Planning Obligation by Deed of Agreement under Section 106 of the Town and Country Planning Act 1990

relating to the development of land adjacent 344 New Road Staincross Barnsley South Yorkshire

Dated 24 August 2015

Barnsley Metropolitan Borough Council (1)

Mason Building Contractors Limited (2)

Carole Avery and Richard Francis Horner (3)

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DATE 24 August 2015

PARTIES

(1) **BARNSLEY METROPOLITAN BOROUGH COUNCIL** of Town Hall Barnsley South Yorkshire S70 2TA ("Council")

(2) **MASON BUILDING CONTACTORS LIMITED** (Company registration number 04756857) whose registered office is situate at Shop 1a, Four Square Chapel, Mapplewell, Barnsley, S75 6AA ("Owner")

(3) **CAROLE AVERY** and **RICHARD FRANCIS HORNER** of 21 Old Mount Farm, Woolley, Wakefield, West Yorkshire, WF4 2LD ("Mortgagee")

INTRODUCTION

1. The Council is the local planning authority for the purposes of the Act for the area in which the Site is situated;

2. The Owner is the freehold owner of the Site which is registered under title number SYK580920.

3. The Mortgagee is the proprietor of a registered charge on the Site and has agreed to enter into this Agreement to give his consent to the terms of this Deed.

4. The Owner has submitted the Application to the Council and the parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed;

5. The Council resolved on 23 September 2014 to grant the Planning Permission subject to the prior completion of this Deed.

NOW THIS DEED WITNESSES AS FOLLOWS:

1 DEFINITIONS

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

"Act"	the Town and Country Planning Act 1990.
"Application"	the application for full planning permission dated 4 July 2014 submitted to the Council for the Development and allocated reference number 2014/0781.
"Commencement of Development"	the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions,

	diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and "Commence Development" shall be construed accordingly.
"Development"	means the erection of 2 no. detached dwellings and associated works on the Site in accordance with the Planning Permission.
"Dwellings"	means the residential units that may be built on the Site as part of the Development and reference to "Dwelling" shall be construed accordingly;
"Green Spaces Contribution"	means the sum of £4,000 (four thousand pounds) towards the upkeep and benefit of green spaces in the Council's administrative area.
"Index"	All Items Index of Retail Prices issued by the Office for National Statistics or any successor organisation.
"Interest"	interest at four per cent 4% above the base lending rate of the Barclays Bank Plc from time to time.
"Plan"	the plan attached to this Deed.
"Planning Permission"	the full planning permission subject to conditions to be granted by the Council pursuant to the Application as set out in the Second Schedule.
"Practical Completion"	means the stage when a Dwelling has been constructed and fitted out and is ready for occupation;
"Site"	the land against which this Deed may be enforced as shown edged red on the Plan.

2 CONSTRUCTION OF THIS DEED

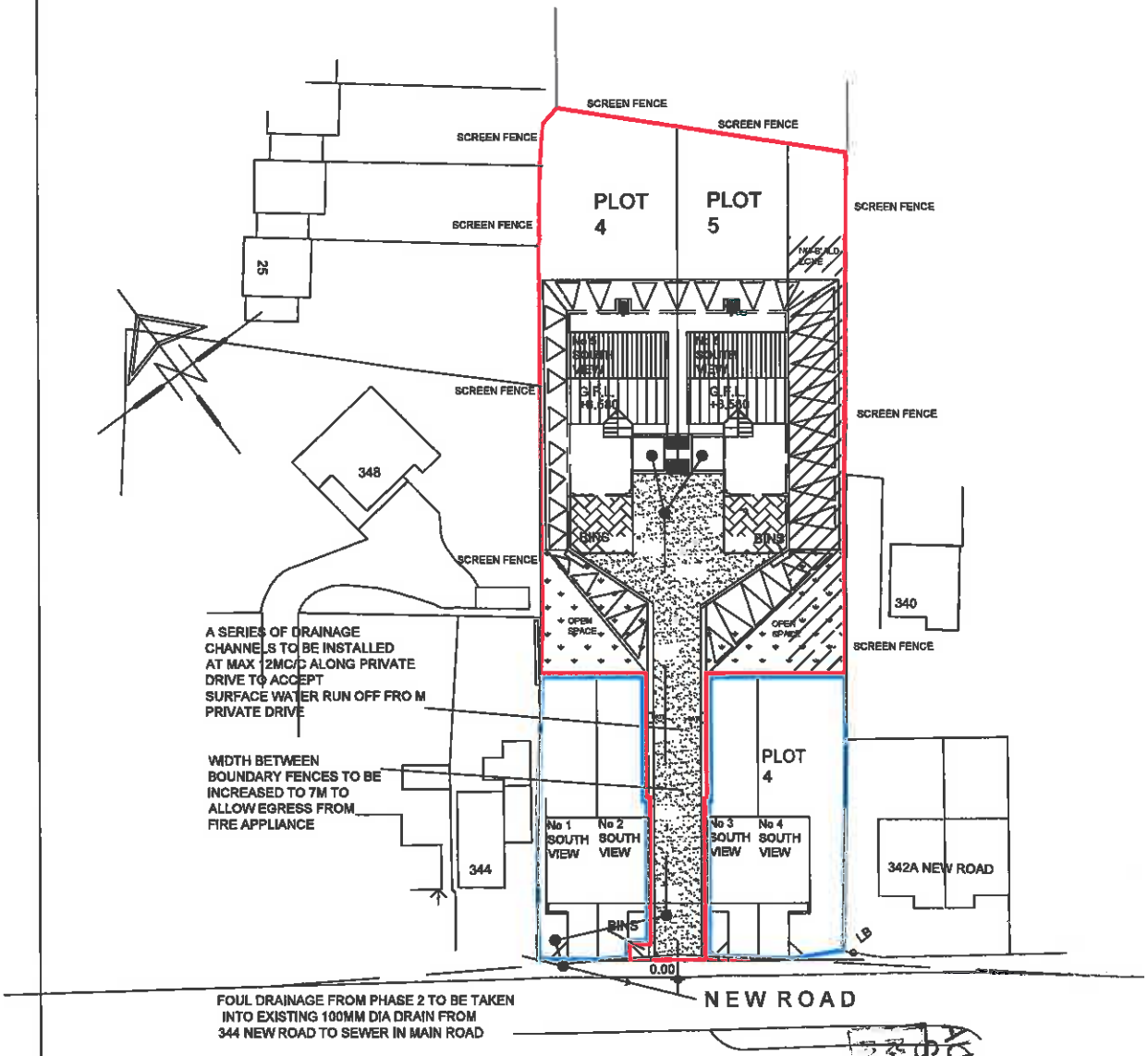
2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.

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 severally 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.



SITE PLAN



LOCATION PLAN

SCALE 1:200

AUTHORISED SIGNATORY 1690

White Agus PARTNERSHIP
ARCHITECTURAL SERVICES AND SURVEYORS
8 MORSTON BUSINESS PARK, WHALEY ROAD, BARUGH GREEN, BARNSLEY. S75 1HQ
Phone: 01226 208482
Fax: 01226 283030
Email: info@whiteaguspartnership.co.uk
Web: www.whiteaguspartnership.co.uk

Project.	Client.
RESIDENTIAL DEVELOPMENT NEW ROAD, STAINCROSS BARNSLEY	MASON BUILDING CONTRACTORS

Drawing Title.	Date.	Scale.
SITE PLAN JULY 2014	JULY 2014	1:500 @ A3

Ref.	Dwg. No.	Rev.
13-033	21	

Date	Suffix	Description	Date	Suffix	Description

2.6 References to any party to this Deed shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the Council includes any successor local planning authority exercising planning powers under the Act.

2.7 The headings and contents list are for reference only and shall not affect construction.

3 LEGAL BASIS

3.1 This Deed is made pursuant to Section 106 of the Act.

3.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council as local planning authority against the Owner.

4 CONDITIONALITY

This Deed is conditional upon the grant of the Planning Permission save for the provisions of Clauses 7.1, 10, 14, 15 and 16 which shall come into effect immediately upon completion of this Deed.

5 THE OWNER'S COVENANTS

The Owner covenants with the Council as set out in the Third Schedule.

6 THE COUNCIL'S COVENANTS

The Council covenants with the Owner as set out in the Fourth Schedule.

7 MISCELLANEOUS

7.1 The Owner shall pay to the Council on completion of this Deed the reasonable legal costs of the Council incurred in the negotiation, preparation and execution of this Deed.

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

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

7.4 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Council 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 Building Control and Sustainability 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.

7.5 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.

7.6 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.

7.7 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development.

7.8 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.

7.9 Nothing contained or implied in this Deed shall prejudice or affect the rights discretions powers duties and obligations of the Council [and County Council] under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority.

8 MORTGAGEE'S CONSENT

The Mortgagee acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Site shall be bound by the obligations contained in this Deed and that the security of the registered charge over the Site shall take effect subject to this Deed PROVIDED THAT the Mortgagee shall otherwise have no liability under this Deed unless it takes possession of the Site in which case it too will be bound by the obligations as if it were a person deriving title from the Owner.

9 WAIVER

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

10 CHANGE IN OWNERSHIP

The Owner agrees with the Council to give the Council immediate written notice of any change in ownership of any of its interests in the Site occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation purchased by reference to a plan.

11 INDEXATION

Any sum referred to in the Third Schedule 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.

12 INTEREST

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

13 VAT

All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.

14 DISPUTE PROVISIONS

14.1 In the event of any dispute or difference arising between the parties to this Deed in respect of any matter contained in this Deed such dispute or difference shall be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in England with such matters as may be in dispute and such person shall act as an expert whose decision shall be final and binding on the parties in the absence of manifest error and any costs shall be payable by the parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the parties in equal shares.

14.2 In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to Clause 14.1 or as to the appropriateness of the professional body then such question may be referred by either part to the president for the time being of the Law Society for him to appoint a solicitor to determine the dispute such solicitor acting as an expert and his decision shall be final and binding on all parties in the absence of manifest error and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties in equal shares.

14.3 Any expert howsoever appointed shall be subject to the express requirement that a decision was reached and communicated to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty-eight working days after the conclusion of any hearing that takes place or twenty-eight working days after he has received any file or written representation.

14.4 The expert shall be required to give notice to each of the said parties requiring them to submit to him within ten working days of notification of his appointment written submissions and supporting material and the other party will be entitled to make a counter written submission within a further ten working days.

14.5 The provisions of this clause shall not affect the ability of the Council to apply for and be granted any of the following: declaratory relief, injunction, specific performance, payment of any sum, damages, any other means of enforcing this Deed and consequential and interim orders and relief.

15 JURISDICTION

This Deed is governed by and interpreted in accordance with the law of England and Wales and the parties submit to the non-exclusive jurisdiction of the courts of England and Wales.

16 DELIVERY

The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

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

FIRST SCHEDULE

Details of the Owner's Title, and description of the Site

The Site is all that freehold land shown edged red on the Plan which is registered at the Land Registry with title absolute under title number SYK580920 being land on the north side of New Road, Staincross, Barnsley.

SECOND SCHEDULE

Form of notice of planning permission

BARNSLEY
Metropolitan Borough Council

GRANT OF PLANNING PERMISSION

TOWN AND COUNTRY PLANNING ACT 1990

APPLICATION NO. 2014/0781

To White Agus Partnership
8 Morston Business Park
Whaley Road
Barnsley
S75 1HQ

DESCRIPTION Erection of 2 no. detached dwellings and associated works (Resubmission)
LOCATION Land adjacent 344 New Road, Staincross, Barnsley, S75 6GP

Permission is granted for the proposals which were the subject of the Application and Plans registered by the Council on and described above.

THIS DECISION IS SUBJECT TO THE TERMS OF THE AGREEMENT/UNILATERAL UNDERTAKING MADE UNDER SECTION 106 OF THE TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED).

The approval is subject on compliance with the following conditions:

1 The development hereby approved shall be carried out strictly in accordance with the plans (Nos 20, 21) and specifications as approved unless required by any other conditions in this permission.
Reason: In the interests of the visual amenities of the locality and in accordance with LDF Core Strategy Policy CSP 29, Design.

2 Construction or remediation work comprising the use of plant, machinery or equipment, or deliveries of materials shall only take place between the hours of 0800 to 1800 Monday to Friday and 0900 to 1400 on Saturdays and at no time on Sundays or Bank Holidays.
Reason: In the interests of the amenities of local residents and in accordance with Core Strategy Policy CSP 40, Pollution Control and Protection.

3 Pedestrian inter-visibility splays, having the dimensions 2m x 2m, shall be safeguarded at the drive entrance/exit such that there is no obstruction to visibility at a height exceeding 1m above the nearside channel level of the adjacent highway.

Reason: In the interests of Highway Safety in accordance with CSP26.

4 Sight lines, having the dimensions 2.0m x blue line boundary with 342A New Road and 2.0m x blue line boundary with 344 New Road, shall be safeguarded at the vehicular entrance/exit to the site, such that there is no obstruction to visibility at a height exceeding 1m above the

The grant of this consent does not constitute or imply permission, approval or consent by the Local Authority for any other purpose.

Signed
Head of Planning and Building Control

Dated 02 June 2015

Development Service
PO Box 634, Barnsley, S70 9FE

Telephone: 01226 - 772000
Fax: 01226 - 772591

nearside channel level of the adjacent highway.

Reason: In the interests of Highway Safety in accordance with CSP26.

5 Vehicular and pedestrian gradients within the site shall not exceed 1:12 to ensure safe and adequate access.

Reason: In the interests of Highway Safety in accordance with CSP26.

6 The parking/manoeuvring facilities, indicated on the submitted plan, shall be surfaced in a solid bound material (i.e. not loose chippings) and made available for the manoeuvring and parking of motor vehicles prior to the development being brought into use, and shall be retained for that sole purpose at all times.

Reason: To ensure that satisfactory off-street parking/manoeuvring areas are provided, in the interests of highway safety and the free flow of traffic and in accordance with Core Strategy Policy CSP 26, New Development and Highway Improvement.

7 Unless otherwise agreed in writing by the local planning authority, no building or other obstruction shall be located over or within 2 metres either side of the centre line of the water main, which crosses the site.

Reason: In order to allow sufficient access for maintenance and repair work at all times, in accordance with CSP40.

8 The applicant shall ensure that the development is undertaken in compliance with CIRIA 32 guidance 'Construction over abandoned mine workings' in consultation with the Coal Authority, where shallow mine workings within 10 times the extraction thickness of the foundations must be stabilised.

Reason: To comply with the NPPF, 120/121 Land Stability.

Informative(s)

1	The proposed development lies within a coal mining area which may contain unrecorded coal mining related hazards. If any coal mining feature is encountered during development, this should be reported immediately to The Coal Authority on 0345 762 6848. It should also be noted that this site may lie in an area where a current licence exists for underground coal mining. Further information is also available on The Coal Authority website at: www.gov.uk/government/organisations/the-coal-authority Property specific summary information on past, current and future coal mining activity can be obtained from: www.groundstability.com
2	The granting of planning permission does not in any way infer that consent of the landowner is given. Therefore the consent of all relevant landowners is required before proceeding with any development including that of the Council as landowner. If it should transpire that the applicant does not own any of the land included in this consent then it is the responsibility of the applicant to seek all necessary consents and approvals of the landowner.
3	All waste and recyclable waste containers have to be collected from the kerbside of the public highway; therefore, storage areas should be provided adjacent to the highway. The storage area should provide sufficient space to allow containers to be left on collection days

	without obstructing pedestrian or vehicular traffic on the public highway, to the detriment of road safety.
4	The developer must contact Mr G Handley -01226 772026 Network Resilience and Asset Management prior to any work commencing on-site, to gain all necessary technical and legal approvals relating to the creation of vehicular accesses to the highway and as the development involves works abutting the highway, to ensure no damage is caused to the highway

Development Service
PO Box 634, Barnsley, S70 9FE

Telephone: 01226 - 772600
Fax: 01226 - 772599

NOTES:-

Appeals to the Secretary of State

If you are aggrieved by the decision of the Council to grant permission for the proposed development subject to conditions then you can appeal to the Secretary of State for the Environment, Transport and Regions under Section 78 of the Town and Country Planning Act. If you want to appeal, then you must do so within six months of the date of this notice, using a form which you can get from The Planning Inspectorate, Room 3/24 Hawk Wing, Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN.

The Secretary of State can allow a longer period for giving notice of an appeal, but he will not normally be prepared to use this power unless there are special circumstances which excuse the delay in giving notice of appeal. The Secretary of State need not consider an appeal if it seems to him that the Local Planning Authority could not have granted planning permission for the proposed development or could not have granted it without the conditions it imposed, having regard to the statutory requirements, to the provisions of the development order and to any directions giving under the order. In practice, the Secretary of State does not refuse to consider appeals solely because the Local Planning Authority based its decision on a direction given by him.

Purchase Notices

If either the Local Planning Authority or the Secretary of State for the Environment, Transport and Regions refuses permission to develop land or grants it subject to conditions, the owner may claim that he can neither put the land to a reasonably beneficial use in its existing state nor can he render the land capable of a reasonably beneficial use by the carrying out of any development which has been or would be permitted. In these circumstances, the owner may serve a purchase notice on the Council in whose area the land is situated. This notice will require the Council to purchase his interest in the land in accordance with the provisions of part VI of the Town and Country Planning Act 1990.

Compensation

In certain circumstances compensation may be claimed from the Local Planning Authority if permission is refused or granted subject to conditions by the Secretary of State on appeal or on reference to the application to him. These circumstances are set out in Sections 114 and related provisions of the Town and Country Planning Act 1990.

Development Service
PO Box 634, Barnsley, S70 9FE

Telephone: 01226 - 772600
Fax: 01226 - 772599

THIRD SCHEDULE

The Owner's Covenants with the Council

The Owner covenants with the Council to pay to the Council the Green Spaces Contribution in the following manner:-

To pay the sum of £2,000 in respect of each Dwelling and each payment shall be paid within 14 days of Practical Completion of the respective Dwelling.

FOURTH SCHEDULE

Council's Covenants

Repayment of contributions

1 The Council hereby covenants with the Owner to use all sums received from the Owner under the terms of this Deed for the purposes specified in this Deed for which they are to be paid or for such other purposes for the benefit of the Development as the Owner and the Council shall agree.

2 The Council covenants with the Owner that it will pay to the Owner such amount of any payment made by the Owner to the Council under this Deed which has not been expended in accordance with the provisions of this Deed (and money shall be deemed to be expended if the Council has properly entered into a contract for the expenditure of the money for the purpose for which it is paid which is reasonably likely to result in the fulfilment of that purpose) within ten years of the date of receipt by the Council of such payment.

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

THE COMMON SEAL OF BARNSLEY)
METROPOLITAN BOROUGH COUNCIL)
was affixed in the presence of:)

Director of Legal and Governance / Authorised Signatory:

No. 1690
IN REGISTER

EXECUTED AS A DEED by MASON BUILDING)
CONTRACTORS LIMITED acting by:)

Director:

Secretary:

EXECUTED AS A DEED by)
CAROLE AVERY)

in the presence of:-)

Signature C. Avery

Name of witness L. Potts

Address 24, Richmond Ave
FERRYBRIDGE
KNOTTINGLEY
WF11 8QU.

Occupation RETIRED

EXECUTED AS A DEED by)
RICHARD FRANCIS HORNER)

in the presence of:-)

Signature

Name of witness L. Potts

Address 24, Richmond Ave
FERRYBRIDGE
KNOTTINGLEY
WF11 8QU

Occupation RETIRED.