AS A DEED** by affixing the  
**COMMON SEAL** of **BARNSELY**  
**METROPOLITAN BOROUGH COUNCIL**  
in the presence of:

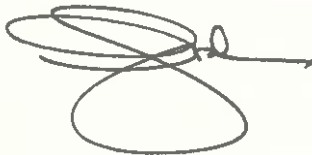


Director of Legal and Governance / Authorised Signatory  
*Par 1 Considered Par 7(g)*

No. 130  
IN REGISTER

**EXECUTED** as a **DEED** by  
**PERSIMMON HOMES LIMITED**  
Acting by its Attorney (1)

*W. GARDNER*



in the presence of:

*PAUL THORNTON, 3 HEPTON COURT, YORK ROAD,  
LEEDS, LS9 6AW*

Acting by its Attorney (2)

in the presence of:

*PAUL THORNTON, 3 HEPTON COURT, YORK ROAD,  
LEEDS, LS9 6AW*