

Dated 28th July 2022

BARNSELY METROPOLITAN BOROUGH COUNCIL

and

WARRIOR DEVELOPMENTS LIMITED

DEED

Pursuant to Section 111 Local Government Act 1972 (as amended) in relation to Land known as former Goldthorpe Primary School site, High Street, Goldthorpe Rotherham, S63 9NQ

**Jason Field,
Head of Legal Services
Barnsley Metropolitan Borough Council
Town Hall, Barnsley, S70 2TA**

Contents

Clause	Page
1. DEFINITIONS AND INTERPRETATION	1
2. INTERPRETATION	2
3. COMMENCEMENT AND LEGAL EFFECT	2
4. COVENANTS	3
Schedule – Planning Agreement	4

This Deed is made on

28th July

2022

Between

- (1) **BARNLEY METROPOLITAN BOROUGH COUNCIL** of Town Hall Church Street
Barnley S70 2DR of (hereinafter referred to "the Council"); and
- (2) **WARRIOR DEVELOPMENTS LIMITED (CO. REGN. NO. 02525771)** of Tattersall
House, East Parade, Harrogate, North Yorkshire, United Kingdom, HG1 5LT
(hereinafter referred to as "the Developer")

Whereas

- (A) The Council is the Local Planning Authority for the purposes of the Town and Country
Planning Act 1990 for the area within which the Land is situated and is the authority.
- (B) The Council is the owner of an estate in fee simple absolute in possession of the Land
under freehold title number SK518707
- (C) The Developer is desirous to acquire from the Council the Land.
- (D) The Developer submitted the Planning Application to the Council for permission to
carry out the Development.
- (E) The Council has decided to grant planning permission for the Development subject to
the completion of this Deed without which planning permission for the Development
would not be granted.

This Deed is made in pursuance of Section 111 of the Act and witnesses as follows

1. DEFINITIONS AND INTERPRETATION

1.1. The definitions and rules of interpretation shall apply as follows:-

Act

the Local Government Act 1972 (as
amended)

Development

means the development of the Land in
accordance with the Planning Permission to
construct Erection of a 1,979 sq.m (gross)
retail unit (Use Class E) with vehicular and
pedestrian accesses; parking; hard and soft

landscaping; boundary treatments; trolley bay; electricity substation and associated works

Land

means the freehold land described in the First Schedule hereto against which this Agreement may be enforced

Plan

the plan which is annexed to this Deed.

Planning Agreement

the Agreement in the form of that appended to the Schedule hereto to be duly entered into with the Council pursuant to the terms of Section 106 of the Town and Country Planning Act 1990 (as amended).

Planning Application

the application (including plans and drawings) submitted by the Developer to the Council for permission to carry out the Development (reference: 2022/0056).

Planning Permission

the planning permission granted by the Council pursuant to the Planning Application.

2. INTERPRETATION

- 2.1. Reference to any enactment shall be construed as a reference to that enactment as amended extended or re-enacted or repealed by or under any other enactment and shall include all instruments orders and regulations.
- 2.2. Words importing one gender shall be construed as importing any gender and words importing the singular shall be construed as importing the plural and vice versa.
- 2.3. Reference to a clause or schedule shall unless the context otherwise admits be a reference to a clause or schedule of this Deed.

3. COMMENCEMENT AND LEGAL EFFECT

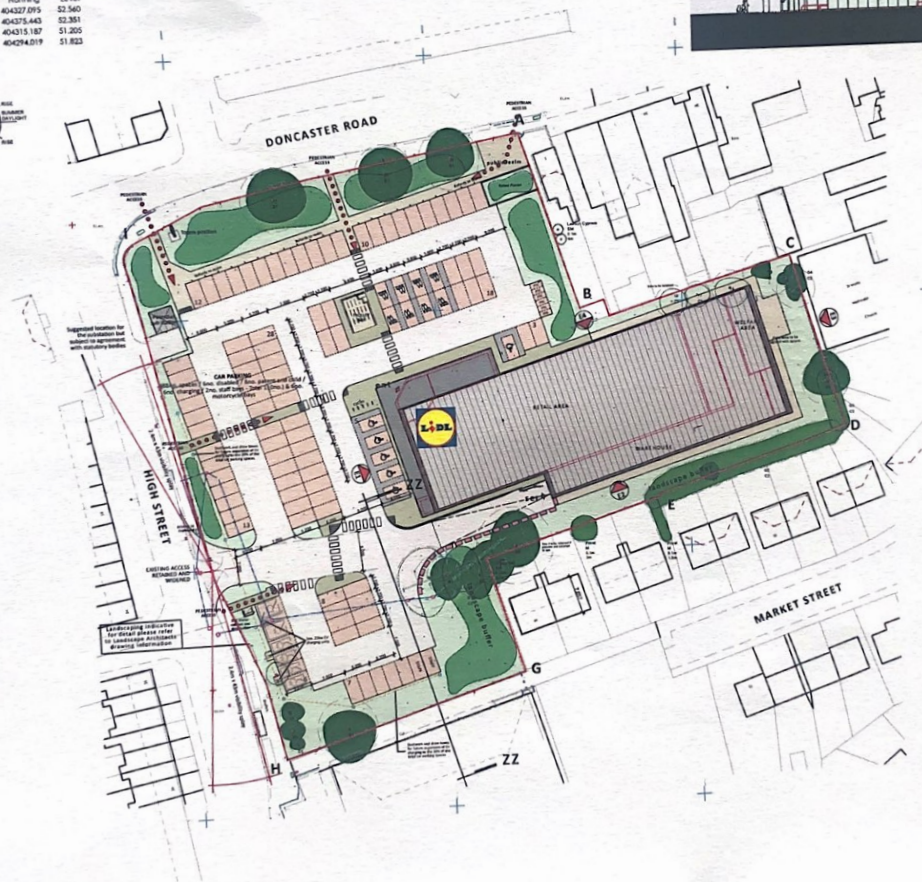
The provisions hereof shall take effect on the date hereof.

Station	Easting	Northing	Level
ST01	446262.644	404327.095	52.560
ST02	446214.827	404375.443	52.351
ST03	446188.643	404315.187	51.205
ST04	446227.482	404294.019	51.823



- A-B - Existing paladin fence on brick wall to be retained and repaired as required
- B-C - Existing brick wall retained and made good
- C-D - Retained palsade fence
- D-E - Retained paladin fence
- E-G - Existing brick wall
- G-H - Existing brick wall with railing above retained and made good where required
- H-I - Retained existing brick wall, new wall to areas of blocked up openings to match existing and made good as required
- I-I Existing wall retained and made good
- I-A - Existing wall removed

Extent of boundary required to have 2.5m Noise barrier as Noise Assessment

[illegible]

- 3.1. Save as provided for by this Deed nothing in this Deed shall be treated as giving rise to any rights or to third parties under the Contracts (Rights of Third Parties) Act 1999.
- 3.2. If any provision of this Deed is held to be invalid illegal or unenforceable under any enactment or rule of law that term or provision shall to that extent be deemed not to form part of this Deed and the enforceability of the remainder of this Deed shall remain unaffected.
- 3.3. If the Planning Permission expires through operation of law or is otherwise quashed or revoked such that it may no longer be implemented this Deed shall forthwith determine and cease to have effect.
- 4. **COVENANTS**
- 4.1. The Developer hereby covenants to enter into the Planning Agreement in the form of that appended to the Second Schedule hereto on the date that it acquires the Land from the Council.
- 4.2. The Council hereby covenants as follows:
 - 4.2.1. to issue the Planning Permission on the date hereof or as soon as reasonably practicable thereafter and in any event within 10 working days;
 - 4.2.2. to enter into the Planning Agreement with the Developer on the date that it disposes of the Land to the Developer in the form of that appended to the Schedule hereto.

First Schedule

land known as former Goldthorpe Primary School site, High Street,
Goldthorpe Rotherham, S63 9NQ.

Second Schedule – Planning Agreement

DATED

2022

BARNSELY METROPOLITAN BOROUGH COUNCIL

And

WARRIOR DEVELOPMENTS LIMITED

AGREEMENT

under Section 106 of the Town and Country Planning Act 1990 relating to land
known as former Goldthorpe Primary School site, High Street, Goldthorpe
Rotherham, S63 9NQ.

,
Jason Field,
Head of Legal Services
Barnsley Metropolitan Borough Council
Town Hall, Barnsley, S70 2TA.

THIS DEED OF AGREEMENT is made the day of
Two Thousand and Twenty Two

BETWEEN

- (1) **BARNSELY METROPOLITAN BOROUGH COUNCIL** of Town Hall Barnsley
South Yorkshire S70 2TA ("the Council") of the first part, and
- (2) **WARRIOR DEVELOPMENTS LIMITED (CO. REGN. NO. 02525771)** of
Tattersall House, East Parade, Harrogate, North Yorkshire, United Kingdom, HG1 5LT
("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 of the Land registered under Land Registry Title Number
- (3) The Owner submitted the Applications to the Council seeking Planning Permission for the Development.
- (4) The parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Agreement and agree that the obligations comply with regulation 122 of the Community Infrastructure Levy Regulations 2010.

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 planning application with the reference numbers 2022/0056 submitted to the Council for the Development.

Biodiversity Contribution means the sum of £6,250 (six thousand two hundred and fifty pounds) to be applied by the Council towards biodiversity gain outside the Land in order to meet the Biodiversity Shortfall.

Biodiversity Shortfall means the extent of biodiversity loss of 0.25 units arising from the Development as calculated in accordance with the DEFRA Biodiversity Metric which is not met as determined by the Council

"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 Car Park" means the car park within the boundaries of the Land as shown on the Plan.

"the Car Park Scheme" means a scheme for imposing a time limit of two hours (but no more than two hours) on cars parked within the Car Park including provision for enforcing such limit (which scheme may be operated by but not limited to the use of ANPR cameras and which scheme may be implemented and/or operated and/or managed by the Owner or by an independent third party contractor

"the Development" means the development of the Land in accordance with the Planning Permission to for the erection of a 1,979 sq.m (gross) retail unit (Use Class E) with vehicular and pedestrian accesses; parking; hard and soft landscaping; boundary treatments; trolley bay; electricity substation and associated works

"the Land" means the freehold land described in the First Schedule hereto against which this Agreement may be enforced.

"Occupation and Occupied": means occupation for the purposes permitted by the Planning Permission from which the Development benefits but not including occupation by personnel engaged in construction fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and "Occupy" shall be construed accordingly.

"the Plan" means the plan annexed hereto

"the Planning Permission" means the planning permission to be granted pursuant to the 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 the local planning authority against the Owner.

COMMENCEMENT

- 4 The provisions of this Deed shall be conditional upon;
- 4.1 the grant of the Planning Permission; and
 - 4.2 the Commencement of the Development.

OWNER AND COUNCIL COVENANTS

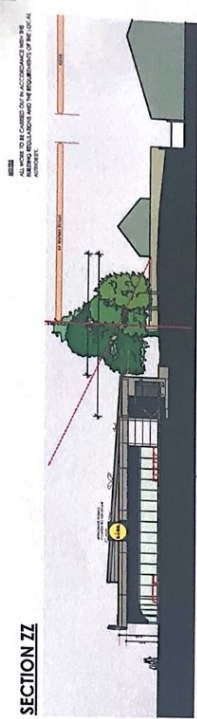
5.1 The Owner covenants with the Council as set out paragraph 1 to 2 inclusive of the Second Schedule.

5.2 The Council covenants with the Owner as set out in paragraph 3 and 4 of the Second Schedule.

MISCELLANEOUS

6.1 The Owner shall pay to the Council on completion of this Deed the sum of £1000.00 (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.

SECTION ZZ



BOUNDARY LEGEND

- A-B - Existing paladin fence on brick wall to be retained and repaired as required
- B-C - Existing brick wall retained and made good
- CD - Retained paladeis fence
- DE - Retained paladeis fence
- E-G - Existing brick wall
- G-H - Existing brick wall with railing above retained and made good where required
- H-I - Retained existing brick wall, new wall to AH - blocked up openings to match existing and made good as required
- H-I - Existing wall retained and made good
- I-A - Existing wall removed

Extent of boundary required to have 2.5m Noise barrier as Noise Assessment

[illegible]

6.2 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.

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

6.4 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 Head of Planning and Building Control and any notices shall be deemed to have been properly served if sent by recorded delivery or special delivery to the principal address or registered office (as appropriate) of the relevant party.

6.5 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.

6.6 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.

6.7 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.

6.8 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.

6.9 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.

6.10 Any dispute arising between the parties as to their respective rights duties or obligations or as to the failure of the Council to give or confirm its consent or approval where required under this Agreement or as to any other matter or thing arising out of or connected with the subject matter of this Agreement or any failure to agree upon any matter may be referred in accordance with clauses 6.11 and 6.12 to the determination of a person ("Expert").

6.11. Any reference to an Expert in accordance with clause 6.10 shall be to a reputable person unconnected to any of the parties hereto and experienced in matters to which the subject matter of the dispute relates and who shall be agreed between the parties to the dispute or appointed on the application of any party to the dispute made at any time by the President of the Law Society and the decision of the Expert shall be final and binding upon the parties to the dispute and the parties hereby agree to act in accordance with the decision (save for manifest error).

6.12 Each of the parties to the dispute referred to an Expert pursuant to clause 6.11 shall be entitled to submit to the Expert representations and cross representations with such supporting evidence as they shall consider necessary and the Expert shall have regard thereto in making his decision which he shall deliver in writing as expediently as possible and the reference to him shall include authority to determine in what manner all the costs of the referral (whether incurred by the parties to the dispute or the Expert himself) shall be paid.

6.13 In the event that an application is made pursuant to Section 73 of the 1990 Act for an amendment to the Planning Permission and planning permission is granted in respect of the application (and the Council is satisfied in its absolute discretion that no revised planning obligations are required as a result of such amendment) references to the Planning Permission in this Agreement shall be to both the Planning Permission and a new planning permission granted pursuant to Section 73 of the 1990 Act and this Agreement shall apply to and remain in full force in respect of that new planning

permission without the need for a further agreement to be entered into pursuant to Section 106 of the 1990 Act.

6.14 Where any notice or confirmation is to be served on the Council under the terms of this Agreement such notice or confirmation shall be sent to Head of Planning, and Building Control at Barnsley Metropolitan Borough Council, Westgate Plaza One, PO Box 600, Barnsley, S70 9EZ, quoting the Application reference number 2020/1339

6.15 Where any notice or confirmation is to be served on the Owner under the terms of this Agreement such notice or confirmation shall be sent to the address set out at the beginning of this deed or to such other address as the owner may notify the Council in writing.

JURISDICTION

7 This deed is to be governed by and interpreted in accordance with the law of England

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 known as former Goldthorpe Primary School site, High Street, Goldthorpe Rotherham, S63 9NQ. and for the purpose of identification shown edged red on the Plan

SECOND SCHEDULE

1. The Owner covenants;
 - 1.1 to Submit for the approval of the Council a Car Park Scheme
 - 1.2 not to Commence the Development until the Car Park Scheme has been submitted and approved by the Council in writing
 - 1.3 not to Occupy the Development until any works set out by the approved Car Park Scheme have been carried out to enable the said Scheme to be operational
 - 1.4 to effectively operate the approved Car Park Scheme (or use reasonable endeavours to procure that any third party given responsibility for its operation does so)
2. To pay the Biodiversity Contribution to the Council prior to the Commencement of Development and not to Commence the Development until the said contribution has been paid to the Council.
3. The Council covenants to act reasonably and without delay in approving the Car park Scheme following submission or to respond advising of reasons why any submitted Car Park Scheme cannot be approved.
4. That in the event the Biodiversity Contribution or any part thereof is not expended within 30 (thirty) years of the date of payment then the sum not expended plus interest accrued will be repaid to the Owner or to the Owner's nominee



IN WITNESS of the above the parties have executed this Deed as a deed and the same has been delivered by them or on their behalf on the above date

THE COMMON SEAL of **BARNESLEY**)

METROPOLITAN BOROUGH)

COUNCIL was hereunto affixed to this)

Deed in the presence of:-)



~~Executive director Core Services/~~

Legal Services Director /

Authorised Signatory

EXECUTED as a **DEED** by)

WARRIOR DEVELOPMENTS LIMITED)

acting by a Director:)

Director:

In the presence of;

Witness Signature:

Witness Name:

Witness Address:

Witness Occupation: