

Planning Obligation by Deed of Agreement
under Section 106 of the Town and Country
Planning Act 1990

relating to 48 – 50 Sheffield Road, Barnsley, S70 1HS

Date: 31st August 2022

Barnsley Metropolitan Borough Council (1)

Clayburn Properties Limited (2)

Blacks Solicitors LLP
City Point
29 King Street
Leeds
LS1 2HL

DATE 31st August, 2022

PARTIES

- (1) **BARNLEY METROPOLITAN BOROUGH COUNCIL** of Town Hall, Barnley, South Yorkshire, S70 2TA (hereinafter referred to as “the Council”) of the first part;
- (2) **CLAYBURN PROPERTIES LIMITED** (company registration number 06794081) with registered office address Brookside Bracken Hill, Ackworth, Pontefract, West Yorkshire, WF7 7BG (hereinafter referred to as “the Owner”) of the second part;

INTRODUCTION AND BACKGROUND

- 1 The Council is the local planning authority for the purposes of the Act for the area in which the Site is situated and is the authority by whom the planning obligations hereby created are enforceable.
- 2 The Council is also the local highway authority for the purposes of the Highways Act 1980 for the area in which the Site is situated.
- 3 The Owner is the freehold owner of the Site registered with title absolute under Land Registry Title Number SYK252392.
- 4 The Council is minded to grant planning permission subject to the Owner entering into this Deed without which the Council would not grant the said Planning Permission.

NOW THIS DEED WITNESSES AS FOLLOWS:

OPERATIVE PART

1 DEFINITIONS

For the purposes of this Deed the following expressions shall have the following meanings:

“Act” means the Town and Country Planning Act 1990;

“Application” means planning application reference 2022/0150 which was validated by the Council on 11 February 2022 for “conversion of building into 2no commercial units at ground floor (Use

Class E) and 12no residential flats on upper floors and associated external alterations including new mansard roof and dormer windows to the front, sides and rear”;

“Commencement of Development”

means for the purposes of this Deed only the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out pursuant to the Planning Permission other than works or operations consisting of site clearance, demolition work, environmental or archaeological investigations or surveys, investigations for the purposes of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, the extraction of coal, making the ground good solid and safe following any of the above mentioned works or operations, any other works required in order to comply with any condition attached to the Planning Permission which either requires those works to be carried out prior to commencement of Development, or prohibits the commencement of Development until those works have been carried out, erection of temporary access and egress points and delivery, storage and parking areas, the diversion and laying of services, the erection of any temporary means of enclosure and the temporary display of site notices or advertisements and **“Commencement”, “Commence Development” and “Commence the**

	Development shall be construed accordingly;
“Development”	means the development of the Site pursuant to the Planning Permission;
“Dwelling”	means any dwelling (including a house flat or maisonette) to be constructed on the Site pursuant to the Planning Permission;
“Index”	means the All Items Retail Price Index published by the Office for National Statistics contained in the Monthly Digest of Statistics (or contained in any official publication substituted therefore), or any replacement or modification of such index in force from time to time;
“Interest”	means interest at 4 per cent above the base lending rate of the Barclays Bank PLC from time to time;
“Occupation” and “Occupied”	means the first beneficial occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, occupation for marketing or display or occupation in relation to security operations and “Occupy” shall be construed accordingly;
“Plan”	means the plan attached to this Deed at the First Schedule and numbered 2236 and dated 15 July 2020;

“Planning Permission”

means the planning permission subject to conditions to be granted pursuant to the Application;

“Site”

means the land which is described in the First Schedule and which is (together with other land which is also subject to the Application) shown edged red on the Plan;

“Working Day”

means any day of the week other than Saturday Sunday or any bank holiday.

2 CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 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.
- 2.4 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.
- 2.5 References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council the successors to its statutory functions.

3 LEGAL BASIS

- 3.1 This Deed is made pursuant to Section 106 of the Act as substituted by Section 12 of the Planning and Compensation Act 1991 and to the extent that the covenants in this Deed are not made under Section 106 of the Act they are made under Section 111 of the Local Government Act 1972.
- 3.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed are planning obligations pursuant to Section 106 of the Act which bind the Site and each and every

part thereof and are enforceable against the Owner and their successors in title by the Council in its capacity as local planning authority.

4 CONDITIONALITY

4.1 This Deed shall take effect upon the date hereof but clause 5 shall be conditional upon:

- (a) the grant of the Planning Permission; and
- (b) the Commencement of Development on the Site.

5 THE OWNER'S COVENANTS

5.1 The Owner covenants with the Council that the Site shall be subject to the restrictions and provisions set out in the Second Schedule.

6 THE COUNCIL'S COVENANTS

6.1 The Council covenants with the Owner to comply with the restrictions and provisions as set out in the Third Schedule.

7 MISCELLANEOUS

7.1 Upon completion of this Deed the Owner shall pay to the Council the reasonable legal costs of the Council incurred in the negotiation, preparation and execution of this Deed in the sum of £1,000.00 (one thousand pounds).

7.2 A person who is not a party to this Deed shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

7.3 This Deed shall be registrable as a local land charge by the Council.

7.4 The parties agree with one another to act reasonably and in good faith in fulfilment of the objectives of this Deed and in particular 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 or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction shall be given on behalf of the Council by Head of Planning & Building Control or other appropriate manager or delegated officer within the Council from time to time.

7.5 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.

7.6 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.

- 7.7 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) 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 on the Site.
- 7.8 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed:
- (a) to the extent that such breach relates to any part of the Site in which that person has no interest; and/or
 - (b) (in respect of this Deed as a whole) which occurs after that person has parted with their interest in the Site or if it be part only of the Site the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach arising prior to parting with such interest for which they shall continue to be liable.
- 7.9 The obligations contained in this Deed shall not be binding on or enforceable against:
- (a) any owner, occupier, tenant of any of the Dwellings nor their mortgagee or chargee or any person deriving title from them;
 - (b) any mortgagee or chargee from time to time which shall have the benefit of a mortgage or charge over the Site or over any part or parts thereof unless (but subject always to the preceding and remaining provisions of this Deed) such mortgagee or charge has entered into possession of the Site or any part thereof to which such obligation relates; and/or
 - (c) a statutory undertaker or other person who acquires any part of the Site or any interest in it for the purposes of the supply of electricity, gas, water, drainage, telecommunication services or public transport services.
- 7.10 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with any planning permission other than the Planning Permission.

8 WAIVER

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.

9 JURISDICTION

This Deed is governed by and interpreted in accordance with the laws of England.

10 DELIVERY

The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

11 DISPUTES

11.1 Where the parties are in dispute or disagreement as to their respective rights duties or obligations or as to the failure of the Council to give or confirm its consent where required under this Agreement or as to any other matter or thing arising out of or connected with this Deed or its meaning or construction then the parties shall use their reasonable endeavours to resolve the same within 20 Working Days of the dispute or disagreement arising.

11.2 Failing the resolution of any such dispute or disagreement within the said 20 Working Days the dispute or disagreement may be referred for determination in accordance with the provisions of this clause 11 on the reference of either of the parties to the dispute or disagreement.

11.3 The dispute or disagreement shall be referred to the decision of a reputable Chartered Surveyor unconnected to any of the parties and qualified to deal with the subject matter of the dispute or disagreement who shall either be jointly appointed by the parties within a period of 5 Working Days following a failure of the parties to resolve the dispute or disagreement pursuant to clause 11.2 above or failing agreement on such nomination appointed by the President for the time being of the Royal Institution of Chartered Surveyors.

11.4 The determination of the independent Chartered Surveyor (including any determination as to the responsibility for payment of their costs and those of the parties) shall be final and binding upon the parties.

11.5 The reference shall be deemed to be a reference to any expert (and not an arbitrator).

11.6 The terms of reference of the Chartered Surveyor as an expert shall include the following:

- (a) they shall call for representations from all parties with 10 Working Days of a reference to them under this Deed and shall require the parties to exchange representations within this period;
 - (b) they shall allow the parties 10 Working Days from the expiry of the 10 Working Days period referred to in sub-clause (a) above to make counter representations;
 - (c) any representations or counter representations received out of time shall be disregarded by the independent Chartered Surveyor;
 - (d) they shall provide the parties with a written decision (including their reasons) within 10 Working Days of the last date for receipt of counter-representations;
 - (e) they shall be entitled to call for such independent expert advice as they shall think fit;
- and

- (f) their costs those of the parties and the costs of any independent expert advice called for by the Chartered Surveyor shall be included in their award.

12. INDEXATION AND INTEREST

- 12.1 All payments to be made by the Owner to the Council pursuant to the Second Schedule shall be increased or decreased by an amount equivalent to any percentage increase or decrease in the Index from the date of this Deed to the date on which such payment is paid.
- 12.2 If any payment due under this agreement is paid late, Interest will be payable from the date payment is due to the date of payment.

FIRST SCHEDULE

The Site

The land edged red on the Plan which comprises 48 – 50 Sheffield Road, Barnsley, S70 1HS and which is part of the land which is registered in the name of the Owner at the Land Registry under Title Number SYK252392.



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Note to Client These works will be subject to CDM Legislation



Unit 2, The Office Campus, Paragon
Business Park, Red Hall Court,
Wakefield, WF1 2UY

Project Proposed 12 No Flats at
48-50 Sheffield Road, Barnsley
S70 1HS for Mr S Clayburn

Drawing
Ordnance Survey Plan

01924 380873
Date 15/07/2020

Drg No

A4	
F	2236 Scale
R	1:500
	OS

SECOND SCHEDULE

The Owner's Covenants with the Council

1. Definitions

1.1 For the purposes of this Second Schedule (and this Deed as a whole) the following definitions shall apply in addition to those set out in clause 1:

"Sustainable Travel Contribution"	means such sum calculated in accordance with the Council's supplementary planning document entitled "Sustainable Travel" adopted November 2019 being £3,600.00 (three thousand six hundred pounds) such sum to be used by the Council towards helping finance and deliver the programme of public transport improvements and enhancements identified in the Infrastructure Delivery Plan, the updated Barnsley Rail Vision, and other relevant documents in accordance with the Councils SPD 'Sustainable Travel' (November 2019).
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The Owner covenants with the Council as follows:

1. Sustainable Travel Contribution

- 1.1 To pay the Sustainable Travel Contribution to the Council prior to the Occupation of any of the Dwellings.
- 1.2 Not to Occupy any of the Dwellings until the Sustainable Travel Contribution has been paid to the Council.

THIRD SCHEDULE

Council's Covenants with the Owner

The Council hereby covenants with the Owner in the following terms:

General

1. To use the Sustainable Travel Contribution paid to the Council under the terms of this Deed for the purposes specified in this Deed for which they are to be paid.
2. To provide to the Owner such evidence as the Owner shall reasonably require in order to confirm the expenditure of the Sustainable Travel Contribution within 20 Working Days of receipt of such request.
3. At the written request of the Owner to provide written confirmation of the discharge of the obligations contained in this Deed when the Council is satisfied that such obligations have been performed.

Repayment of the Sustainable Travel Contribution

4. The Council further covenants with the Owner that it will pay to the Owner any part of the Sustainable Travel Contribution which has not been expended or committed for expenditure in accordance with the provisions of this Deed within 10 years of the date of receipt by the Council of such payment together with all interest accrued thereon from the date of payment to the date of refund.

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

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

Authorised Signatory:



EXECUTED AS A DEED by CLAYBURN PROPERTIES LIMITED
acting by two Directors or a Director and the)
Secretary)

Director:

Director/Secretary: