

DATED 9th November 2022

BARNSELY METROPOLITAN BOROUGH COUNCIL (1)

-and-

JAMES WILLIAM NIPPERS (2)

DEED OF VARIATION

made pursuant to Section 106 and 106A
of the Town and Country Planning Act 1990 (as amended)

In connection with an Agreement and Planning Obligation, dated 7TH March 2017
made under Section 106 of the Town and Country Planning Act 1990 (as amended)

and relating to

Land adjacent 22 Windmill Avenue, Grimethorpe, Barnsley, S72 7AN.

THIS DEED is made the

day of

9th November

2022

BETWEEN:

- (1) **BARNSELY METROPOLITAN BOROUGH COUNCIL** of Town Hall, Barnsley, South Yorkshire, S70 2TA ("**the Council**") of the first part; and
- (2) **JAMES WILLIAM NIPPERS**. Of 8 Windmill Avenue, Grimethorpe, S72 7AN ("**the Owner**") of the second part.

1. DEFINITIONS & INTERPRETATION

1.1 In this Deed the following words and expressions shall have the following meanings:

"Deed"	means this deed;
"Section 106 Agreement"	means the agreement made pursuant to Section 106 of the 1990 Act dated 7 TH March 2017 and made between (1) Barnsley Metropolitan Borough Council and (2) the Owner.
"New Permission"	Means the planning permission approval granted pursuant to application reference 2021/1452.

1.2 Where the context so requires:

- 1.2.1 all the words and expressions beginning with capital letters in this Deed shall have the same meanings ascribed to them in the Section 106 Agreement and shall be construed accordingly;
- 1.2.2 the singular includes the plural and vice versa and words importing the masculine gender only include the feminine gender and extend to include a corporation sole or aggregate;
- 1.2.3 references to any party includes the successors in title of that party;
- 1.2.4 where a party includes more than one person any obligations of that party shall be joint and several;
- 1.2.5 references to clauses paragraphs and schedules are references to clauses paragraphs and schedules to this Deed and are for reference only and shall not affect the construction of this Deed.

2. RECITALS

- 2.1 The Council is the local planning authority for the purpose of the 1990 Act for the area within which the Site is situated and is the authority by whom the obligations hereby created are enforceable.
- 2.2 This Deed is supplemental to the Section 106 Agreement and varies the Section 106 Agreement only to the extent set out in this Deed.
- 2.3 The Owner is now the registered proprietor with absolute title of the Site registered with HM Land Registry under title number SYK630654.
- 2.4 The Council and the Owner have agreed that the Section 106 Agreement shall be varied as set out in clause 3 of this Deed and the parties have agreed to enter into this Deed in order to vary the terms of the Section 106 Agreement accordingly.

3. OPERATIVE PROVISIONS

- 3.1 This Deed is made pursuant to section 106 and 106A of the 1990 Act and all other powers so enabling and is a planning obligation for the purposes thereof with the intent that it shall bind the interests of the Owner and its successors in title to each and every part of the Site and its assigns as provided in these clauses and in the clauses of the Section 106 Agreement.
- 3.2 Words and expressions in this Deed shall have the same meanings as in the Section 106 Agreement save to the extent that this Deed otherwise provides.
- 3.3 The parties hereto hereby mutually agree to vary and supplement the terms of the Section 106 Agreement as set out in the Schedule hereto.

4. IT IS HEREBY AGREED AND DECLARED AS FOLLOWS:

- 4.1 This Deed shall be construed as one with the Section 106 Agreement.
- 4.2 The provisions of the Section 106 Agreement continue to be enforceable by the Council and to bind the Site in all respects save for as varied by this Deed, but for the avoidance of doubt the alterations and amendments hereby made shall to the extent only that they are material supersede specific provisions to the contrary in the Section 106 Agreement as varied by this Deed and the Section 106 Agreement as varied by this Deed shall always be read together (mutatis mutandis) with the latter to that extent predominating.

- 4.3 No person who is not a party to this Deed may enforce any terms hereof pursuant to the Contracts (Right of Third Parties) Act 1999 provided that this clause shall not affect any right of action of any person to whom this Deed has been lawfully assigned or becomes vested in law.
- 4.4 The obligations hereby created shall be registered as a Local Land Charge.
- 4.5 The Owner shall pay to the Council its reasonable legal fees incurred in the preparation negotiation and completion of this Deed.

SCHEDULE

Supplemental Covenants to the Original Agreement in respect of the New Permission;

1. Any and all references to the term "Planning Permission" in the Original Agreement shall also be deemed to include reference to the New Permission.
2. The Original Agreement shall be enforceable against the development undertaken pursuant to the New Permission and any and all references to the term "Development" in the Original Agreement shall be deemed to also be references to the development as permitted by the New Permission.
3. The final Dwelling to be built on the Land (the third Dwelling in relation to the Planning Permission and the second Dwelling in relation to the New Permission) shall not be Occupied until the outstanding sum of the Green Space Contribution of £5000 (five thousand pounds) has been paid to the Council.

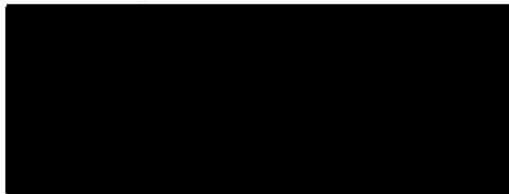
IN WITNESS whereof the parties hereto have executed this Deed the day and year first before written,

THE COMMON SEAL of BARNSELY

METROPOLITAN BOROUGH

COUNCIL was hereunto affixed to this

Deed in the presence of:



Borough Secretary/Authorised Signatory



EXECUTED as a DEED

by **JAMES WILLIAM NIPPERS**

in the presence of

Witness' Signature:

Witness' Name:

Witness' Address:

