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BOROUGH SECRETARY'S DEPARTMENT

BARNSLEY
Metropolitan Borough Council

LEGAL SERVICES DIVISION

To: Assistant Director, Planning and Transportation
(fao Dawn Bullen)

My Ref: JK/SAC/PG/254/00231 **Your Ref:**

Date: 14th May 2007 **Enquiries to:** John Kirkham **Ext:** 3020

Rec:
Ack:

Section 106 Agreement – Application reference: 2006/1859
St Helen's Adult Learning Centre, St Helen's Way, Monk Bretton, Barnsley

Please find enclosed a copy of the Section 106 Agreement completed in respect of the above and dated 10th May 2007.

The agreement requires the developer to pay an open space contribution of £71,471 on commencement of the development

Can you please arrange for the agreement to be noted in your Planning Register.

John Kirkham
for the Borough Secretary.

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Wragge&Co

DATED 10th May 2007

BARNSLEY METROPOLITAN BOROUGH COUNCIL **(1)**

and

HARRON HOMES (YORKSHIRE) LIMITED **(2)**

AGREEMENT

under Section 106 of the
Town and Country Planning Act 1990
(as amended)
relating to development on site of
Former St Helens Adult Learning Centre,
St Helens Way, Monk Bretton, Barnsley
in the County of South Yorkshire

THIS DEED OF AGREEMENT is made the 10th day of May 2007

BETWEEN

(1) **BARNSLEY METROPOLITAN BOROUGH COUNCIL** of Town Hall Barnsley South Yorkshire S70 2TA ("the Council") of the one part; and

(2) **HARRON HOMES (YORKSHIRE) LIMITED** (Company Registration No. 3012678) of Suffolk House, Roecliffe Business Centre, Roecliffe Nr Boroughbridge, North Yorkshire YO51 9NE ("the Developer") of the other part.

RECITALS

(1) The Council is the Local Planning Authority for the purposes of this Agreement for the area within which the Site is situated and is the authority by whom the obligations contained in this Agreement are enforceable.

(2) The Developer is the registered proprietor of the Site.

(3) The Council has under the provisions of the Local Government Act 1985 and the Town and Country Planning Act 1990 prepared and published the Unitary Development Plan ("the Development Plan") for the Council's area.

(4) Having regard to the provisions of the Development Plan and to all other material considerations the Council has resolved to grant planning permission for the Development subject to the Developer entering into this Agreement to make provision for regulating the Development and securing the matters herein referred to.

(5) The Developer has submitted the Application to the Council for permission to develop the Site for the purposes and in the manner described in the Application.

(6) It is recommended by Policy H6 of the Development Plan (as amended) that new housing development should include provision for at least 15% of the gross site area as public open space and if on site provision is not possible or the Council deems that suitable off site provision would be acceptable a monetary payment equal to the estimated value of any shortfall in the provision should be made to the Council for the provision or extension of facilities elsewhere that can conveniently serve the development ("Open Space and Related Works Contribution").

NOW THIS DEED WITNESSETH AS FOLLOWS:-

Definitions and Interpretation

1.1 In this Agreement and for the purposes of the Recitals to this Agreement the following expressions shall where the context admits have the following meanings:

"Act"	means the Town and Country Planning Act 1990
"Agreement"	means this Agreement;

"Commencement of the Development"	means carrying out or beginning to carry out any material operation pursuant to the Planning Permission within the meaning of Section 56 of the Act or the date specified in a notice served by the Developer pursuant to clause 3.3 whichever is the earlier and **"Commence"** shall have a corresponding meaning;
"Development"	means the development permitted by the Planning Permission;
"Local Planning Authority"	means the Council acting in its capacity as the local planning authority which expression shall include where the context so admits its successors in title;
"Open Space and Related Works Contribution"	means the sum of £71,471 (seventy one thousand four hundred and seventy one thousand pounds;
"Plan"	means the plan incorporated within this Agreement;
"Planning Application"	means an application for planning permission in respect of the Land (Reference Number 2006/1859) registered by the Council on 12 November 2006;
"Planning Permission"	means a planning permission granted by the Local Planning Authority pursuant to the Planning Application substantially in the form of the Recommendation Sheet annexed as Appendix 1 which expression shall include any amendment or modification to the said planning permission;
"Site"	means the land shown edged red on the Plan being registered in the Nottingham East District Land Registry.

1.2 Words including the singular shall include the plural and vice versa and words importing the masculine gender shall include the feminine gender and vice versa

1.3 Any reference to a statute statutory instrument or order shall be deemed to include reference to any further statute for the time being in force amending replacing or supplementing such statute and any regulations directions consents orders or instruments made thereunder and all provisions and conditions referred to therein

1.4 Any reference to the Site shall include each and every part of it.

1.5 The Clause headings and index to this Agreement are for reference only and shall not affect the construction of this Agreement.

1.6 References in this Agreement to Clauses relate to the relevant provisions in respect of this Agreement.

1.7 The expression "the Council", and "the Developer" shall include their successors in title and assigns.

1.8 If any clause of paragraph or sub-clause of this Agreement or any part thereof shall be void or being voidable is avoided or is otherwise unenforceable this shall not affect the operation of any other provision of this Agreement provided that it is severable therefrom.

Enabling Provisions

2 This Agreement is made pursuant to Section 106 of the Town and Country Planning Act 1990 and all other powers enabling and enactments which may be relevant for the purpose of giving validity hereto and is a planning obligation for the purposes of and as defined in the said Section 106 and the covenants herein contained on the part of the Developer are entered into with the intent that the same bind the land comprising the Site and shall be enforceable by the Council without limit of time not only against the Developer but also against its successors in title and any person corporate or otherwise claiming through or under it an interest or estate in the land comprising the Site or any part or parts thereof as if that person had also been an original covenanting party in respect of the interest or estate for the time being held by it.

Developer's Covenants

3 The Developer **COVENANTS** with the Council as follows:

3.1 The Developer will pay the Open Space and Related Works Contribution to the Council on Commencement of the Development **PROVIDED THAT** the Council shall apply and appropriate the Open Space and Related Works Contribution to be spent ~~on the improvement of the open space in the area~~ as on off site open space improvements to the area of land adjacent to the Site being the natural area within Carlton Industrial Estate Buffer zone.

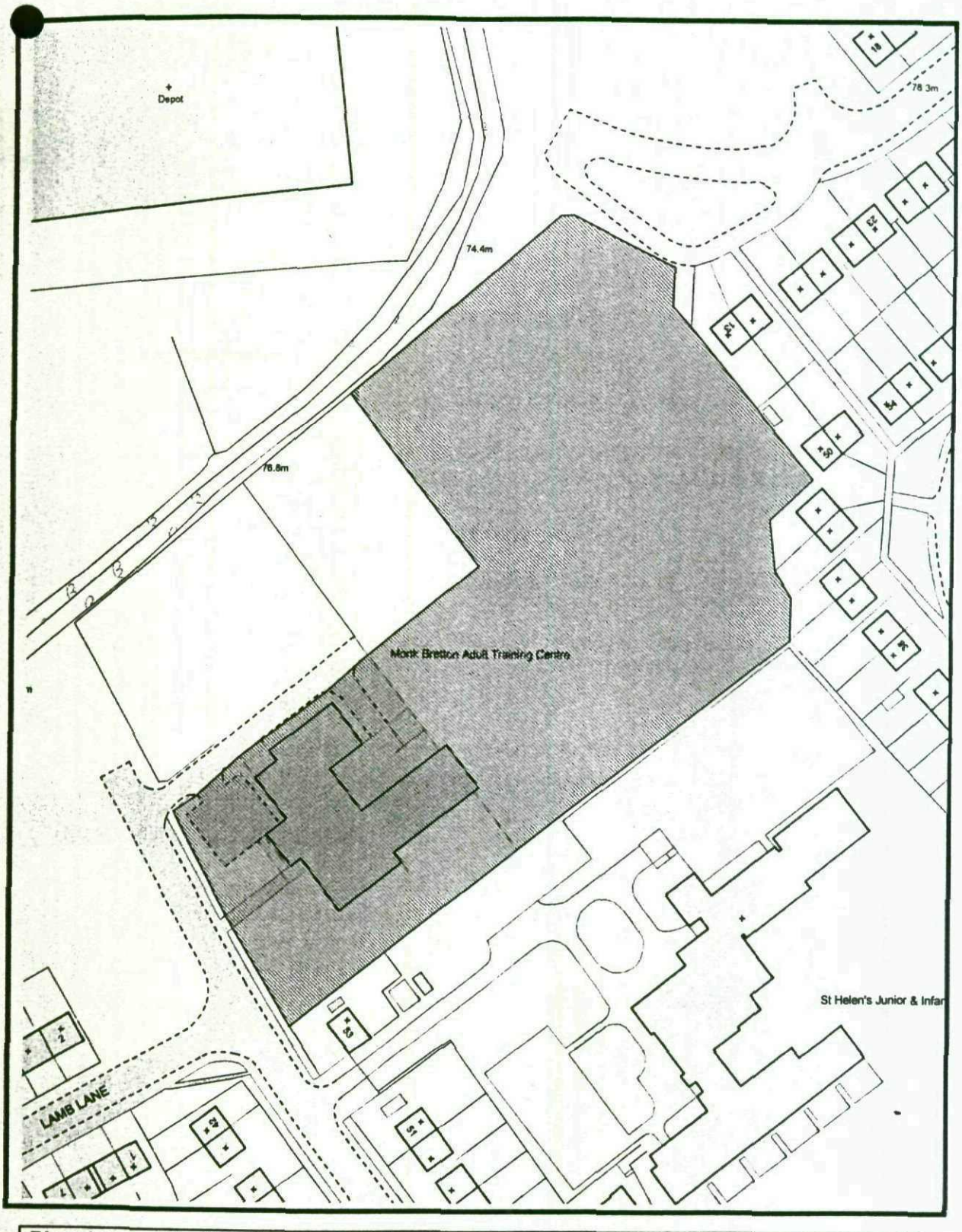
3.2 Without prejudice to any other remedies available to the Council, the Commencement of the Development shall not take place nor shall any action whatsoever be taken on the Site pursuant to the Planning Permission unless and until the Open Space and Related Works Contribution has been paid in full to the Council.

3.3 The Developer will serve on the Council fourteen days prior written notice of the Commencement of the Development.

General

4 It is agreed and declared as follows:

4.1 No party shall be liable for any breach of a covenant contained in this Agreement after it has parted with its interest in the Site 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;



Planning Application Number: 2006/1859	1:1250
Site Address: Site of adult training centre, St. Helens Way, Monk Bretton, Barnsley.	
Development Description: Residential Development of 54 dwellings	

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2006/1859

4.2 If the Planning Permission shall expire before the Commencement of the Development or shall at any time be revoked this Agreement shall forthwith determine and cease to have effect;

4.3 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the one relating to the Development granted pursuant to the Planning Application) granted (whether or not on appeal) after the date of this Agreement;

4.4 The Council will upon the written request of the Developer at any time after the obligations of the Developer under this Agreement have been fulfilled issue written confirmation thereof and thereafter cancel all related entries in the Register of Local Land Charges;

4.5 This Agreement is a Local Land Charge and may be registered as such by the Council;

4.6 No delay or omission on the part of any Party to this Agreement in exercising any right, power or remedy provided by law or under this Agreement shall:

(i) impair such right, power or remedy; or

(ii) operate as a waiver thereof;

4.7 The single or partial exercise of any right, power or remedy provided by law or under this Agreement shall not preclude any other or further exercise thereof or the exercise of any other right, power or remedy;

4.8 The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers and remedies provided by law.

Interest on overdue payments

5 If any payment due under any of the provisions of this Agreement is not made on or before the date on which it is due ("the Due Date") the party from whom it was due shall at the same time as making the payment pay to the other party interest at 3 per cent per annum above the median base rate of Barclays Bank plc as at the Due Date for the period starting with the Due Date and ending with the date on which payment of the sum on which interest is payable is made.

Notice

6 Any notice given pursuant to this Agreement shall be in writing and shall be sufficiently given to any party if sent in a letter by first class post addressed to that party at the party's place of business or that party's registered office or the address of that party set out at the head of this Agreement (or any alternative address notified by that party in accordance with this clause) and any notice so given shall be deemed unless the contrary is proved to have been effected at the time at which the letter would be delivered in the ordinary course of post.

Legal Expenses

7 The Developer shall pay to the Council on the execution of this Agreement the Council's costs incurred in the preparation and settlement of this Agreement in the sum of £~~s~~ 500 ~~s~~ ~~s~~

Third Party Rights

8 Any person who is not a party to this agreement shall have no rights under the Contract (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

Coming into effect

9 This Agreement shall be delivered and shall come into effect upon the date of its execution by the parties.

IN WITNESS whereof these presents have been duly executed as a Deed by the parties hereto the day and year first before written.

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

Borough Secretary

AUTHORISED SIGNATORY

No. 5342 IN REGISTER

EXECUTED AS A DEED by)
HARRON HOMES (YORKSHIRE))
LIMITED ~~was affixed to this Deed~~ ~~s~~)
in the presence of:-)

Director

Director/Secretary

Appendix 1

Recommendation Sheet

Notwithstanding the above, the proposals will result in the development of an area of open space and would normally be contrary to UDP Policy GS34. However given the presence of other material considerations in the form of the extant permission the presumption against development is overrided by the offer of a 3,000 sq metre strip of land alongside the public footpath as compensation.

The above are considered to amount to very exceptional circumstances to justify the development subject to a Section 106 agreement for a financial contribution towards the provision of off-site open space to the amount of £71,471.00.

Design - The scheme equates to a density of 49 dwellings per hectare which is within the range of 35-55 dwellings per hectare recommended within suburban areas. The proposed layout consists of a mix of house and apartment types in accordance with PPG3 and PAN30.

Residential Amenity - The site is overlooked along its eastern boundary by existing dwellings. In order to achieve a satisfactory relationship with these properties the development has been kept to two storeys along the boundary and the minimum separation distances required by the Council's SPG are met.

Access - The Transportation Manager advises that subject to the developer re-surfacing St Helens Way up to its junction with Burton Road the development can be accommodated without undue problems arising on the adjacent network.

Public Open Space - In accordance with SPG20, new developments are required to either incorporate an area of public open space or a contribution in lieu is required. To fulfil this requirement the developer will provide a financial contribution of £71,471.00 which will be used to improve public open space in the area.

Impact on the setting of a public right of way: The 3,000 sq metre area of land alongside the public footpath will ensure the setting of the public footpath is retained as open as possible.

Recommendation - The Board agree to grant planning permission for the proposed development subject to the following.

1. The satisfactory completion of a Section 106 Agreement to secure a financial contribution of £71,471.00 which will be used to improve open space in the area.

2. The conditions listed in the recommendation below.

Recommendation

Grant subject to:-

1 The development hereby permitted shall be begun before the expiration of 3 years from the date of this permission.
Reason: In order to comply with the provision of Section 91 of the Town and Country Planning Act 1990.

2 The development hereby approved shall be carried out in strict accordance with the amended plans and specifications received on 15 February 2007, unless prior written consent has been given by the Local Planning Authority to any minor variation.
Reason: For the avoidance of doubt as amendments have been submitted during the course of processing the application and in accordance with UDP Policy BE6, Design Standards.

3 No development shall take place until full details of the proposed external materials have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
Reason: In the interests of the visual amenities of the locality and in accordance with UDP Policy BE6, Design Standards.

4 Construction or remediation work comprising the use of plant, machinery or equipment, or deliveries of materials shall only take place between the hours of 0800 to 1800 Monday to Friday and 0900 to 1400 on Saturdays and at no time on Sundays or Bank Holidays.
Reason: In the interests of the amenities of local residents and in accordance with UDP Policy ES1, Pollution.

5 The boundary treatment shown on the approved plans shall be completed before the buildings are occupied. Development shall be carried out in accordance with the approved details and shall thereafter be retained.
Reason: In the interests of the visual amenities of the locality and the amenities of occupiers of adjoining property and in accordance with U.D.P. Policy BE6, Design Standards.

6 The existing building shall be demolished and all resulting debris removed from site before the development hereby approved is implemented.
Reason: In the interests of visual amenity and the amenities of the local residents.

7 All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which die within a period of 5 years from the completion of the development, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with other of similar size and species, unless the Local Planning Authority give written consent to any variation.
Reason: In the interests of the visual amenities of the locality.

8 Prior to the commencement of the development a scheme shall be submitted to, and approved in writing by, the Local Planning Authority describing the methodology to be employed to suppress dust arising from the operations in the form of a Dust Action Plan. Such measures may include water bowsers; sprayers mobile and fixed; or similar equipment; regulating the speed of vehicles on the site; and such other steps as are appropriate. The operations shall thereafter be undertaken in complete accordance with the approved scheme. At such times, when due to site conditions the prevention of dust is not possible all site works contributing to the dust problem should cease until such time as conditions improve to allow a resumption of works.
Reason: In the interests of local amenity and to protect the environment.

9 Prior to the commencement of the development a scheme shall be submitted to, and received the written approval of the Local Planning Authority, identifying measures to be taken to ensure that all vehicles leaving the site are in such condition as not to leave dust, slurry or mud on the highway. The development shall thereafter be undertaken in accordance with the details of the approved scheme. Notwithstanding such arrangements, should any material nevertheless be accidentally deposited on the public highway, the operator shall immediately remove such material.
Reason: In the interests of highway safety.

10 A noise impact assessment shall be submitted to and approved by the local authority with regard to the impact of industrial near neighbours prior to engineering works commencing. Such a scheme may include improving the sound insulation capacity of buildings containing sensitive uses, permanent and temporary acoustic barriers, bunds, fences and enclosures, working methodologies, public information, night working (if required), conditions for the suspension of site works, etc.
Reason: To protect the amenity of future occupiers of the site and occupiers of neighbouring land from excessive noise.

11 No development shall take place until details of the foul and surface water drainage have been submitted to and approved in writing by the Local Planning Authority. Thereafter no part of the development shall be occupied or brought into use until the approved scheme has been fully implemented. The scheme shall be retained throughout the life of the development unless otherwise agreed in writing with the Local Planning Authority.
Reason: To ensure the proper drainage of the area.

12 Unless otherwise agreed in writing by the local planning authority no building or other obstruction shall be located over or within 3 metres either side of the centre line of the sewers which cross the site.
Reason: In order to allow sufficient access for maintenance and repair work at all times

13 Surface water from vehicle parking and hardstanding areas shall be passed through an interceptor of adequate capacity prior to discharge. Roof drainage should not be passed through an interceptor
Reason: In the interest of satisfactory drainage

14 The site shall be developed with separate systems of drainage for foul and surface water.
Reason: In the interests of satisfactory drainage.

15 No piped discharge of surface water from the application site shall take place until works to provide a satisfactory outfall for surface water have been completed in accordance with details to be submitted to and approved in writing by the Local Planning Authority before development commences.
Reason: To ensure that the site is properly drained and surface water is not discharged to the foul sewerage system, which will prevent overloading.

16 No development works shall begin until a report, endorsed by a competent engineer experienced in ground contamination and remediation matters, has been submitted and agreed with the Local Planning Authority. The report shall, amongst other matters, include the following:-

1. Measures to test and evaluate the topsoil on the site with regards potential contamination.

2. Assessment of the risks posed to the potential development, including an appraisal of potential contaminant sources, pathways and receptors.

3. Remediation measures to treat or remove any contaminated material, if required.

4. The subsequent certification/validation reports are submitted, showing that the site has been satisfactorily remediated and that the development of the site can be safely occupied

The development shall thereafter be undertaken in full accordance with the submitted report. For further information, see BMBC's Supplementary Planning Guidance 28, "Developing Contaminated Land".
Reason: To protect the environment and ensure the site is suitable for the proposed use.

17 Prior to the commencement of development plans to show the following levels shall be submitted to and approved by the Local Planning Authority; finished floor levels of all buildings and structures; road levels; existing and finished ground levels. Thereafter the development shall proceed in accordance with the approved details.
Reason: To enable the impact arising from need for any changes in level to be assessed and in accordance with UDP Policy BE6, Design Standards.

Wragge&Co

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