

**ALDHAM MILL FARM, BARNSLEY ROAD,
WOMBWELL**

**FORMAL SUBMISSION FOR VARIATION OF SECTION
106 AGREEMENT**

**DRAFT REVISED SECTION 106 AGREEMENT IN
UNILATERAL FORM**

2

DATED

**SUPPLEMENTAL AGREEMENT UNDER SECTION 106A OF THE TOWN &
COUNTRY PLANNING ACT 1990 RELATING TO LAND AT ALDHAM MILL
FARM BARNSELY ROAD WOMBWELL BARNSELY**

between

BARNSELY METROPOLITAN BOROUGH COUNCIL

and

MICHAEL SMEATON AND DIANE WENDY SMEATON

and

HSBC BANK PLC

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THIS DEED is dated 2014

- (1) Barnsley Metropolitan Borough Council of Town Hall Barnsley South Yorkshire S70 2TA (**Council**).
- (2) Michael Smeaton and Diane Wendy Smeaton of Aldham Mill Farm Barnsley Road Wombwell Barnsley South Yorkshire S73 8EG (**Owner**).
- (3) HSBC Bank Plc incorporated and registered in England and Wales with company number 14259 whose registered office is at Sheffield SPC 79 Hoyle Street Sheffield S3 7EW (**Mortgagee**).

BACKGROUND

- (A) The Council is the local planning authority for the purposes of the TCPA 1990 for the area in which the Property is situated.
- (B) The Owner is the freehold owner of the Property subject to a mortgage in favour of the Mortgagee but otherwise free from encumbrances.
- (C) The Mortgagee is the registered proprietor of the charge dated 1 May 2003 referred to in the charges register of title number SYK440978 and has agreed to enter into this deed to give its consent to the terms of this deed.
- (D) On 19 February 2004 the Council, and the Owner and the Mortgagee entered into the Original Agreement.
- (E) Without prejudice to the terms of the other covenants contained in the Original Agreement the parties have agreed to vary the terms of Original Agreement as set out in this deed.
- (F) This agreement is made under section 106A of the TCPA 1990 and is supplemental to the Original Agreement.

AGREED TERMS

1. INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in this deed.
- 1.2 All words and phrases defined in the Original Agreement shall have the same meaning in this deed save where the context otherwise dictates.
- 1.3 In this deed the following expression shall have the following meaning:

Original Agreement: the agreement made under section 106 of the TCPA 1990 dated 19 February 2004 between the Council, the Owner and the Mortgagee.

- 1.4 All references in this deed to clauses in the Original Agreement are to clauses within the Original Agreement.
- 1.5 Clause headings shall not affect the interpretation of this deed.
- 1.6 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.7 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.8 Unless the context otherwise requires, words in the singular include the plural and in the plural shall include the singular.
- 1.9 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.10 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.
- 1.11 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.
- 1.12 A reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.13 A reference to **writing** or **written** does not include faxes or e-mail.
- 1.14 References to clauses, Schedules and plans (unless the context otherwise requires) are to clauses, Schedules and plans of this deed.
- 1.15 An obligation in this deed on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.16 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.

- 1.17 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 PROVISION

This deed is made pursuant to the provisions of sections 106 and 106A of the TCPA 1990, section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 or section 2 of the Local Government Act 2000 and any other enabling powers.

3. VARIATIONS TO THE ORIGINAL AGREEMENT

- 3.1 Paragraph 1 (i) of the Second Schedule of the Original Agreement shall be deleted and replaced with the following:

Cease use of the existing outdoor riding ménage which for identification purposes is shown edged pink on Plan 2 (or any part of it) for any commercial event save and except for use of the purposes of equestrian events and PROVIDED such equestrian events are held on Saturdays and/or Sundays only.

- 3.2 Paragraph 2 of the Second Schedule of the Original Agreement shall be deleted and replaced with the following:

The Owners shall not use or permit the use of the Riding Centre or any part of it for the purposes of any event whatsoever which is open or otherwise accessible to the general public save and except for the purposes of equestrian events only and PROVIDED such equestrian events are held on Saturdays and/or Sundays only.

- 3.3 In all other respects the Original Agreement (as varied by this deed) shall remain in full force and effect.

4. COVENANTS TO THE COUNCIL

The Owner and the Mortgagee covenant to observe and perform the covenants, restrictions and obligations contained in the Original Agreement as varied by this deed.

5. MORTGAGEE'S CONSENT

The Mortgagee hereby consents to the Owners entering into this Agreement and acknowledges that this Agreement binds the land. The Mortgagee shall only be liable for any breach of this Agreement if it has itself caused that breach whilst mortgagee in possession. It shall not be liable for any pre-existing breach.

6. LOCAL LAND CHARGE

This deed shall be registered as a local land charge.

7. THIRD PARTY RIGHTS

No one other than a party to this deed and their successors shall have any right to enforce any of its terms.

8. 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.

The common seal of
Barnsley Metropolitan Council
was affixed to this document in the presence
of:

Authorised signatory

Signed as a deed by
Michael Smeaton
in the presence of:

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Witness signature, name, address and
occupation

Signed as a deed by
Diane Smeaton
in the presence of:

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Witness signature, name, address and
occupation

Executed as a deed by
HSBC Bank PLC acting by
a director, in the presence of:

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Director

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Witness signature, name, address and
occupation