

Dated *16th October* 2017

**PLANNING OBLIGATION BY WAY OF UNILATERAL UNDERTAKING
UNDER SECTION 106 OF THE TOWN & COUNTRY PLANNING ACT 1990
RELATING TO LAND AT BONDFIELD CLOSE, WOMBWELL, S73 8TX.**

BY

ACKROYD & ABBOTT LIMITED

AND

GLEESON REGENERATION LIMITED

TO

BARNSLEY METROPOLITAN BOROUGH COUNCIL

THIS DEED is dated

16th October

2017

- (1) ACKROYD AND ABBOTT LIMITED incorporated and registered in England and Wales with company number 507624 whose registered office is at 2 Rotherham Road, Sheffield, South Yorkshire, S13 9LL ("the Owner").

AND

- (2) GLEESON REGENERATION LIMITED incorporated and registered in England and Wales with company number 03920096 whose registered office is at 6 Europa Court, Sheffield Business Park, Sheffield, S9 1XE ("the Developer").

TO

- (3) BARNSELY METROPOLITAN BOROUGH COUNCIL of Town Hall, Barnsley, South Yorkshire (S70 2TA) ("the Council").

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 owns the freehold interest in the Property.
- (C) The Developer has entered into a Contract with the Owner to acquire the Property dated 13th December 2016 made the Planning Application and is proposing to carry out the Development.

AGREED TERMS

1. INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in this deed:

Base Rate: the base lending rate from time to time of the Bank of England.

Commencement of Development: the carrying out in relation to the Development of any material operation as defined by section 56(4) of the TCPA 1990 but disregarding for the purposes of this deed and for no other purpose, the following operations: demolition works; site clearance; ground investigations; site survey works; temporary access construction works;

2. STATUTORY PROVISIONS

- 2.1 This deed constitutes a planning obligation for the purposes of section 106 of the TCPA 1990.
- 2.2 The obligations contained in clause 3 of this deed are planning obligations for the purposes of section 106 of the TCPA 1990 and are entered into by the Owner and Developer with the intention that they bind the interests held by those persons in the Property and their respective successors and assigns.
- 2.3 This deed shall come into effect on the date of grant of the Planning Permission.
- 2.4 The obligations contained in clause 3 of this deed are enforceable by the Council in accordance with section 106 of the TCPA 1990.

3. COVENANTS WITH THE COUNCIL

The Owner and Developer covenant with the Council:

- (a) To notify the Council in writing prior to Occupation of the 25th Dwelling or within 1 year of commencing development, whichever is the sooner
- (b) And not to Occupy more than 25 Dwellings until the Public Open Space Contribution and Highway Safety has been paid to the Council.

4. GENERAL

- 4.1 The obligations on the part of the Owner and Developer contained in this deed are not intended to be and shall not be binding on:-
- 4.1.1 owners and occupiers of individual completed dwellings on the Property from time to time or their successors in title; and
- 4.1.2 Statutory service providers that own service sites (e.g. pumping stations and substations) on the Property

5. RELEASE

No person shall be liable for any breach of an obligation, restriction or covenant contained in this deed after parting with all of its interest in the Property, except in respect of any breach subsisting prior to parting with such interest.

6. DETERMINATION OF DEED

This deed shall be determined and have no further effect if the Planning Permission:

- (a) expires before the commencement of development (as defined by section 56 of the TCPA 1990);
- (b) is varied or revoked other than at the request of the Owner or Developer or by non-material amendment.
- (c) is quashed following a successful legal challenge.

7. LOCAL LAND CHARGE

This deed is a local land charge and shall be registered as such by the Council.

8. INTEREST AND INDEXATION

- (a) If the Public Open Space Contribution has not been paid to the Council on the dates specified at Clause 3, the Owner shall pay interest on the Public Open Space Contribution for the periods from the due dates to and including the dates of payment at the Default Interest Rate.
- (b) Any sum payable under this Deed by the Owner shall be increased by an amount equivalent to the increase in the Index from the date hereof until the date on which such sum is payable.

9. COUNCIL'S COSTS

The Developer shall pay to the Council on the date of this deed the Council's reasonable and proper legal costs together with all disbursements incurred in connection with the preparation, completion and registration of this deed in the sum of £500.

10. OWNERSHIP

- 10.1 The Owner warrants that no person other than the Owner has any legal or equitable interest in the Property.

11. NOTICES

- 11.1 Any notice or other communication required to be given under this deed shall be in writing and shall be delivered personally, or sent by pre-paid first class

post or recorded delivery or by commercial courier, to any person required to receive the notice or communication at its address as set out below:

- (a) Council: the Service Director of Legal Services Division, PO Box 600, Barnsley, South Yorkshire, S70 9EZ;
- (b) Owner: Ackroyd and Abbott Ltd of 2 Rotherham Road, Sheffield, South Yorkshire, S13 9LL
- (c) Developer: Gleeson Regeneration Ltd of 6 Europa Court, Sheffield Business Park, Sheffield, S.Yorks, S9 1XE

or as otherwise specified by the relevant person by notice in writing to each other person.

11.2 Any notice or other communication shall be deemed to have been duly received:

- (a) if delivered personally, when left at the address and for the contact referred to in this clause;
- (b) if sent by pre-paid first class post or recorded delivery, at 9.00 am]on the second Working Day after posting; or
- (c) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

12. THIRD PARTY RIGHTS

No person other than a party to this undertaking, and their respective successors and permitted assigns, and the Council and the successors to its respective statutory functions shall have any rights to enforce any term of this deed.

13. SEVERANCE

13.1 If any court or competent authority finds that any provision of this deed (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this deed shall not be affected.


13.2 If any invalid, unenforceable or illegal provision of this deed would be valid, enforceable and legal if some part of it were deleted, the parties shall amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the parties' original commercial intention.

14. 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.

SIGNED as a DEED on behalf of
ACKROYD AND ABBOTT LIMITED by
in the presence of:

)
) 

Director T.W. RUSLING

Signature of witness



Name (in block capitals)

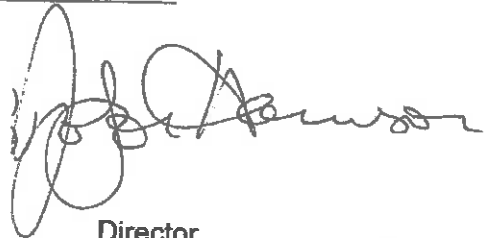
K. MACKENZIE

Address

223A OLOFIELD RD

SB 60Z

SIGNED as a DEED on behalf of
GLEESON REGENERATION LIMITED by
in the presence of:



Director J L HARRISON

Signature of witness



Name (in block capitals)

C B HAWLEY

Address

11 AUGHTON Rd. SWALLOWNEST

SHEFFIELD S26 4TF

These are the notes referred to on the following official copy

The electronic official copy of the title plan follows this message.

Please note that this is the only official copy we will issue. We will not issue a paper official copy.

This official copy was delivered electronically and when printed will not be to scale. You can obtain a paper official copy by ordering one from HM Land Registry.

This official copy is issued on 05 September 2017 shows the state of this title plan on 05 September 2017 at 17:14:35. It is admissible in evidence to the same extent as the original (s.67 Land Registration Act 2002). This title plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground.

This title is dealt with by the HM Land Registry, Nottingham Office .

archaeological investigation; and erection of any fences and hoardings around the Property.

Commenced and Commences shall be construed accordingly.

Commencement Date: the date of Commencement of Development.

Default Interest Rate: 4% per annum above the Base Rate.

Development: the development of the Property described in the Planning Application.

Dwellings: means the residential units that may be built on the Property as part of the Development and reference to "Dwelling" shall be construed accordingly.

Index: means the All in Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation or if that Price Index ceases to exist such an index as the Council reasonably nominates.

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.

Plan: see plan referred to.

Planning Application: an application for planning permission for 49 dwellings with associated garages/parking spaces and sewers validated by the Council on 15th February 2017 under reference number 2017/0155.

Planning Permission: the planning permission to be granted by the Council in respect of the Planning Application.

Public Open Space and Highway Contribution: the sum of £80,162 towards the cost of the provision or improvement of public open space within Wombwell and the surrounding area AND/OR improvements to the parking arrangements for and /or safety of access to and from the adjoining school.

Property: the land at Bondfield Close, Wombwell, S73 8TX shown edged red on the Plan and registered at HM Land Registry under title number SYK533267.

TCPA 1990: Town and Country Planning Act 1990.

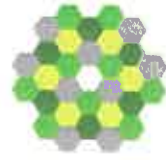
Working Day: a day (other than a Saturday, Sunday or public holiday) in England when banks in London are open for business.

1.2 Clause headings shall not affect the interpretation of this deed.

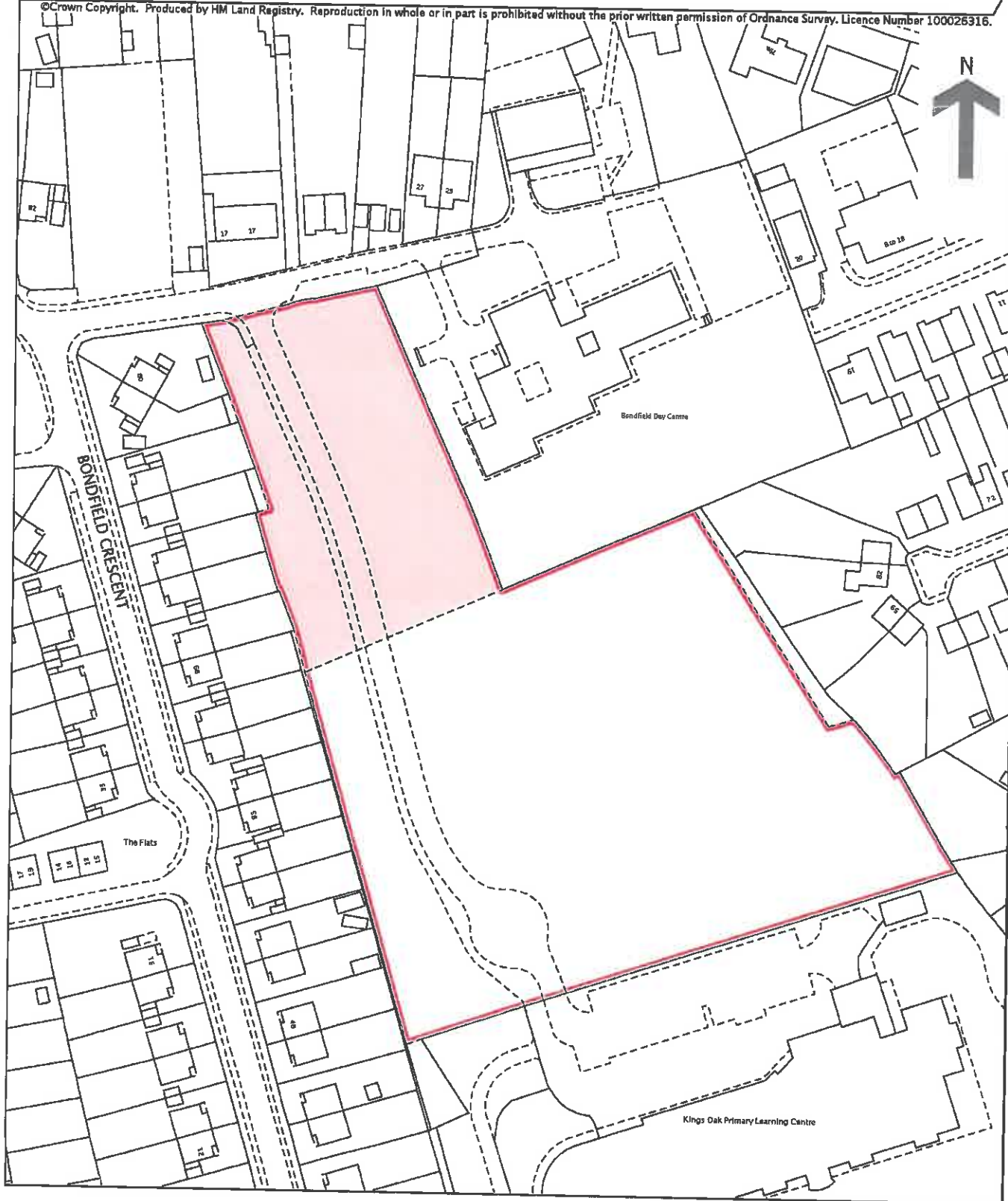
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 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.
- 1.8 A reference to a statute or statutory provision is a reference to it as it is in force at the date of this deed.
- 1.9 A reference to a statute or statutory provision shall include any subordinate legislation made as at the date of this deed under that statute or statutory provision.
- 1.10 A reference to **writing** or **written** does not include e-mail.
- 1.11 A reference to "this deed" or to any other agreement or document referred to in this deed is a reference to this deed or such other document or deed as varied or novated (in each case, other than in breach of the provisions of this deed) from time to time.
- 1.12 References to clauses and plans are to the clauses and plans of this deed.
- 1.13 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.
- 1.14 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.
- 1.15 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.

HM Land Registry
Official copy of
title plan

Title number SYK533267
Ordnance Survey map reference SE3902NE
Scale 1:1250
Administrative area South Yorkshire : Barnsley



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