

DATED 18th December 2018

BARNSELY METROPOLITAN BOROUGH COUNCIL (1)

-and-

BDW TRADING LIMITED (2)

DEED OF VARIATION
made pursuant to Section 106 and 106A
of the Town and Country Planning Act 1990 (as amended)

In connection with an Agreement and Planning Obligation, dated 15 February 2018,
made under Section 106 of the Town and Country Planning Act 1990 (as amended)

and relating to

land at Lee Lane, Royston, South Yorkshire, S71 4RT

Planning Permission Reference: 2016/1490

Planning Application Reference: 2018/0687

WALKER MORRIS LLP

Kings Court
12 King Street
LEEDS
LS1 2HL

Tel: 0113 2832500

Fax: 0113 2459412

Ref: CAS/BLQ00004.11036

THIS DEED is made the

17th

day of

December

2018

BETWEEN:

- (1) **BARNSELY METROPOLITAN BOROUGH COUNCIL** of Smithies Lane Depot, Smithies Lane, Barnsley, S71 1NL ("**Council**") of the first part; and
- (2) **BDW TRADING LIMITED** (Company No. 03018173) whose registered office is Barratt House Cartwright Way, Forest Business Park, Bardon Hill, Coalville, Leicestershire, LE67 1UF ("**Developer**") of the second part.

1. DEFINITIONS & INTERPRETATION

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

"**Deed**" means this deed;

"**Plan**" means the plan annexed to this Deed and marked as "Plan 2"

"**Section 106 Agreement**" means the agreement made pursuant to Section 106 of the 1990 Act dated 15 February 2018 and made between (1) Barnsley Metropolitan Borough Council (2) Janet Clayton and Alan Wilfred Clayton and Christine Ida Watson and (3) BDW Trading Limited .

1.2 Where the context so requires:

1.2.1 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 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 includes the successors in title of that party;

1.2.4 where a party includes more than one person any obligations of that party shall be joint and several;

1.2.5 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 purpose 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 and varies the Section 106 Agreement only to the extent set out in this Deed.
- 2.3 The Developer is the registered proprietor with absolute title of the Land registered with HM Land Registry under title number SYK659981.
- 2.4 The Section 73 Application (as hereinafter defined) was submitted to the Council on behalf of the Developer for planning permission for the Development.
- 2.5 The Council has agreed that the Section 106 Agreement shall be varied as set out in clause 3. of this Deed and the parties have agreed to enter into this Deed in order to vary the terms of the Section 106 Agreement accordingly.

3. OPERATIVE PROVISIONS

- 3.1 This Deed is made pursuant to section 106A of the 1990 Act and all other powers so enabling and is a planning obligation for the purposes thereof with the intent that it shall bind the interests of the Owner and its successors in title to each and every part of the Land and its assigns as provided in these clauses and in the clauses of the Section 106 Agreement.
- 3.2 Words and expressions in this Deed shall have the same meanings as in the Section 106 Agreement save to the extent that this Deed otherwise provides.
- 3.3 The parties hereto hereby mutually agree to vary and supplement the terms of the Section 106 Agreement so that the Section 106 Agreement shall from today be read and construed as follows:
- 3.3.1 The definition of "Application" in clause 1.1 of the Section 106 Agreement shall be deleted and replaced with the following definition:

""Application" means: -

1. the application reference number 2016/1490 for residential development of 164 Dwellings on the Land ("**Application 2016/1490**"); and / or (as appropriate)
2. the Section 73 Application;"

3.3.2 The definition of "Planning Permission" in clause 1.1 of the Section 106 Agreement shall be deleted and replaced with the following definition:

"Planning Permission" means: -

1. the planning permission granted pursuant to Application 2016/1490 on 16 February 2018 ("**Planning Permission 2016/1490**"); and / or (as appropriate)
2. a planning permission to be granted pursuant to the Section 73 Application ("**Section 73 Permission**");"

3.3.3 The following new definition be inserted into clause 1.1 of the Section 106 Agreement between the definitions of "Registered Provider" and "Statutory Undertaker":

"Section 73 Application" means the section 73 application reference number 2018/0687 for variation of Condition 2 (relating to plans to allow plan amendments to alter development from 164 to 166 dwellings) of Planning Permission 2016/1490 - application for residential development of 164 dwellings to include means of access and public open space;"

3.3.4 The definition of "Affordable Housing Units" in clause 1.1 of the Section 106 Agreement shall be amended to refer to 17 Dwellings of Affordable Housing instead of 16 Dwellings of Affordable Housing.

3.3.5 The definition of "Affordable Rented Dwellings" in clause 1.1 of the Section 106 Agreement shall be deleted and replaced with the following definition:

"Affordable Rented Dwellings" has the same meaning as the term "affordable rented housing" contained in the definition of Affordable Housing contained in the glossary at Annex 2 of the National Planning Policy Framework and comprises eight Dwellings in total consisting of six x two bed houses to be constructed on

plots 16, 17, 18, 23, 24 and 25 and two x three bed houses to be constructed on plots 37 and 38 or other such locations and/or house types/sizes that may be agreed in writing between the Owner and the Council from time to time such properties to be made available at an Affordable Rent to persons in accordance with the Registered Provider's policy;"

3.3.6 The definition of "Intermediate Dwellings" in clause 1.1 of the Section 106 Agreement shall be deleted and replaced with the following definition:

"Intermediate Dwellings" has the same meaning as the term "intermediate housing" contained in the definition of Affordable Housing contained in the glossary at Annex 2 of the National Planning Policy Framework and comprises nine Dwellings in total consisting of five x two bed houses to be constructed on plots 8, 9, 39, 40, and 126 and four x three bed houses to be constructed on plots 54, 55, 56 and 57 or such other locations and/or house types that may be agreed in writing between the Owner and the Council from time to time such properties to be made available at an Intermediate Rent to persons in accordance with the Registered Provider's policy;"

3.3.7 Plan 2 shall be removed from the Section 106 Agreement and shall be replaced with the Plan.

4. IT IS HEREBY AGREED AND DECLARED AS FOLLOWS:

4.1 This Deed shall be construed as one with the Section 106 Agreement.

4.2 The provisions of the Section 106 Agreement continue to be enforceable by the Council and to bind the Land in all respects save for as varied 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 this Deed and the Section 106 Agreement as varied by this Deed shall always be read together (*mutatis mutandis*) with the latter to that extent predominating.

4.3 No person who is not a party to this Deed may enforce any terms hereof pursuant to the Contracts (Right of Third Parties) Act 1999 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.

4.4 For the avoidance of doubt:

Lee Lane, Royston Affordable



- Affordable Rented Unit
- Affordable Intermediate Unit

B	Updated as re-plan application
A	Updated as re-plan application
Developer:	Lee Lane
Location:	Royston
Marketing Name:	
Drawing Title:	Affordable
Drawing Number:	LL-PL / 25
Revision:	B
Scale:	1:500
Drawn By:	KL
Date Issued:	Nov 2016



Playsham House, 2 Capital Park, Morley, Leeds LS27 0WH
Tel: 0113 357 8888

- 4.4.1 where an obligation in the Section 106 Agreement has been satisfied in relation to Planning Permission 2016/1490, nothing shall require the Owner to comply with that obligation again in respect of the Section 73 Permission; and
- 4.4.2 the Council shall, on request from any one or more of the parties, provide written confirmation that any obligation so satisfied has been formally discharged.
- 4.5 The obligations hereby created shall be registered as a Local Land Charge.
- 4.6 The Owner shall pay to the Council its reasonable legal fees incurred in the preparation negotiation and completion of this Deed.

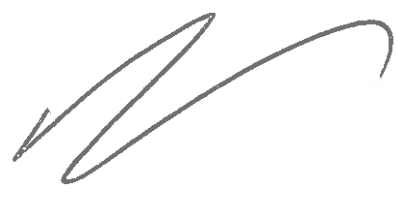
IN WITNESS whereof the parties hereto have executed this Deed the day and year first before written,

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


Borough Secretary/Authorised Signatory

No. 1257
IN REGISTER

SIGNED and DELIVERED as a DEED)
(but not delivered until the date hereof) by)



DAVID COE
DEVELOPMENT DIRECTOR

and)

DAVE HUDSON
TECHNICAL DIRECTOR



as the Attorney in the name of)
BDW TRADING LIMITED in exercise of the)
power conferred upon them by a Power of Attorney)
dated 12 May 2017 in the presence of: -)

Witness Signature 

Name RICHARD WEILDING

Address BARRATT DAVID WILSON HOMES
RAYNHAM HOUSE, 2 CAPITOL CLOSE
MORLEY, LS27 0WH

Occupation
TECHNICAL COORDINATOR