

**BOROUGH SECRETARY'S
DEPARTMENT**



LEGAL SERVICES DIVISION

To: Planning and Transportation
(FAO: Elaine Ward and Joe Jenkinson)

My Ref: JF/DH/PG/254/00262

Your Ref:

Date: 16 November 2010 Enquiries to: Jason Field

Ext: 2651

**Upper Sheffield Road, Barnsley – Yorkshire Traction
Section 106 Deed of Variation**

I attach a copy of the completed Section 106 Agreement further Deed of Variation relating to land at the Yorkshire Traction site, Upper Sheffield Road, Barnsley. This Deed of Variation varies the original Agreement (as varied) to ensure that the obligations in the original Agreement also apply to the new planning permission reference 2010/1013. The Public Open Space provisions are also slightly varied, as shown in clause 5.

Jason Field
for the Borough Secretary

DATED 9th November 2010

BARNSELY METROPOLITAN BOROUGH COUNCIL

and

PERSIMMON HOMES LIMITED

SUPPLEMENTAL AGREEMENT AND DEED OF VARIATION

Pursuant to Section 106 and Section 106A of the Town and Country Planning Act 1990 (as amended) relating to development on land at Yorkshire Traction Site, Vernon Works Upper Sheffield Road Barnsley

A.C. Frosdick, LL.B. DipLG,
Borough Secretary,
Town Hall,
Barnsley S70 2TA.

THIS DEED OF VARIATION is made the 9th day of November Two Thousand and Ten

BETWEEN

- (1) **BARNSELY METROPOLITAN BOROUGH COUNCIL** of Town Hall Barnsley South Yorkshire S70 2TA ("the Council") of the first part and
- (2) **PERSIMMON HOMES LIMITED** (Company registration number 04108747) whose registered office is situate at Persimmon House Fulford York YO19 4FE ("the Owner") of the second part

RECITALS

- (1) This Deed of Variation is supplemental to an agreement entered into pursuant to Section 106 of the Town and Country Planning Act 1990 between the Council (1) The Yorkshire Traction Company Limited (2) Colin Soar and Michael Soar (3) and the Owner dated 27 July 2007 ("the Original Section 106 Agreement") and a Deed of Variation of the Original Section 106 Agreement between the Council (1) and (2) Persimmon Homes dated 30th September 2010 ("the First Deed of Variation"),
- (2) The Owner is now the registered proprietor with Title Absolute under title number SYK559886 of land at the former Yorkshire Traction Site Upper Sheffield Road Barnsley referred to in the Original Section 106 Agreement as the Green Land ("the Owners Site")
- (3) The Owner has the benefit of an unconditional contract to purchase the adjoining land at Vernon Works Upper Sheffield Road Barnsley referred to in the Original Section 106 Agreement as the Blue Land ("the Adjoining Site")

(4) The Green Land and the Blue Land are together referred to in the Original Section 106 Agreement as the Site

(5) The Owner was granted planning permission under planning reference 2006/1894 to develop the Site ("the Original Planning Permission").

(6) The Owner was granted a second planning permission under planning reference number 2010/0406 for a similar planning permission with a varied condition 40 ("the Second Planning Permission") and the Original Section 106 Agreement was varied by the First Deed of Variation to ensure the obligations contained in the Original Section 106 Agreement also applied to the Second Planning Permission

(7) The Owner has applied for a third planning permission to develop the Site under planning reference number 2010/1013 and the Council wish to further vary the Original Section 106 Agreement to ensure the obligations contained in the Original Section 106 Agreement also apply to any permission granted pursuant to this planning application, subject to certain obligations relating to public open space also being varied

(8) The Head of Planning and Transportation agrees to vary the Original Section 106 Agreement by entering into this Deed of Variation pursuant to powers granted to him under the Council's Scheme of Delegation.

(9) Any words or phrases which are defined in the Original Section 106 Agreement (as varied) and which appear in this Deed of Variation shall have the same meaning as are associated to them in the Original Section 106 Agreement (as varied) unless a contrary intention appears from this Deed of Variation

NOW THIS DEED WITNESSETH AS FOLLOWS:-

1 Variation

- 1.1 It is hereby agreed between the parties to this Deed of Variation that the Original Section 106 Agreement as varied by the First Deed of Variation is further varied in the manner set out in the Schedule to this Deed of Variation and the Original Section 106 Agreement shall (save as amended by the First Deed of Variation) remain in full force and effect and the amendments contained in this Deed of Variation shall take effect as if they were included in the Original Section 106 Agreement
- 1.2 This Deed of Variation is made pursuant to the statutory provisions and in consideration of the covenants contained herein and for the avoidance of doubt it is agreed and declared that the said covenants are ones to which section 111 of the Local Government Act 1972, Section 106 of the Town and Country Planning Act 1990 and all other powers so enabling.
- 1.3 This Deed of Variation contains planning obligations made pursuant to Section 106 of the Town and Country Planning Act 1990 which are enforceable by the Council and which binds each and every part of the Green Land.
- 1.4 The provisions of this Deed of Variation shall have immediate effect upon the completion of this Deed

2 Miscellaneous

- 2.1 The Owner agrees to pay the Council's legal fees in respect of the drafting negotiation and completion of this Deed of Variation in the sum of £500.
- 2.2 Clause 1.1 shall be of no effect unless the Council issue a decision notice in respect of planning application 2010/1013 in the form of the draft decision notice annexed hereto or of substantially similar effect

Schedule

The Original Section 106 Agreement shall be varied as follows:

- 1 The following definitions shall be deleted from Clause 1

"New Planning Application" means the application made by the Owner under section 73 of the Town and Country Planning Act 1990 under planning application reference number 2010/0406

- 2 The following definitions shall be added to Clause 1

"the Second Planning Application" means the application made by the Owner under section 73 of the Town and Country Planning Act 1990 under planning application reference number 2010/0406

"the Third Planning Application" means the application made by the Owner under planning application reference number 2010/1013

- 3 The definition of "Planning Permission" in Clause 1 shall be replaced by the following definition:

"Planning Permission" means planning permission granted by the Council pursuant to the Planning Application, the Second Planning Application or the Third Planning Application and any non-material amendment to any such planning permission

- 4 The following words shall be added to the end of Clause 3.1:

"PROVIDED THAT if planning permission granted pursuant to the Third Planning Application is implemented the Open Space Contribution shall be increased by £5,326 to £284,396 which shall be payable prior to completion of the 100th dwelling

to be constructed on the site"

5 Clause 4.1 is replaced as follows:

"Following receipt of the same the Council shall apply and appropriate the Open Space Contribution to be spent for the following purposes:

4.1.1 £90,024 (ninety thousand and twenty four pounds) towards the provision of a LEAP on the Public Open Space Land to be applied within two years of the transfer of the Public Open Space Land or receipt of the Open Space Contribution (whichever is later)

4.1.2 £42,754 (forty two thousand seven hundred and fifty four pounds) towards the maintenance of the Public Open Space Land (and the LEAP thereon)

4.1.3 The remaining amount of the Open Space Contribution is to be spent firstly at Warren Quarry Lane Open Space for the provision of a Youth Facility and secondly on other public open space in the locality of the Site

4.1.4 If for any reason the Public Open Space Land has not been transferred within five years of the implementation of the Planning Permission the sums of money in clauses 4.1.1 and 4.1.2 shall instead be applied towards the purposes in clause 4.1.3"

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:-)



S. P. Che

Borough Secretary/Authorised Signatory

No. 1345
IN REGISTER

EXECUTED AS A DEED by)
PERSIMMON HOMES LIMITED)
acting by its attorneys)

[*WAYNE GROWEN*]

-and

[*NEIL WILLIAMS*]

in the presence of:

Attorney

Attorney

E. Taylor.
(ERICA TAYLOR)
3 HEPTON COURT
YORK ROAD
LEEDS
LS9 6PW.



Draft Decision Notice

2010/1013

AgentName
AgentAddress

Persimmon Homes West Yorkshire
C/o John R Paley Associates
1 Red Hall Crescent
Paragan Business Village
Wakefield
WF1 2DF

Residential development of 200 no. dwellings and associated works.
Former Yorkshire Traction Site and Vernon Works
Upper Sheffield Road
Barnsley
S Yorks

- 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 Unless prior written consent has been given by the Local Planning Authority to any minor variation, the development hereby approved shall be carried out in strict accordance with the following plans and specifications:

Planning Layout - P09:4234:01 Rev E
Boundary Treatments - P09:4234:03 Rev A
Site Sections - P09:4234:05 Rev A
Street Scenes - P09:4234:06 Rev A
Bin Stores - P09:4234:07
Structural Details for Standard Retaining Wall - 3322-S-D-001
House Types - P09:4234:100, P09:4234:101, P09:4234:102, P09:4234:103, P09:4234:104, P09:4234:105, P09:4234:106, P09:4234:107, P09:4234:108, P09:4234:109, P09:4234:110, P09:4234:111, P09:4234:112, P09:4234:113, P09:4234:114, P09:4234:115, P09:4234:116, P09:4234:117 (excluding plot 42), P09:4234:118, P09:4234:119, P09:4234:120 Rev A, P09:4234:121, P09:4234:122, P09:4234:123, P09:4234:124, P09:4234:125, P09:4234:126, P09:4234:127, P09:4234:128, P09:4234:129, P09:4234:130, P09:4234:131, P09:4234:132, P09:4234:133, P09:4234:134, P09:4234:135, P09:4234:136, P09:4234:137, P09:4234:138, P09:4234:139, P09:4234:140, P09:4234:141, P09:4234:142, P09:4234:143, P09:4234:144, P09:4234:145, P09:4234:146, P09:4234:147, P09:4234:148, P09:4234:149, P09:4234:150, P09:4234:151, P09:4234:152, P09:4234:153, P09:4234:154, P09:4234:155, P09:4234:156, P09:4234:157, P09:4234:158, P09:4234:159, P09:4234:160
- 3 Prior to commencement of development details of the site compound (including parking of vehicles of site operatives and visitors, means of access for construction traffic, and area for storage of plant and materials used in constructing the development) and the details of the sales area (including the show home, sales office and car park) shall be

submitted to and approved in writing by the Local Planning Authority. Development shall proceed thereafter in accordance with the approved details, unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interests of highway safety, residential amenity and visual amenity.

- 4 Prior to commencement of development details of measures to control noise, dust and to prevent mud on the road shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented throughout the duration of the development, unless otherwise agreed in writing by the Local Planning Authority.

- 5 Reason: In the interest of residential amenity and highway safety. 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.

- 6 Prior to the commencement of any development works on plots 90-141, a remediation scheme, endorsed by a competent engineer experienced in ground contamination, shall be submitted to the local Planning Authority for approval. This report shall, amongst other matters, include the following:-

1. Methodology to identify and remove any contaminated material.
2. Measures to test and evaluate any imported soils onto the site to ensure they are suitable for the intended use.
3. Chemical testing suite, frequencies and threshold levels.
4. Procedures to confirm capping levels have been achieved on plots.
5. The subsequent validation that the site has been satisfactorily remediated and that the development of the site can be safely undertaken and occupied.

The development shall thereafter be undertaken in full accordance with the submitted reports.

Reason - to protect the environment and ensure the site is suitable for the proposed use.

- 7 The remediation of the part of the site that includes plots 1-89 & 142-200 shall be undertaken in accordance with the Geoenvironmental Appraisal, Remediation Strategy and Verification Plan. On completion of the remediation for this part of the site a Validation Report shall be submitted to and approved in writing by the Local Planning Authority.

Reason: To protect the environment and ensure the site is suitable for the proposed use.

- 8 No development shall take place until full foul and surface water drainage details, including a scheme for surface water run-off limitation and a programme of works for implementation, 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 proper drainage of the area

- 9 Prior to commencement of development on plots 57-169 (inclusive) an Arboricultural Implications Assessment and Method Statement, including details of tree protection fencing, shall be submitted to and approved in writing by the Local Planning Authority. The development shall proceed in accordance with the approved statement and the approved fencing shall be installed before machinery or materials are brought on to the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced off in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the written consent of the Local Planning Authority.

Reason: To safeguard existing trees, in the interest of visual amenity.

- 10 No development shall take place until there has been submitted to and approved in writing by the Local Planning Authority, full details of both hard and soft landscaping works, including details of the species, positions and planted heights of proposed trees and shrubs; together with details of the position and condition of any existing trees and hedgerows to be retained. The soft landscaping details shall include new tree planting in the area of public open space to replace the trees felled within woodland W5. The approved hard landscaping details shall be implemented prior to the occupation of the building(s).

Reason: In the interests of the visual amenities of the locality.

- 11 The route of the footpath running diagonally across the public space (as shown on the approved layout plan P09:4234:01 Rev E) is indicative only. The exact route of the footpath and full construction details shall be submitted to and approved in writing by the Local Planning Authority prior to the transfer of the area of public open space. The footpath shall be installed in accordance with the approved details prior to transfer of the area of public open space.

Reason: In order to ensure that the route of the footpath correlates with the position of the play area.

- 12 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.

- 13 Prior to commencement of development full highway engineering construction details, including highway retaining structure, and phasing of the highway works shall be submitted to and approved in writing by the Local Planning Authority. Development shall proceed in accordance

with the approved details, unless otherwise agreed in writing by the Local Planning Authority.

- 14 Reason: In the interest of highway safety.
Prior to the commencement of the construction of the 50th dwelling highway improvement works shall be completed in their entirety. Such works shall comprise of:- carriageway widening; radius improvements; relocation of bus stops, provision of new bus shelters, bus border kerbing and ribbed tactile paving slabs; carriageway and footway resurfacing; provision of 2 no. pedestrian refuges and associated tactile paving and white lining; alterations to white lining, highway drainage and street furniture as required; provision of waiting restrictions under Traffic Regulation Order legislation; provision of right turn lane.

Reason: In the interests of highway safety and the proper development of the site.

- 15 Prior to the occupation of the development the developer shall implement the Travel Plan by Sanderson (consulting engineers) Ltd, dated June 2010.

Reason: To encourage sustainable travel

- 16 Prior to the occupation of the dwellings a report detailing the findings of the archaeological survey shall be submitted to and approved in writing by the local planning authority.

Reason: To ensure that arrangements are made to record archaeological remains.

- 17 Unless otherwise agreed in writing by the Local Planning Authority, the dwellings located on plots 57-169 (inclusive), as detailed on the approved plan (DWG: P09:4234:01 Rev E), shall not be occupied until the scrap yard use located on the eastern part of the site (shown as plots 90-141) has completely ceased and the site has been remediated in its entirety

Reasons: In the interests of the amenities of the future occupiers and highway safety.

- 18 Within three months of the occupation of the development, the developer shall provide each household with a public transport season ticket

Reason: To encourage the use of sustainable transport modes

- 19 Windows and glazing to the doors of Plots 1 to 28, 186 to 195 & 200, facing Upper Sheffield Road, shall be double glazed and capable of 34dBA sound reduction. Such windows shall be provided with trickle vents capable of the same level of sound attenuation.

Reason: To safeguard the amenities of future residents.

- 20 The boundary treatment to each plot as shown on the approved plans shall be completed before the plot is occupied.

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.

- 21 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.
- 22 Unless otherwise agreed in writing by the local planning authority no building or other obstruction shall be located over or within 3.0 metres either side of the centre line of the sewer, which crosses the site.
Reason: In order to allow sufficient access for maintenance and repair work at all times
- 23 Unless otherwise agreed in writing by the local planning authority no building or other obstruction shall be located over or within 3.0 metres either side of the centre line of the water main, which crosses the site.
Reason: In order to allow sufficient access for maintenance and repair work at all times
- 24 No piped discharge of surface water from the application site shall take place until work to provide a satisfactory outfall for surface water has been completed in accordance with details to be submitted to and approved by the local planning authority before development commences.
Reason: To ensure that the site is properly drained.
- 25 Visibility splays, having the dimensions 2.4m x 90m, shall be safeguarded at the junction of the access road with Upper Sheffield Road, such that there is no obstruction to visibility and forming part of the adopted highway.
Reason: In the interest of road safety.

26 October 2010

InformativeText

