

Dated

2014

JUSTIN MICHAEL SIMMS

and

HILARY MARY SIMMS

to

BARNSELY METROPOLITAN BOROUGH COUNCIL

Unilateral Undertaking

under Section 106 of the Town
and Country Planning Act 1990

Relating to land adjoining

Lakeside View, Huddersfield Road, Ingbirchworth, Penistone, Sheffield S36 7GF

THIS UNDERTAKING is made the day of Two thousand and fourteen

BY:

(1) **JUSTIN MICHAEL SIMMS** of Cockle Edge, Huddersfield Road, Ingbirchworth, Sheffield S36 7GG (“the First Owner”); and

(2) **HILARY MARY SIMMS** of Cockle Edge, Huddersfield Road, Ingbirchworth, Sheffield S36 7GG (“the Second Owner”)

TO:

(1) **BARNSELY METROPOLITAN BOROUGH COUNCIL** of PO Box 604 Barnsley S70 9FE (“the Council”)

Background

- (A) The First Owner and the Second Owner are the owners of the Property.
- (B) The Council is the local planning authority for the area within which the Property is situated.
- (C) The First Owner and the Second Owner have made the Planning Application and are proposing to carry out the Development on the Property pursuant to the Planning Permission.
- (D) In accordance with the Council’s Unitary Development Plan on planning contributions the First Owner and the Second Owner give this undertaking to perform the obligations set out in this deed.

Agreed Terms

1. Interpretation

1.1 The definitions and rules of interpretation in this clause apply in this deed:

Ancillary Workshop Floorspace: the parts of the Property to be constructed pursuant to the Planning Permission which are to be used for the carrying out of the Business and which are shown shaded blue on Plan 2.

Business: the business to be carried out in the Ancillary Workshop Floorspace being a business for the provision of educational and therapeutic care services.

Commencement of Development: the carrying out in relation to the Development of any material operation as defined by section 56(4) of the TCPA 1990.

Commenced and **Commences** shall be construed accordingly.

Commencement Date: the date of Commencement of Development

Council: Barnsley Metropolitan Borough Council of PO Box 604 Barnsley S70 9FE.

Development: the development of the Property described in the Planning Application.

Dwelling House: the dwelling house to be constructed pursuant to the Planning Permission.

Occupation: occupation for the purposes permitted by the Planning Permission and “occupy” and “occupied” shall be construed accordingly.

Plan: the plan attached to this deed and if numbered plans are attached any reference to a numbered plan is to a plan so numbered.

Property: the freehold land adjoining Lakeside View, Huddersfield Road, Ingbirchworth, Penistone, Sheffield S36 7GF which is registered at HM Land Registry under title number SYK85679 being the land shown for identification purposes only edged red on Plan 1.

Planning Application: an application for planning permission registered by the Council on [DATE] under reference number [REFERENCE NUMBER] for full planning permission to develop the Property for the erection of a dwelling house with ancillary use of the dwelling house and the Property for the provision of educational and therapeutic care services.

Planning Permission: the planning permission to be granted by the Council in respect of the Planning Application.

TCPA 1990: Town and Country Planning Act 1990.

Working Day: a day (other than a Saturday, Sunday or public holiday in England when banks in London are open for business).

1.2 Clause headings shall not affect the interpretation of this deed.

1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality)

- 1.4 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to other genders.
- 1.7 A reference to any party shall include that party's personal representatives, successors or permitted assigns and in the case of the Council the successors to its respective statutory functions.
- 1.8 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time provided that, as between the parties, no such amendment, extension or re-enactment shall apply to the deed to the extent that it would impose any new or extended obligation, liability or restriction, on, or otherwise adversely affect the rights of, any party.
- 1.9 A reference to a statute or a statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.10 A reference to **writing** or **written** does not include faxes or e-mail.
- 1.11 A reference to "this deed" or to any agreement or document referred to in this deed is a reference to this deed or such other document or deed as varied or novated (in each case other than in breach of the provisions of this deed) from time to time.
- 1.12 References to clauses and plans are to the clauses and plans of this deed.
- 1.13 An obligation in this deed o a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.14 Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.15 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.

2. **Statutory Provisions**

- 2.1 This deed constitutes a planning obligation for the purposes of Section 106 of the Act Section 111 of the Local Government Act 1972 and all other enabling powers.
- 2.2 The obligations contained in clause 3 of this deed are planning obligations for the purposes of section 106 of the TCPA 1990 and are entered into by the First Owner and the Second Owner with the intention that they bind the interests held by those persons in the Property and their respective successors and assigns.
- 2.3 This deed shall come into effect on the date of this deed but the obligations contained herein shall become effective only upon the grant of the Planning Permission and Commencement of Development.
- 2.4 The obligations contained clause 3 of this deed are enforceable by the Council in accordance with section 106 of the TCPA 1990.

3. Covenants with the Council

The First Owner and the Second Owner covenant with the Council:

- (a) To use the Ancillary Workshop Floorspace as a facility for the provision of therapeutic care and education and no other purpose within Use Class D1 of the Town and Country Planning Act Use Classes Order 1987 (or any order revoking or re-enacting that Order with or without modification) unless further planning permission is granted.
- (b) Following a period of 12 months from first Occupation of the Property to occupy and operate the Property for the dual purposes of a Dwelling House with Ancillary Workshop Floorspace and (subject to the provisions of Clause (C) below) not to occupy the Dwelling House unless the Ancillary Workshop Floorspace is used for the Business or vice versa.
- (c) Not to cause or permit the Dwelling House to be occupied by the person(s) other than the person (s) who operate(s) the Business (or if within the first twelve months following first Occupation of the Property the person(s) who will operate the Business) and by members of his, her or their household and following a period of 12 months from first Occupation of the Property the Ancillary Workshop Floorspace shall be operated to the extent that at least one occupant of the Dwelling House shall derive the equivalent of a

full time employment from that operation PROVIDED ALWAYS THAT this covenant shall not preclude the occupation of the Dwelling House by a person who is retired from employment (or whose business has failed and is unemployed) following demonstrable use of the Ancillary Workshop Floorspace for five years (during which time that person (s) shall have derived the equivalent of full time employment from that operation) or a widow or widower or other dependants of such a person who was residing with him or her when he or she died.

(d) Not to cause or permit any internal alterations to the Property which would lead to a reduction in the area of the Ancillary Workshop Floorspace without the prior consent of the Council.

4. Release

No person shall be liable for any breach of an obligation, restriction or covenant contained in this deed after parting with all of its interest in the Property, except in respect of any breach subsisting prior to parting with such interest.

5. Determination of Deed

This deed shall be determined and have no further effect if the Planning Permission:

- (a) expires before the Commencement of Development;
- (b) is varied or revoked other than at the request of the First Owner and the Second Owner; or
- (c) is quashed following a successful legal challenge

6. Local Land Charge

This Unilateral Planning Obligation is a local land charge and may be registered as such in the Register of Local Land Charges maintained by the Council

7. Ownership

- 7.1 The First Owner and the Second Owner warrant that no person other than the First Owner and the Second Owner has any legal or equitable interest in the Property.
- 7.2 The First Owner and the Second Owner will give to the Council within 15 Working Days, the details of any conveyance, transfer, lease, assignment, mortgage or other disposition entered into in respect of all or part of the Property including for the avoidance of doubt:
- (a) the name and address of the person to whom the disposition was made; and
 - (b) the nature and extent of the interest disposed of.

8. Third party rights

No person other than a party to this undertaking and their respective successors and assigns and the Council and any successors to its statutory functions shall have any right to enforce any term of this deed.

9. Severance

- 9.1 If any court or competent authority finds that any provision of this deed (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this deed shall not be affected.
- 9.2 If any invalid, unenforceable or illegal provision of this deed would be valid, enforceable and legal if some part of it were deleted the parties shall amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible achieve the parties' original commercial intention.

10. Governing Law

This deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

EXECUTED AS A DEED by)

JUSTIN MICHAEL SIMMS)

In the presence of

NAME
ADDRESS
OCCUPATION

EXECUTED AS A DEED by)

HILARY SIMMS)

In the presence of

NAME
ADDRESS
OCCUPATION