

DATED 11th Dec 2012

BARNSELY METROPOLITAN BOROUGH COUNCIL

and

D NOBLE LIMITED

AGREEMENT

under Section 106 of the Town and Country Planning Act 1990 (as amended)
relating to development on land at Shaw Lane Carlton Barnsley in the County of
South Yorkshire

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

THIS DEED OF AGREEMENT is made the 11th day of December Two Thousand and Twelve

BETWEEN

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

(2) **D NOBLE LIMITED** (Company registration number 00874002) whose registered address is Noble House Perseverance Street Castleford West Yorkshire WF10 1LD ("the Owner") of the second part

RECITALS

(1) The Council is the Local Planning Authority for the purposes of this Agreement for the area within which the land described in the First Schedule hereto ("the Land") is situated and is the authority by whom the obligations contained in this Agreement are enforceable

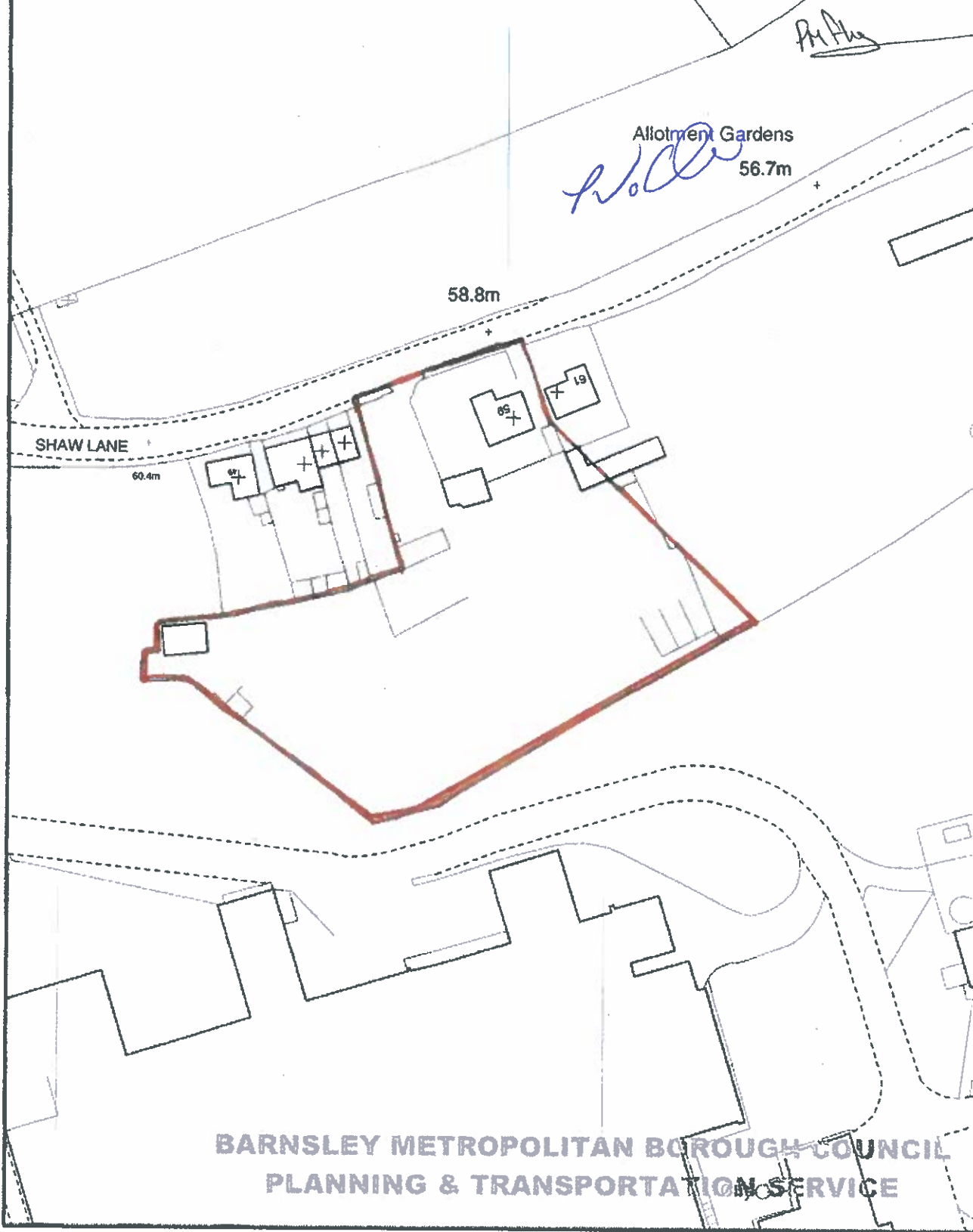
(2) The Owner is the registered proprietor with Title Absolute of the Land under Land Registry Title Numbers SYK539115, SYK548582, SYK218723, SYK540394 and SYK583122,

(3) The Owner has submitted the Application to the Council and The Council has issued Planning Permission for the Development

(4) The Owner has also submitted the Second Application and the Third Application to the Council

(5) The parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed and comply with the requirements of condition 23 of the Planning Permission and to ensure that the obligation applies to the Planning Permission the Second Planning Permission and the Third Planning Permission

BARNSELY METROPOLITAN BOROUGH COUNCIL PLANNING & TRANSPORTATION SERVICE



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BARNSELY METROPOLITAN BOROUGH COUNCIL
PLANNING & TRANSPORTATION SERVICE

BARNSELY MBC - Planning and Transportation Service

Assistant Director: Stephen Moralee BA(Hons) MBA

PO Box 604, Barnsley. S70 9FE

Tel: (01226) 770770 Fax: (01226) 772599



Scale 1: _____

NOW THIS DEED WITNESSETH AS FOLLOWS:-

DEFINITIONS

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

“the 1990 Act” means the Town and Country Planning Act 1990 (as amended)

“the Application” means the application for planning permission submitted to the Council for residential development with the reference number 2007/0650

“the Commencement of Development” means the actual date upon which the Development is begun by the carrying out of any material operation as defined by Section 56(4) of the Town and Country Planning Act 1990 and “Commence Development” is to be construed accordingly

“the Development” means the development of the Land for residential development in accordance with the Planning Permission the Second Planning Permission or the Third Planning Permission

“Interest” means interest at 4 per cent above the base lending rate of Barclays Bank Plc from time to time or should this rate cease to exist such other bank lending rate as the Council may reasonably nominate

“the Plan” means the plan annexed hereto

“the Planning Permission” means the planning permission granted or to be granted pursuant to the Application

“Public Open Space Commuted Sum” means £10,000 (ten thousand pounds only)

“the Second Application” means the application for planning permission submitted to the Council for residential development with the reference number 2012/0274

“the Second Planning Permission” means any planning permission granted pursuant to the Second Planning Application

“the Third Application” means the application for planning permission submitted to the Council for residential development with the reference number 2012/0486

“the Third Planning Permission” means any planning permission granted pursuant to the ~~Second~~ Planning Application

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 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.

2.5 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.

2.6 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.

LEGAL BASIS

3 This Agreement is made pursuant to section 106 of the Town and Country Planning Act 1990 section 111 of the Local Government Act 1972 section 2 of the Local Government Act 2000 and all other enabling powers and is a planning obligation for the purposes of and as defined in the said Section 106 and the covenants restrictions and requirements imposed on the Owner herein are enforceable by the Council as local planning authority against the Owner

COMMENCEMENT

4 The provisions of this Deed shall have immediate effect upon the completion of this Deed other than the obligations in Clause 5 which shall have effect upon the Commencement of Development

OWNER AND COUNCIL COVENANTS

- 5.1 The Owner covenants with the Council as set out in Part 1 of the Second Schedule
- 5.2 The Council covenants with the Owner as set out in Part 2 of the Second Schedule

MISCELLANEOUS

6.1 The Developer shall pay to the Council on completion of this Deed the sum of £1000 (one thousand pounds) (on which no VAT shall be payable) in respect of the legal costs of the Council incurred in the negotiation, preparation and execution of this Deed.

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

6.3 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Council or by the Council from the Owner 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 the Assistant Director of Planning and Regulatory Services and any notices 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.

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

6.5 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.

6.6 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Land but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

6.7 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.

6.8 No waiver (whether expressed or implied) by the Council 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 from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

6.9 For the avoidance of doubt the obligation to pay the Public Open Space Commuted Sum shall only be payable once

INTEREST

7 If any payment due by the Owner under this Deed is paid late, Interest will be payable from the date payment is due to the date of payment.

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

FIRST SCHEDULE

All that land at Shaw Lane Carlton Barnsley for the purpose of identification shown edged red on the Plan

SECOND SCHEDULE

Part 1

The Owner covenants with the Council to pay the Public Open Space Commuted Sum upon the Occupation of the 20th dwelling or the 1st October 2013 or whichever comes first

Part 2

The Council covenants with the Owner to spend the Public Open Space Commuted Sum firstly on improvements to Carlton Recreation Ground, including improvements to the existing equipped play area and secondly if any sums remain on public open space in the Carlton area

THE COMMON SEAL of **BARNSELY**)

METROPOLITAN BOROUGH)

COUNCIL was hereunto affixed to this)

Deed in the presence of:-)



Borough Secretary/Authorised Signatory



No. 2489
IN REGISTER

EXECUTED as a **DEED** by D **NOBLE**)
LIMITED)

Acting by



Director

Director/Secretary

