

DATED

30th June

2016

## PLANNING AGREEMENT

between

(1) BARNSELY METROPOLITAN BOROUGH COUNCIL

and

(2) GLEESON DEVELOPMENTS LIMITED

Planning Obligation Agreement under  
Section 106 Town & Country Planning Act 1990

relating to land at

Barnburgh Lane Goldthorpe "Phase 2", Bolton Upon Dearne

THIS DEED is made the 20th day of June 2016

**BETWEEN**

- 1) BARNSELY METROPOLITAN BOROUGH COUNCIL of 1 Gateway Plaza, Sackville St, Barnsley, South Yorkshire S70 ("the Council")
- 2) GLEESON DEVELOPMENTS LIMITED whose registered office is at 6 Europa Court, Sheffield Business Park, Sheffield, S9 1XE (Company Registration Number; 00848808) ("the Owner")

**RECITALS**

- (A) The Council is the local planning authority for the purposes of the 1990 Act for the area within which the Land is situated and by whom the obligations and covenants contained in this Deed are enforceable
- (B) The Owner is the registered proprietor of the registered land being registered at the Land Registry under title number SYK522219
- (C) The Owner has submitted the Planning Application to the Council for the residential development of the Land

**OPERATIVE PART**

**NOW THIS DEED WITNESSETH AS FOLLOWS:**

**1. DEFINITIONS AND INTERPRETATION**

1.1. In this Deed the following terms shall have the following meanings: -

"1972 Act"	The Local Government Act 1972
" 1990 Act"	The Town and Country Planning Act 1990 (as amended)
" 2011 Act"	The Localism Act 2011
"Affordable Housing"	has the same meaning given to it in annex 2 of the National Planning Policy Framework march

<p>“Affordable Housing Commuted Sum”</p>	<p>Means the sum of £412,247 [four hundred and twelve thousand two hundred and forty seven pounds only] or such other sum as determined by a Viability Assessment Appraisal to be applied towards the provision or improvement of Affordable Housing [in the following priority (1) Goldthorpe (2) Bolton Goldthorpe and Thurnscoe housing market area as defined in the Council’s Strategic Housing Market Assessment 2014 (3) Urban Barnsley as defined in the Council’s Development plan core strategy;</p>
<p>“Commencement of Development”</p>	<p>The carrying out in relation to the development of any material operation as defined by section 56(4) of the 1990 Act but disregarding for the purposes of this deed and for no other purpose, the following operations: demolition works; site clearance; ground investigations; site survey works; temporary access construction works; archaeological investigation; and erection of any fences and hoardings around the Property.</p>
<p>“Completed” and “Completion”</p>	<p>In respect of a Dwelling, the issue of a Final Certificate under the Building Act 1984</p>
<p>“Development”</p>	<p>Means the development the subject of the Planning Permission</p>
<p>“Dwelling”</p>	<p>means any dwelling (including house flat or maisonette to be constructed on the Land pursuant to the Planning Permission and “Dwellings” shall be construed accordingly</p>
<p>“Index”</p>	<p>means the All In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation or if that Price Index</p>

	ceases to exist such index as the Council reasonably nominates
"Interest"	4% above the base rate published by the Bank of England from time to time
"Land"	Means the land at Barnburgh Lane Goldthorpe registered under title number SYK522219 and shown for identification purposes edged red on Plan 1 annexed hereto
"Occupation"	Means occupation of a Dwelling for any purpose permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation relating to security operations and "Occupied" and "Occupy" shall be construed likewise.
"Plan 1"	Means the plan marked Plan 1 attached
"Plan 2"	Means the plan marked Plan 2 attached
"Planning Application"	Means the planning application submitted by the Owner and validated by the Council on 30 <sup>th</sup> September 2015 and allocated planning reference number 2015/1198.
"Planning Permission"	Means planning permission granted by the Council pursuant to the Planning Application
"Practical Completion"	means issue of a certificate of practical completion by the Owner's architect or in the event that the Development is constructed by a party other than the Owner the issue of a certificate of practical completion by that other party's architect;
"Green Space"	The area of land to be laid out in accordance with the Planning Permission for identification purposes shown edged green on Plan 2 (reference 453/2-D dated 8/1/15)
"Public Open Space Commuted Sum"	Means the sum of £104,593.25 (one hundred and four thousand five hundred and ninety

PLAN 1

- Existing trees to be removed
- Existing trees to be retained and protected during construction to British Standard BS5837:1999.
- Areas of new tree planting, see schedule for species
- New shrubs / ground cover planting
- Grass to front garden
- Planting slab across patio to level threshold for principal entrance. Gradient not to exceed 1:12 for maximum 5.00m length
- Private drives
- 1.80m high screen wall
- 5.1m boarded vertical screen fence 1.80m high (100 x 22mm boards with 22mm gaps) 2% to 7% slope max 100 x 100mm posts @ 1.875m centres.
- Pipe adhesion fences, post & wire
- House type code reference number
- Plot number
- Garages location
- Parking bays

**- NOT FOR USE ON SITE -  
PROVISIONAL LAYOUT DRAWING,  
SUBJECT TO PLANNING APPROVAL**

HOUSE TYPE	code	type	no
	201	2 bed semi det / terr	7
	202	2 bed semi det	4
	301	3 bed semi det	6
	302	3 bed semi det	5
	303	3 bed semi det	6
	304	3 bed detached	3
	307	3 bed detached	2
	308	3 bed semi det	7
	310	3 bed detached	2
	311	3 bed semi det	9
	401	4 bed semi det	3
	404	4 bed detached	4
	405	4 bed detached	3
<b>TOTAL</b>			<b>61</b>

URBAN  
RURAL

Proposed drainage route amended to suit new road layout

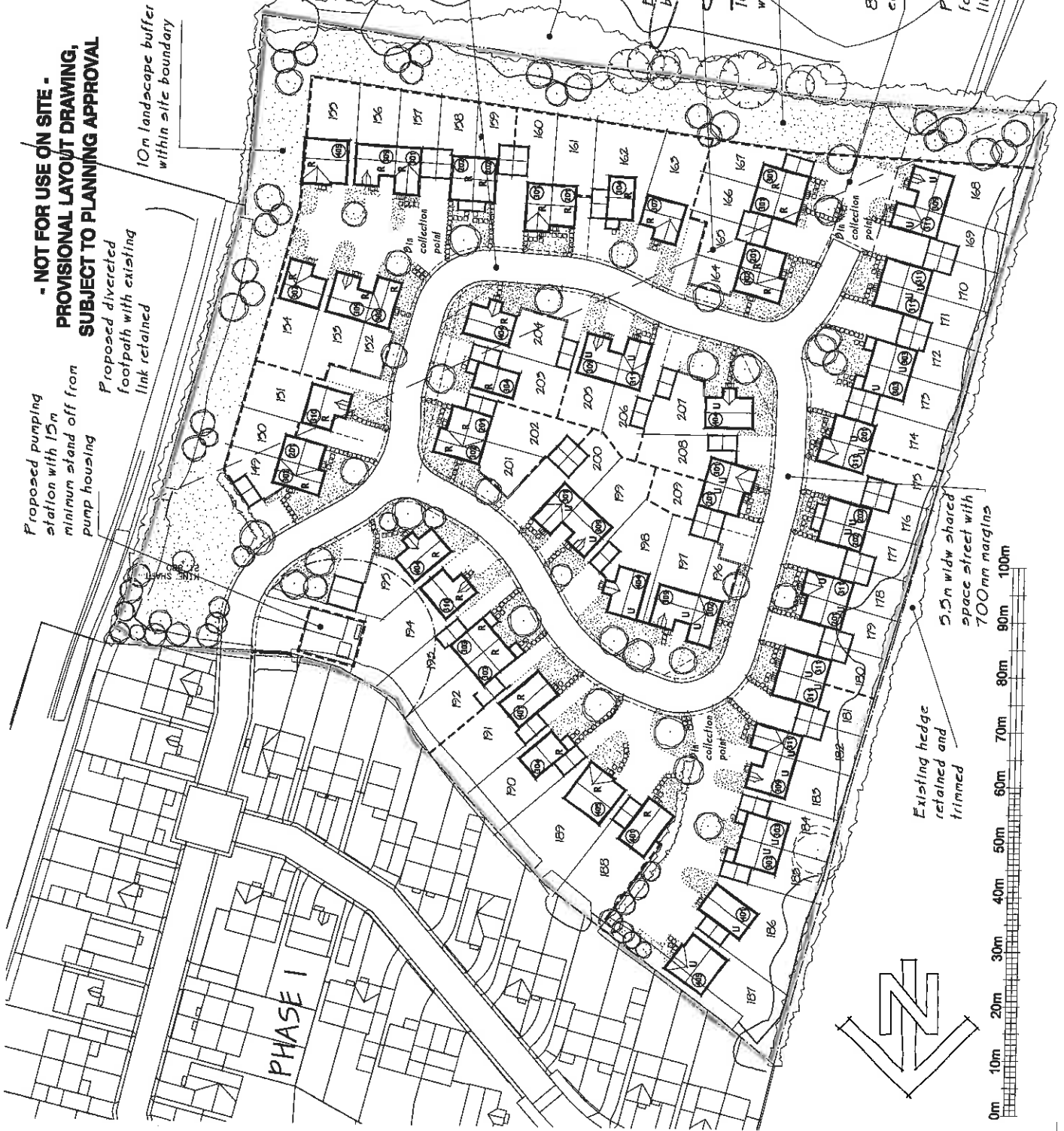
Existing hedge retained and trimmed

Existing footpath to be diverted

10m landscape buffer within site boundary

8.00m drainage easement

Proposed diverted footpath with existing link retained



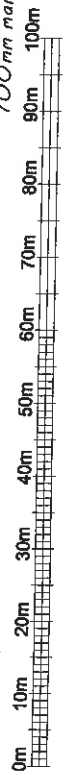
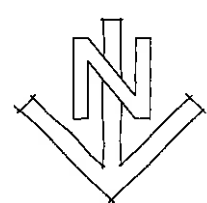
**Richard Ward IAW**  
Chartered Architectural Technologist  
Architectural Design & Development Consultant  
Richard S. Ward  
M.C.I.A.T.  
2, Broomers Close  
Walsan, Farnell  
Northampton NN3 3PH  
Telephone 01604 410943

**planning layout**

**GLEESON HOMES & REGENERATION**

**BARNBURGH LANE GOLDTHORPE PH2**

A1 Plot completed	14.07.15	Scale
A2 Location plan added	22.09.15	
A3 Planning application received	02.10.15	1:500
A4 Planning application submitted	05.10.15	1:500
A5 Planning application approved	05.04.16	1:500
A6 Planning application conditions	05.04.16	1:500
A7 Planning application conditions	05.04.16	1:500
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A98 Planning application conditions	05.04.16	1:500
A99 Planning application conditions	05.04.16	1:500
A100 Planning application conditions	05.04.16	1:500





three pounds and twenty five pence) to be applied for the provision or improvement of public open space *within three miles of the boundary of the Land*

"Travel Plan" Means the travel plan submitted with the Planning Application dated September 2015 and referenced V2.

"Valuation Date" Means the date the Development is assessed in the Viability Assessment which shall be no earlier than the date of the sale of the fifteenth Dwelling and no later than the date of sale of the thirtieth Dwelling

"Viability Assessment" Means an assessment of the viability of the Development at the Valuation Date taking account of the reasonable costs incurred and the income received to date and assuming a competitive return to a willing landowner and developer and using the Homes and Community Agency Development Appraisal Toolkit or similar methodology,

"Viability Assessment Appraisal" Means an appraisal of the Viability Assessment by a suitably qualified professional taking account of any prevailing Government and professional guidance on viability assessments (including the Royal Institution of Chartered Surveyors Guidance Note on Financial Viability in Planning 2012 and any replacement document)

- 1.2. Where in this Deed reference is made to any clause paragraph schedule plan or recital such reference (unless the context otherwise requires) is a reference to a clause paragraph schedule recital or plan in this Deed

- 1.3. Where in any Schedule or part of any Schedule reference is made to a paragraph such reference shall (unless the context requires otherwise) be to a paragraph of that Schedule or (if relevant) part of that schedule
  - 1.4. References to any party to this Deed shall include reference to their successors in title and assigns and to persons claiming or deriving title through or under them and in respect of the Council shall include the successors to their respective statutory functions
  - 1.5. Words importing the singular meaning where the context so admits include the plural meaning and vice versa
  - 1.6. 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
  - 1.7. 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
  - 1.8. 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. LEGAL BASIS**
- 2.1. This Deed is made pursuant to Section 106 of the 1990 Act section 1 of the 2011 Act and section 111 of the 1972 act and all other enabling powers
  - 2.2. The covenants restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of

the 1990 Act and are enforceable by the Council as local planning, authority against the Owner.

**3. CONDITIONALITY**

3.1. This Deed is conditional upon:

3.1.1. the grant of the Planning Permission

3.1.2. the Commencement of Development save for the provisions of clauses 1.1, 4. 6.1.2, 7 8 and 9 which shall come into affect immediately upon completion of this Deed.

**4. AGREEMENTS AND DECLARATIONS**

4.1. The parties agree and declare that:

4.1.1. the provisions of this Deed shall not be enforceable by any person who is not a party to this Deed by virtue of the Contracts (Rights of Third Parties) Act 1999

4.1.2. The covenants given in this Deed shall cease to have effect if

4.1.2.1. the Planning Permission is quashed revoked or otherwise withdrawn at any time; or

4.1.2.2. the Planning Permission expires prior to the Commencement of Development; or

4.1.2.3. the Planning Permission is modified by any statutory procedure without the consent of the Owner

4.1.3. this Deed shall be registrable as a local land charge by the Council as local planning authority

4.1.4. Following the performance and satisfaction of all of the obligations contained in this Deed the Council shall upon written request from the Owner effect the cancellation of all relevant entries made in the Register of Local Land Charges in respect of this Deed

4.1.5. subject to paragraph 3 of the Second Schedule no person or party shall be liable for a breach of the restrictions and obligations contained in this

Deed after that person or party has parted with all of his interest in the Land or the part in respect of which the breach occurs but without prejudice to any liability for any breach committed prior to such parting

- 4.1.6. the Owner agrees to give the Council immediate written notice of any change in ownership of its legal interest in the Land occurring before all the obligations under this Deed have been discharged save in respect of the sale of the completed Dwellings to owner-occupiers and the sale of parts of the Land for infrastructure purposes to any supplier of services for the general use of the Development or any material part of it
- 4.1.7. 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
- 4.1.8. nothing contained in this Deed shall prejudice or affect the rights powers duties and obligations of the Council in the exercise of its functions as local authority and their rights powers duties and obligations under all public and private statutes byelaws and regulations may be as fully and effectually exercised as if the Council were not parties to this Deed
- 4.1.9. if any severable provision of this Deed shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions shall not in any way be deemed thereby to be affected or impaired
- 4.1.10. No waiver (whether expressed or implied) by the Council or the Owner 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 or the Owner from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

4.1.11. the obligations in this Deed shall not be enforceable against a statutory undertaker after the transfer of the statutory apparatus and any operational land upon or in which the statutory apparatus is situated to that statutory undertaker nor enforceable against any owner-occupier for the time being of a completed Dwelling on the Land or their successors in title.

4.1.12. 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

4.1.13. any notices requests demands or other written communications pursuant to this Deed shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party and in the case of the Council addressed for the attention of the Head of Planning and Building Control

4.1.14. if any payment due under this Deed is paid late Interest will be payable from the date payment is due until the date payment is made

4.1.15 any sum payable under this deed by the Owner 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

**5. COUNCIL'S COVENANTS**

The Council covenants to comply with its obligations set out in this Deed (including any obligations contained in the Schedules).

**6. OWNER'S COVENANTS**

6.1.1. The Owner covenants with the Council to observe and perform the obligations as set out in this Deed (including any obligations contained in the Schedules)

6.1.2. The Owner covenants to pay to the Council on the completion of this Deed the reasonable legal costs of the Council in preparing, negotiating and completing this Deed of £1000

**7. ARBITRATION**

7.1 In the event of any dispute or difference arising between the parties to this Deed either party may refer such dispute or difference to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in England with such matters as may be in dispute and such person shall act as an expert whose decision shall be final and binding on the parties in the absence of manifest error and any costs shall be payable by the parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the parties in equal shares.

**8. JURISDICTION**

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

**9. EXECUTION AND DELIVERY**

This document is executed as a deed and is delivered on the date stated at the beginning of this Deed

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

## FIRST SCHEDULE

- 1       The Owner covenants to pay the Affordable Housing Commuted Sum to the Council upon Occupation of the thirtieth Dwelling unless prior to Occupation of thirty Dwellings a Viability Appraisal has been submitted and assessed by a valuer or other suitably qualified person appointed by the Council and the Viability Assessment Appraisal concludes that the Development is only viable if a lesser Affordable Housing Commuted Sum or no Affordable Housing Commuted Sum is payable in which case the Owner covenants to pay to the Council the lesser Affordable Housing Commuted Sum or no Affordable Housing Commuted Sum (as the case may be as identified in the Viability Assessment Appraisal) upon the Occupation of the thirtieth Dwelling
- 2       The Owner covenants not to Occupy more than thirty Dwellings unless the Affordable Housing Commuted Sum has been paid to the Council OR a Viability Appraisal has been submitted and assessed by a valuer or other suitably qualified person appointed by the Council and the Viability Assessment Appraisal concludes that the Development is only viable if a lesser Affordable Housing Commuted Sum or no Affordable Housing Commuted Sum is payable in which case the Owner covenants not to Occupy more than thirty Dwellings until the lesser Affordable Housing Commuted Sum or no Affordable Housing Commuted Sum (as the case may be as identified in the Viability Assessment Appraisal) has been paid to the Council
- 3       The Owner covenants to pay the Council's reasonable costs in procuring a Viability Assessment Appraisal

4 The Owner covenants to provide the Council with any further information or supporting evidence required by the valuer in order for him to be able to properly conduct the Viability Assessment Appraisal and in the event that information is unreasonably withheld delayed or false information is knowingly supplied the full amount of the Affordable Housing Commuted Sum shall be payable

## SECOND SCHEDULE

### **Public Open Space**

The Owner hereby covenants with the Council to observe and perform the following obligation:-

- 1 To pay the Public Open Space Commuted Sum upon Commencement of Development
- 2 Not to Commence Development until the Public Open Space Commuted Sum has been paid to the Council
- 3 Upon Commencement of Development the Owner shall layout the Green Space in accordance with the Planning Permission and a plan to be approved by the Local Planning Authority and thereafter maintain the Green Space in accordance with good horticultural practice and no more than thirty Dwellings shall be Occupied unless and until the Green Space has been transferred to a management company

approved in writing by the Council with suitable resources and arrangements in place to maintain the Green Space over the long term or any other long term maintenance arrangement has been approved by the Council in writing and implemented thereafter

4 The Green Space shall not be used for residential purposes nor shall any buildings or other structures be erected thereon

### **THIRD SCHEDULE**

#### **Travel Plan**

The Owner hereby covenants with the Council to observe and perform the following obligations:-

1. The Owner shall upon Commencement of Development implement the requirements of the Travel Plan as set out in sections 5 and 6.

THE COMMON SEAL OF )  
BARNESLEY METROPOLITAN )  
BOROUGH COUNCIL was affixed in the presence of: )

*T. A. N. L.*

Authorised Signatory:



EXECUTED AS A DEED by )  
GLEESON DEVELOPMENTS LIMITED )  
in the presence of: )

*[Signature]*

*[Signature]*  
MATT SMITH  
65 SHANESIDE CREE,  
DONKESD, B18 1NS

Director:

Director/Secretary:

*[Signature]*