Dated 27 November 2014

SECTION 106

PARTIES:

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

(2) **JAGUAR & WORTLEY DEVELOPMENTS LIMITED** (CRN: 08733656) whose registered office is situate at The Griffin. 8 Town End Road, Ecclesfield, Sheffield, South Yorkshire, S35 9YY ("the Owner")

BACKGROUND

(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 has submitted a written planning application ("Application") known to the Council by reference number 2013/1006 for planning permission ("Planning Permission") to undertake residential development for up to 35 dwellings including means of access (Outline) ("the Pilley Green Development") on land off Pilley Green/Lidgett Lane, Tankersley, Barnsley, S75 3AE ("the Pilley Green Land") and the Council has resolved to grant planning permission subject to the Owner entering into this Agreement

(3) The Owner is the freehold proprietor of the Site and the Site incorporates both the Pilley Green Land and the Affordable Housing Sale Land. The Owner's interest in the Pilley Green Land is registered under Land Registry title number SYK378237 and their interest in the Affordable Housing Sale Land is registered under Land Registry title numbers SYK468450 and SYK44464.

(4) The Council has required the Owner to enter into this Agreement to secure the following planning obligations pursuant to the Application:

- Payment of the Education Contribution in the sum of £100,000;
- Payment of the Public Open Space Contribution which shall be determined on the approval of Reserved Matters Consent pursuant to the Planning Permission;
- Payment of the South Yorkshire Master Travel Plan or provision of bicycles for occupiers of the dwellings to be constructed under the Planning Permission; and
- The provision of Affordable Housing to satisfy the requisite obligations pursuant to Core Strategy Policy CSP 15 Affordable Housing.

(5) As an alternative to providing the Affordable Housing on the Pilley Green Land, the Owner has instead offered to provide the required Affordable Housing off-site on the Affordable Housing Sale Land.

(6) The Affordable Housing Sale Land has the benefit of an extant planning permission granted by the Council on 30 December 2002 and known by reference number B/02/0986/WB ("the Birdwell Planning Permission"). In respect of the Birdwell Planning Permission, 23 of the 41 permitted dwellings have been constructed and are

occupied, but the remaining permitted 18 dwellings have not yet been constructed on the Affordable Housing Sale Land under the extant planning permission.

(7) In order to satisfy their affordable housing obligations in respect of the Application and the application for the development of the Tankersley Land under the separate planning application known to the Council by reference 2013/1007 ("the Tankersley Application"), the Owner has offered to construct 18 dwellings ("the Affordable Housing Units") on the Affordable Housing Sale Land. It is agreed that the Affordable Housing Units shall not be used other than for Affordable Housing.

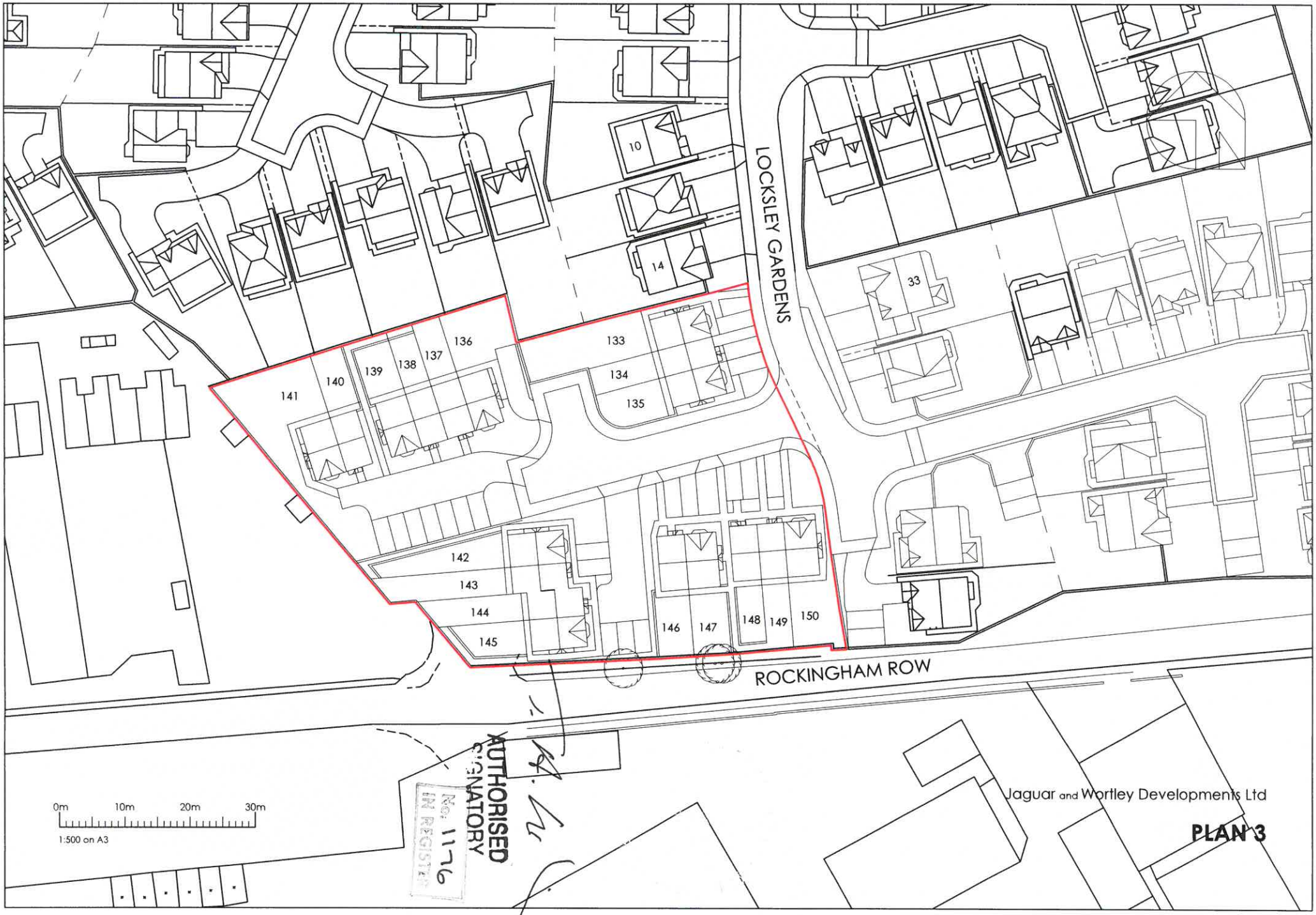
(8) The Council has agreed to accept the Owner's proposal to construct the Affordable Housing Units on the Affordable Housing Sale Land and the parties agree that the obligation to construct the Affordable Housing Units shall be apportioned between the Application and Tankersley Application. Within this Agreement the relevant works to complete the Birdwell Planning Permission have been divided into two parts and are identified separately as "Affordable Housing Stage 1 Works" and "Affordable Housing Stage 2 Works": the separate works shall be undertaken pursuant to this Agreement and the section 106 agreement to secure obligations pursuant to the Tankersley Application (Tankersley Section 106 Agreement). It is further agreed that the Affordable Housing Stage 1 Works will be undertaken by the party who first implements either the Application or the Tankersley Application and the Affordable Housing Stage 2 Works shall then be undertaken by the party who implements the remaining application.

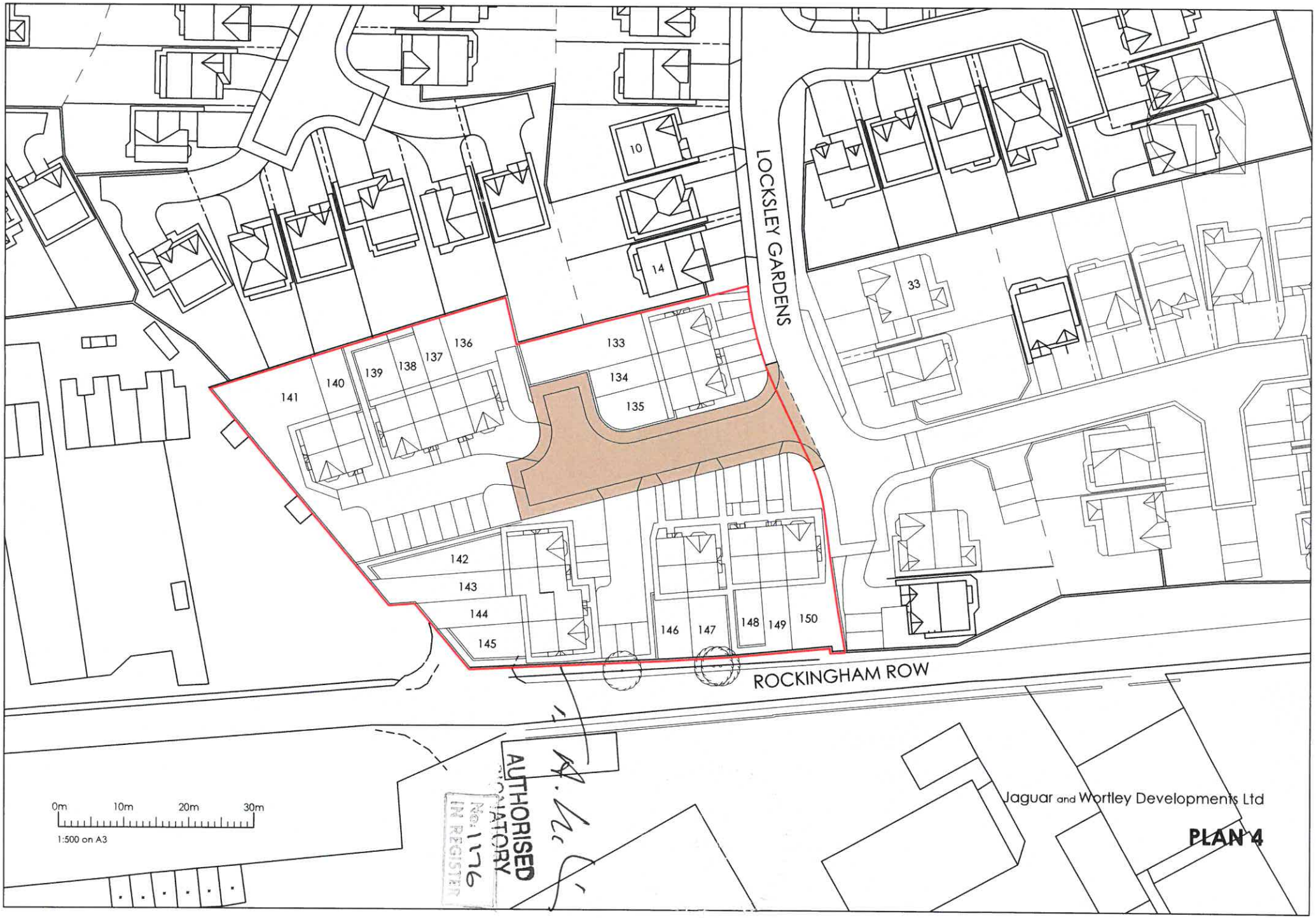
(9) The Council is minded to grant the Planning Permission subject to the completion of this Agreement without which the Planning Permission would not be granted.

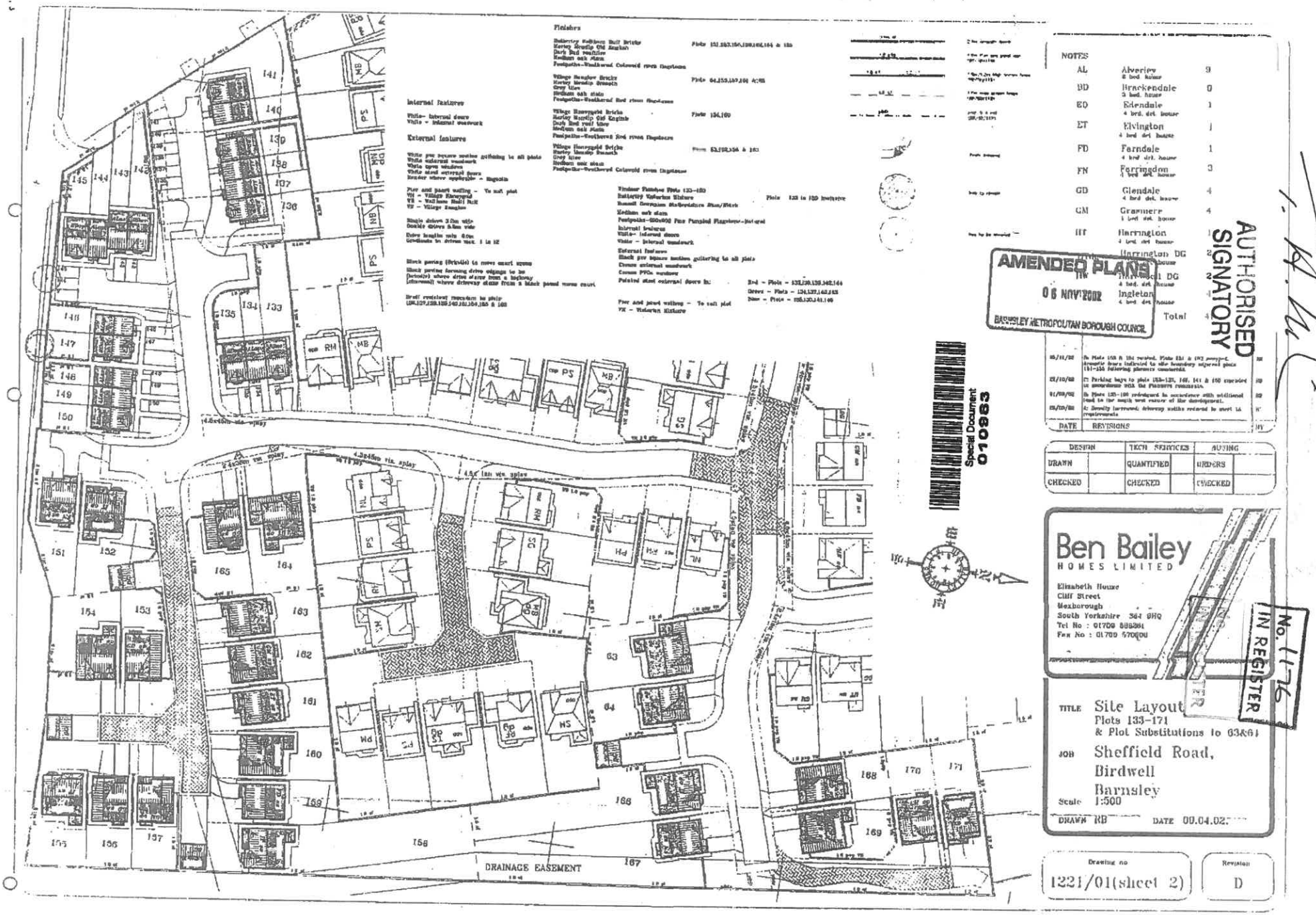
1. DEFINITIONS

Act	the Town and Country Planning Act 1990.
Affordable Housing	means subsidised housing that will be available to persons who cannot afford to rent or buy on the open market and which has the same meaning given to it in annex 2 of the National Planning Policy Framework as published by the Department for Communities and Local Government 2012.
Affordable Housing Commuted Sum	means the sum of £685,672.40 (six hundred and eighty five thousand and six hundred and seventy two pounds and forty pence) to be used by the Council in lieu of the provision of Affordable Housing on the Site for the provision of Affordable Housing (which may include works to bring private sector properties into use for the provision of Affordable Housing) or improvements to existing Affordable Housing within the administrative area of the Council.

Affordable Housing Commuted Sum Calculation	the sum shall be calculated by reference to the difference between the open market value of the applicable Affordable Housing Units at the time the relevant Affordable Housing Units are sold and the estimated lump sum payment that would have been paid to the Owner by a Registered Provider in respect of the Affordable Housing Units.
Affordable Housing Sale Land	means the land off Sheffield Road Birdwell Barnsley shown edged red on Plan 3 annexed hereto.
Affordable Housing Stage 1 Works	means the works in respect of that part of the Birdwell Planning Permission described in Schedule 3 Part 1 of this Agreement.
Affordable Housing Stage 2 Works	means the works in respect of that part of the Birdwell Planning Permission described in Schedule 3 Part 2 of this Agreement.
Affordable Housing Units	means the dwellings to be built on the Affordable Housing Sale Land (whether that be pursuant to either the Affordable Housing Stage 1 Works or Affordable Housing Stage 2 Works) pursuant to the Birdwell Planning Permission and shown specifically on the Birdwell Plan by reference to their plot locations. The Affordable Housing Units shall be used solely for the purpose of Affordable Housing.
Application	the application for outline planning permission for the Pilley Green Development known to the Council under reference number 2013/1006.
Birdwell Plan	means the means the land shown edged red on Plan 4 annexed hereto.
Birdwell Planning Permission	means the planning permission (known by Council reference number B/02/0986/WB) for the construction of forty one residential dwellings on the site of the former Rockingham Colliery, off Sheffield Road, Birdwell, Barnsley (being the land shown edged red on the Birdwell Plan) and granted by the Council under the decision notice dated 30 December 2002. The approved site layout plan in respect of the Birdwell Planning Permission is annexed hereto as Plan 7.

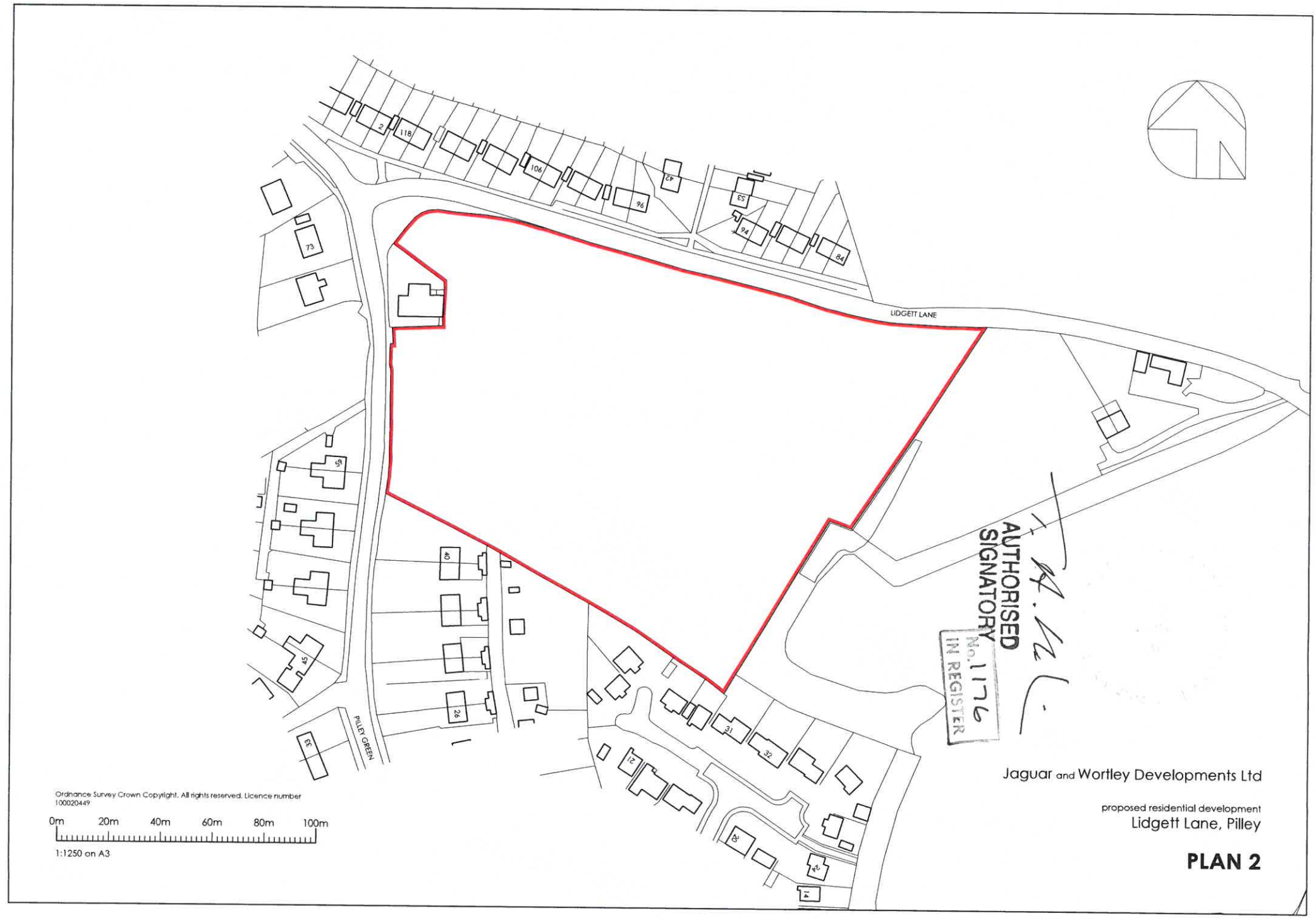

LOCKSLEY GARDENS
ROCKINGHAM ROW
10
14
33
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
0m
10m
20m
30m
1:500 on A3
AUTHORISED SIGNATORY
No. 1176
IN REGISTER
Jaguar and Wortley Developments Ltd
PLAN 3


LOCKSLEY GARDENS
ROCKINGHAM ROW
10
14
33
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
0m
10m
20m
30m
1:500 on A3
AUTHORISED SIGNATORY
No. 1176
IN REGISTER
Jaguar and Wortley Developments Ltd
PLAN 4


AMENDED PLANS
06 NOV 2002
BARNSLEY METROPOLITAN BOROUGH COUNCIL
AUTHORISED SIGNATORY
Special Document
0110983
No. 1176
IN REGISTER
Ben Bailey
HOMES LIMITED
Elizabeth House
Cliff Street
Wakefield
South Yorkshire S64 8HQ
Tel No : 01709 885884
Fax No : 01709 570000
TITLE Site Layout
Plots 133-171
& Plot Substitutions to 63&64
JOB Sheffield Road,
Birdwell
Barnsley
Scale 1:500
DRAWN RB
DATE 09.04.02
Drawing no
1221/01(sheet 2)
Revision
D
DRAINAGE EASEMENT
Plan 7

Commencement of Development	means the actual date upon which the Pilley Green 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" shall be construed accordingly.
Council's Approved List	means the following Registered Providers: Berneslai Homes Limited; South Yorkshire Housing Association Limited; Yorkshire Housing Association Limited; Guiness Northern Counties Limited; Equity Housing Group Limited; Leeds and Yorkshire Housing Association Limited; Chevin Housing Association Limited; and Wakefield and District Housing Limited or such other Registered Provider(s) that may be agreed in writing between the Owner and the Council from time to time.
Drainage Authority	means Yorkshire Water Services Limited.
Education Contribution	means the sum of £100,000 to provide additional education facilities within Tankersley required as a consequence of the Development.
First Occupier	means the first occupier for residential purposes of each Market Sale Unit excluding all subsequent occupations and reference to **"First Occupation"** shall be construed accordingly.
Highway Authority	means Barnsley Metropolitan Borough Council.
Index	means All Items Index of Retail Prices issued by the Office of National Statistics.
Interest	means interest at 4% above the base lending rate of Barclays Bank plc from time to time.
Market Sale Units	means the dwellings to be constructed on that part of the Pilley Green Land in accordance with the Planning Permission.
Necessary Consents	means planning permission building regulation approval and any other requisite consents permissions or licences relating to the Affordable Housing Works.
Occupation or Occupied	means occupation for of the Market Sale Units for the purposes permitted by Planning

	Permission but not including occupation by personnel engaged in construction, fitting out, decoration or occupation for marketing or display or occupation in relation to security operations.
Pilley Green Development	means the residential development for up to 35 dwellings and public open space, including means of access (Outline) on that part of the Site referred to in this agreement as the Pilley Green Land in accordance with the Planning Permission.
Pilley Green Land	means the land off Pilley Green/Lidgett Lane, Tankersley, Barnsley, S75 3AE being comprised in Title SYK 378237 and shown edged red on Plan 2 annexed hereto.
Planning Permission	means the Planning Permission that may be granted pursuant to the Application, a draft of which is attached to this Agreement at Schedule 4.
Practical Completion	means in relation to the Affordable Housing Stage 1 Works or the Affordable Housing Stage 2 Works (as the case may be) certification by the Owner's architect that the relevant works are: (a) completed so that the Affordable Housing Units can be used for the purpose for which they were designed and that all relevant conditions under the Birdwell Planning Permission have been discharged; and (b) fitted out so that they are ready and available for occupation.
Public Open Space Contribution	The sum of the contribution shall be calculated in accordance with the Council's Supplementary Planning Document "Open Space Provision on New Housing Development" as adopted in March 2012 (or any further Policy that supersedes it) and the Council shall notify the Owner of the sum following the date of the Council's approval of the Reserved Matters Consent. The Public Open Space Contribution shall be applied towards the provision or improvement of existing public open space within the administrative area of the Council.


LIDGETT LANE
PILLEY GREEN
AUTHORISED SIGNATORY
No. 1176
IN REGISTER
Ordnance Survey Crown Copyright. All rights reserved. Licence number 100020449
0m 20m 40m 60m 80m 100m
1:1250 on A3
Jaguar and Wortley Developments Ltd
proposed residential development
Lidgett Lane, Pilley
PLAN 2

Reasonable Endeavours	means it is agreed by the parties that the party under such obligation shall not thereby be required to take proceedings (including any appeal) in any court public inquiry or other hearing but subject thereto such party shall be bound to attempt to fulfil the relevant obligation(s) by the expenditure of such effort and / or sums of money and the engagement of such professional or other advisers as in all the circumstances (including any adverse commercial implications to the party to perform such obligation) may be reasonable.
Registered Provider	means a registered provider as defined by the Housing and Regeneration Act 2008 (or as redefined by any amendment, replacement or re-enactment of such Act) and registered under the provisions of the Housing and Regeneration Act 2008 or any company or other body approved by the Homes and Communities Agency for receipt of social housing grant as may be proposed by the Owner and approved by the Council.
Reserved Matters Consent	means any approval of reserved matters consent which may be granted pursuant to the Planning Permission.
Roadway	means the roadway on the Affordable Housing Sale Land coloured brown on Plan 3 annexed hereto.
Service Media	means the pipes wires cable gullies channels and other conduits to be installed on the Affordable Housing Land.
Site	means the land shown edged red on Plan 6 annexed hereto.
South Yorkshire Annual Travel Pass	means the Travel Master Annual Pass valid for all buses, trams and trains for 12 months from the date of issue by the South Yorkshire Passenger Transport Executive for its South Yorkshire Zone or any successor annual travel pass and reference to **"South Yorkshire Annual Travel Passes"** shall be construed accordingly.
Tankersley Application	means the development for up to 41 dwellings including means of access (Outline) known by

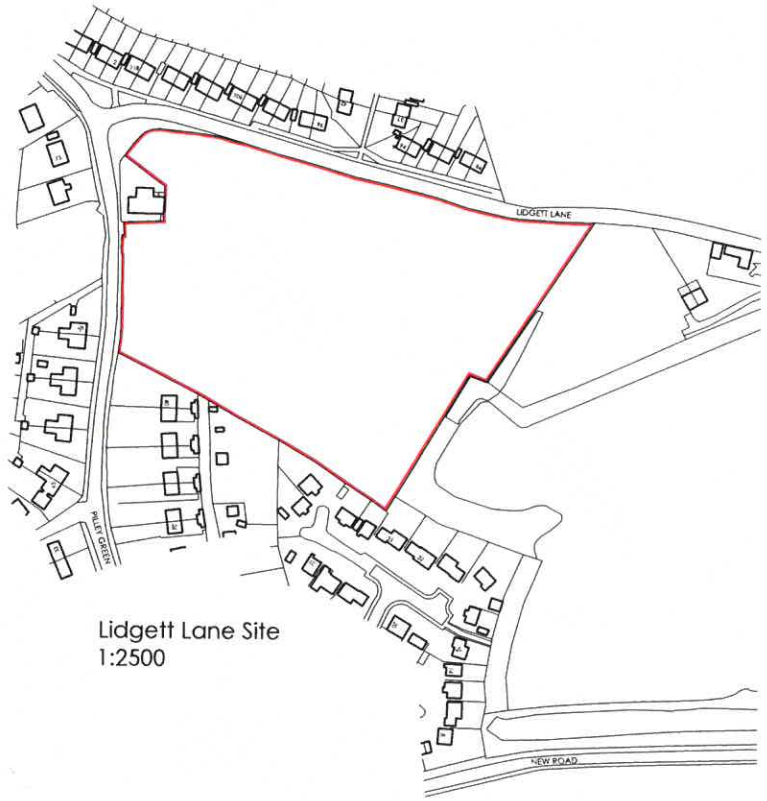
Ordnance Survey Crown Copyright. All rights reserved.
Licence number 100020449

0m 50m 100m 150m
1:2500

0m 20m 40m 60m
1:1000 on A3



Birdwell Site
1:1000



Lidgett Lane Site
1:2500

AUTHORISED SIGNATORY

No. 1176
IN REGISTER

Jaguar and Wortley Developments Ltd

proposed residential development
Lidgett Lane, Pilley

PLAN 6

	application reference 2013/1007 on the Tankersley Land.
Tankersley Land	means the land off New Road/Lidgett Lane, Tankersley, Barnsley, S75 3AE being comprised in Title SYK378237 and shown edged red on Plan 1 annexed hereto.
Tankersley Section 106 Agreement	means the section 106 agreement that secures the planning obligations pursuant to the Tankersley Application. The Tankersley Section 106 Agreement shall secure the provision of either the Affordable Housing Stage 1 Works or the Affordable Housing Stage 2 Works.
Transfer	means a transfer on sale of the Affordable Housing Sale Land to a Registered Provider appearing on the Council's Approved List.

2. INTERPRETATION

2.1 Where in this Agreement 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 Agreement.

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.

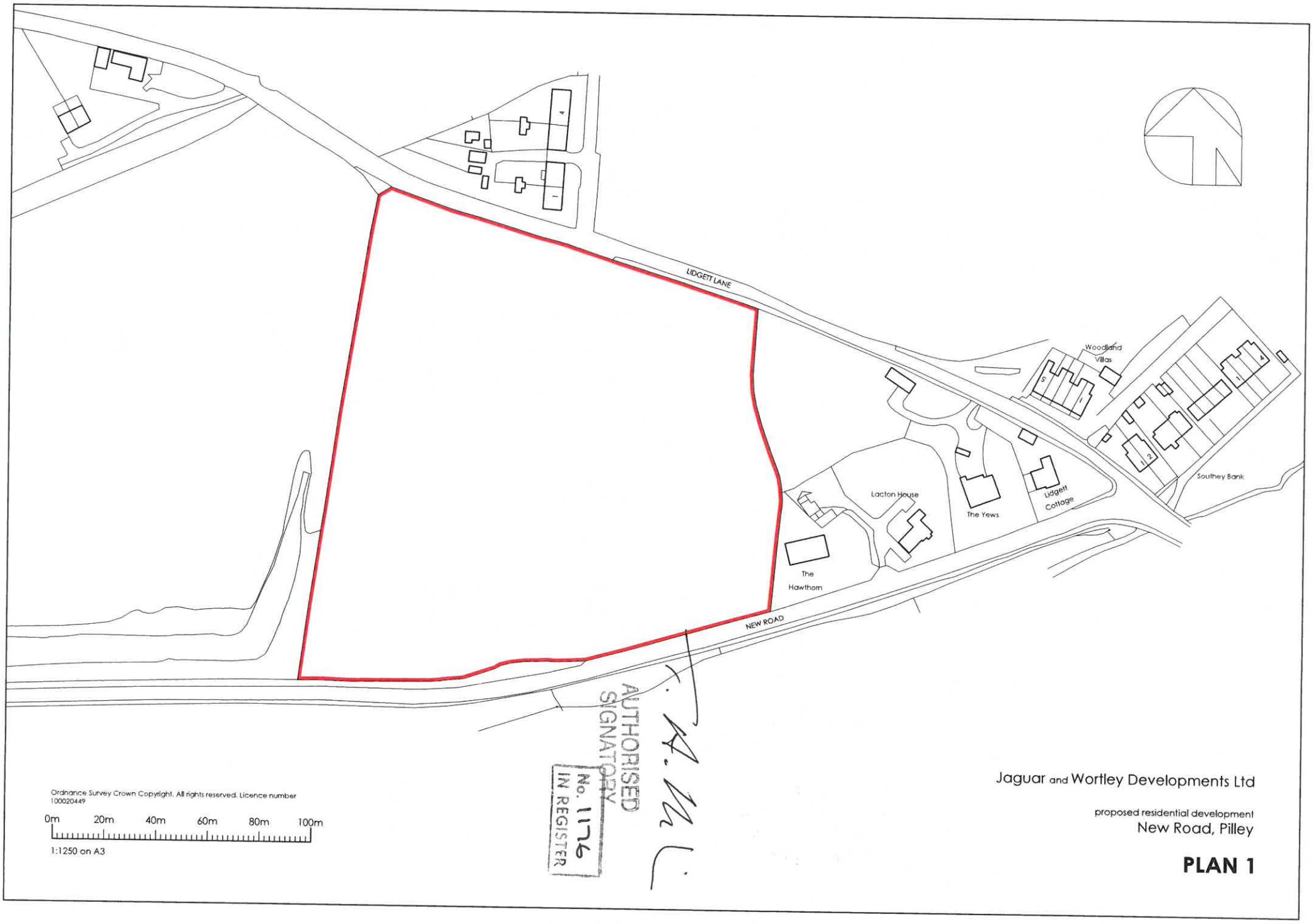
2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and severally unless there is an express provision otherwise.

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.

2.6 References to any party to this Agreement 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 the successors to its respective statutory functions.

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

3. LEGAL BASIS



Ordnance Survey Crown Copyright. All rights reserved. Licence number 100020449

0m 20m 40m 60m 80m 100m

1:1250 on A3

Jaguar and Wortley Developments Ltd

proposed residential development
New Road, Pilley

PLAN 1

3.1 This Agreement is made pursuant to Section 106 of the Act Section 111 of the Local Government Act 1972 and Section 2 of the Local Government Act 2000 and all other statutory provisions.

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

4. CONDITIONALITY

This Agreement is conditional upon:

(i) the grant of the Planning Permission; and

(ii) the Commencement of Development.

save for the provisions of Clauses 7, 10, 11 and 15 and any other relevant provisions which shall come into effect immediately upon completion of this Agreement.

5. OWNER'S COVENANTS

The Owner covenants with the Council in the form set out in Schedule 1.

6. COUNCIL'S COVENANTS

The Council covenants with the Owner in the form set out in Schedule 2.

7. MISCELLANEOUS

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

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

7.3 This Agreement 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 Agreement 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 Council by the Head of Planning, Building Control and Sustainability Development Services of the Council; 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 Agreement 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 Agreement 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 Agreement 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 No person shall be liable for any breach of any of the planning obligations or other provisions of this Agreement after it shall have parted with its entire interest in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

7.9 This Agreement shall not be enforceable against owner-occupiers or tenants of dwellings constructed pursuant to the Planning Permission nor any purchaser or lessee of any land or building for the provision of utilities nor against those deriving title from them.

7.10 Nothing in this Agreement 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 Agreement.

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

8. WAIVER

No waiver (whether expressed or implied) by the Council or the Owner of any breach or default in performing or observing any of the covenants terms or conditions of this Agreement 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.

9. CHANGE IN OWNERSHIP

9.1 The Owner agrees to give the Council at least two months written notice of any intended change in ownership of any of its interests in the Site (other than any sale or lease of a Market Sale Unit or land or building for the provision of utilities) occurring before the obligations under this Agreement as to the provision of the Affordable Housing Units on the Affordable Housing Sale Land pursuant to the Birdwell Planning Permission have been discharged. Such notice shall give details of any intended transferee's full name and registered office (if a company or usual address if not) together with the area of the Site to be purchased by reference to a plan and the estimated date of transfer.

9.2 The Owner shall (unless otherwise agreed with the Council in writing during the period of two months specified in clause 9.1 above) transfer to any transferee of the

Pilley Green Land the freehold interest in the relevant part of the Affordable Housing Sale Land with any necessary rights and other provisions or make such other arrangements with the transferee so as to enable such transferee to supply the Affordable Housing Units (whether that is by undertaking either the Affordable Housing Stage 1 Works or the Affordable Housing Stage 2 Works) on the Affordable Housing Sale Land pursuant to the Birdwell Planning Permission (including retaining the Affordable Housing Sale Land and constructing the Affordable Housing Units themselves and selling the same to a Registered Provider)

9.3 The Owner shall in any case notify the Council in writing immediately when the transfer of any part of the Site is completed and such notice shall 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 Property purchased by reference to a plan.

10. INDEXATION

Any sum referred to in Schedule 1 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.

11. INTEREST

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

12. VAT

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

13. DISPUTE PROVISIONS

13.1 In the event of any dispute or difference arising between the parties to this Agreement in respect of any matter contained in this Agreement 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 regard to 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.

13.2 In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to Clause 13.1 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.

13.3 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.

13.4 The expert shall be required to give notice to each party 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. JURISDICTION

This Agreement 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.

15. DELIVERY

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

SCHEDULE 1
COVENANTS BY THE OWNER

1. **Education Contribution**

1.1 Within 28 days of the Commencement of Development the Owner shall pay the Education Contribution to the Council in its capacity as Local Education Authority subject to the proviso at clause 1.2 below.

1.2 In any event the Owner shall not be required to pay the Education Contribution if at the time the payment becomes due under this Agreement the same sum has already been paid in full pursuant to the Tankersley Section 106 Agreement.

1.3 Upon payment of the Education Contribution the Council shall confirm in writing to the Owner that its obligations under this paragraph 1 have been complied with.

2. **Public Open Space Contribution**

To pay the Public Open Space Contribution to the Council in the following instalments:

2.1 25% of the Public Open Space Contribution to be paid prior to the Commencement of Development.

2.2 25% of the Public Open Space Contribution to be paid prior to Occupation of the 10th Market Sale Unit constructed on the Pilley Green Land pursuant to the Planning Permission.

2.3 25% of the Public Open Space Contribution to be paid prior to Occupation of the 20th Market Sale Unit constructed on the Pilley Green Land pursuant to the Planning Permission.

2.4 25% of the Public Open Space Contribution to be paid prior to Occupation of the 30th Market Sale Unit constructed on the Pilley Green Land pursuant to the Planning Permission.

2.5 Upon payment of each contribution the Council shall acknowledge receipt and upon payment of the final contribution the Council shall confirm in writing to the Owner that its obligations under this paragraph 2 have been complied with.

3. **South Yorkshire Annual Travel Pass**

3.1 On the date of the sale of a Market Sale Unit to the First Occupier the Owner shall offer in writing to the First Occupier of that dwelling:-

3.1.1 to supply, or to procure the supply of, at the Owner's expense a single South Yorkshire Annual Travel Pass for the twelve month period from the date of sale; or

3.1.2 to supply a bicycle or bicycles up to the value of the cost of the purchase of the South Yorkshire Annual Travel Pass on the condition that the type/model of the bicycle or bicycles shall be approved by the First Occupier.

3.2 In the event that the First Occupier accepts the offer made by the Owner under clause 3.1 above, the Owner shall provide or procure the provision of a South Yorkshire Annual Travel Pass or bicycle or bicycles to that First Occupier within 25 days of receiving notification of acceptance from that First Occupier.

3.3 The Owner shall notify the Council in writing when they have provided South Yorkshire Annual Travel Passes or bicycle or bicycles to the First Occupiers of all of the Market Sale Units and shall provide the Council with appropriate evidence verifying that they have complied with clauses 3.1 and 3.2 above.

3.4 Upon provision of the South Yorkshire Annual Travel Pass or bicycle or bicycles the Council shall confirm in writing to the Owner that its obligations under this paragraph 3 have been complied with.

4. Affordable Housing Provisions

4.1 Pilley Green Land

4.1.1 Not more than 50% of the Market Sale Units shall be Occupied unless and until the Affordable Housing Units have been transferred to a Registered Provider appearing on the Council's Approved List on terms that accord with the Homes and Communities Agency's funding requirements current at the date of this Agreement.

4.1.2 **PROVIDED THAT** if, despite the Owner using all Reasonable Endeavours to do so, the Owner has not been able to transfer the Affordable Housing Units to a Registered Provider and the Owner has complied with the provisions of paragraphs 4.3 to 4.5 below, then the threshold in respect of Occupation of Market Sale Units at paragraph 4.1.1 above shall be increased 75%.

4.2 The Affordable Housing Land

The Owner shall carry out the Affordable Housing Stage 1 Works but if they have already commenced under the Tankersley Section 106 Agreement the Owner shall carry out the Affordable Housing Stage 2 Works (in either case "the Affordable Housing Works").

The Owner shall carry out the Affordable Housing Works:-

(a) at its own expense;
(b) in a good and workmanlike manner;
(c) in accordance with all Necessary Consents; and
(d) ensure that the Affordable Housing Units constructed comply with level 3 of the Code for Sustainable Homes (or any applicable replacement guidance).

4.3 The Owner shall use their Reasonable Endeavours to market the relevant Affordable Housing Units to be constructed pursuant to the Affordable Housing Works to a Registered Provider appearing on the Council's Approved List and will promptly upon agreeing heads of terms for a transfer of the Affordable Housing Units to the relevant Registered Provider inform the Council of the identity of the Registered Provider appearing on the Council's Approved List (**"the Initial Registered Provider Transfer Terms"**).

4.4 The Owner will thereafter use all Reasonable Endeavours to exchange contracts with the Registered Provider specified by the Owner for the sale of the Affordable Housing Units and will keep the Council informed on the Owner's progress.

4.5 If the proposed sale does not proceed in accordance with the Initial Registered Provider Transfer Terms the Owner will continue to use Reasonable Endeavours to Exchange contracts with an alternative Registered Provider appearing on the Council's Approved List and will keep the Council informed of the Owner's progress.

4.6 The Affordable Housing Units shall not be used other than for Affordable Housing.

4.7 If the Affordable Housing Units have not been contracted for sale to the Registered Provider within nine calendar months of the date of Practical Completion of the Affordable Housing Units or such later date agreed in writing by the Council then the Owner shall pay the Affordable Housing Commuted Sum to the Council PROVIDED THAT if any Affordable Housing Units have at such date been sold to a Registered Provider the sum that shall payable to the Council shall be calculated in accordance with the Affordable Housing Commuted Sum Calculation in respect of those Affordable Housing Units not already sold to a Registered Provider.

4.8 If any of the relevant Affordable Housing Units (whether or not sold to a Registered Provider) have not achieved Practical Completion within 18 months from the date of Occupation of 50% of the Market Sale Units, the Owner shall in any event pay the Affordable Housing Commuted Sum to the Council or the due proportion of the Affordable Housing Commuted Sum if applicable.

4.9 Upon payment being made to the Council of the whole or due proportion of the Affordable Housing Commuted Sum the Owner shall be free to offer the Affordable Housing Units for sale on the open market free from the obligations in this Agreement and the Council shall confirm to the Owner in writing that the obligations under this paragraph 4 have been complied with

4.10 Upon sale of the Affordable Housing Units to a Registered Provider the Council shall confirm to the Owner in writing that the obligations under this paragraph 4 have been complied with.

SCHEDULE 2
Covenants by the Council

1. **Education Contribution, Public Open Space Contribution and Affordable Housing Contribution**

The Council covenants with the Owner to use all sums received from the Owner under the terms of this for the purposes specified in this Deed and shall repay any sums not expended in fulfilment of the purpose within 5 years from the date of payment or in the case of the Public Open Space Contribution of the date of payment of the final instalment.

SCHEDULE 3
Part 1
Affordable Housing Stage 1 Works

1. Carry out the remaining works to complete the development under the Birdwell Planning Permission (save for the Affordable Housing Stage 2 Works which shall be undertaken pursuant to the Tankersley Section 106 Agreement). The Affordable Housing Stage 1 Works shall include, amongst other matters, the following:

   - Site preparation including remediation as necessary and laying the tarmac base course for the Roadway and installing Service Media for foul and surface water drainage and gas water electricity and other utilities.

   - Entering into an Agreement under section 38 Highways Act 1980 to secure the satisfactory construction and subsequent adoption of the Roadway.

   - Entering into (if required by the Drainage Authority) an Agreement under section 104 Water Industry Act 1991 for adoption of such foul or surface water drainage on the Affordable Housing Land as is adoptable by Yorkshire Water Services Limited.

   - Constructing 8 of the Affordable Housing Units (being plots 133-135 and plots 146-150 as shown on the Birdwell Plan) and parking spaces on the Affordable Housing Sale Land pursuant to the Birdwell Planning Permission so that the same are ready for Occupation for the purpose of Affordable Housing.

2. Within three months of notification of Practical Completion of the Affordable Housing Units to be constructed under the Affordable Housing Stage 2 Works the Owner shall lay the wearing course on the Roadway and carry out such other works as may be necessary to maintain and secure adoption of the Roadway and where applicable adoption of the drainage.

Part 2
Affordable Housing Stage 2 Works

Constructing 10 Affordable Housing Units (being plots 136-145 as shown on the Birdwell Plan) on the Affordable Housing Sale Land pursuant to the Birdwell Planning Permission so that the same are ready for Occupation for the purpose of Affordable Housing

SCHEDULE 4
("Planning Permission")

03 November 2014

RECOMMENDATION SHEET

App. No 2013/1006

Applicant:	**Agent:**
Jaguar Estates/Wortley Construction Ltd. 8 Townend Road Ecclesfield Sheffield S35 9YY	JVH Town Planning Consultants Ltd Houndhill Courtyard Houndhill Marchington Staffordshire ST14 8LN
Description:	**Location:**
Residential development for up to 35 dwellings and public open space, including means of access (Outline)	Land off Pilley Green/ Lidgett Lane Tankersley Barnsley S75 3AE

Outline:

Recommendation: Approved Subject to Legal Agreement

Conditions:

1 Application for approval of the matters reserved in Condition No. 2 shall be made to the Local Planning Authority before the expiration of three years from the date of this permission, and the development, hereby permitted, shall be begun before the expiration of two years from the date of approval of the last of the reserved matters to be approved.
Reason: In order to comply with the provision of Section 92 of the Town and Country Planning Act 1990.

2 The development hereby permitted shall not be commenced unless and until approval of the following reserved matters has been obtained in writing from the Local Planning Authority:-

(a) the layout of the proposed development.
(b) scale of building(s)
(c) the design and external appearance of the proposed development.
(d) landscaping
Reason: In order to allow the Local Planning Authority to assess the details of the reserved matters with regard to the development plan and other material considerations.

3 Detailed plans shall accompany the reserved matters submission indicating existing ground levels, finished floor levels of all dwellings and associated structures, road levels and any proposed alterations to ground levels. Thereafter the development shall proceed in accordance with the approved

Signed
Date
Committee **Sub-Committee**
Delegated **Section** **Date**
Signed
Principal Planning Officer
Date
Signed
Development Control Manager
Date

details.
Reason: To enable the impact arising from need for any changes in level to be assessed in accordance with Core Strategy Policy CSP 29, Design.

4 The development hereby approved shall not exceed a maximum of 35 residential units, the details of which shall be submitted as part of the application for approval of reserved matters.
Reason: To ensure the development conforms with the approved outline planning Permission and stays with the maximum assessed level of development.

5 No residential property shall be more than two storeys in height.
Reason: To safeguard the privacy and amenities of the occupiers of adjoining residential property in accordance with Core Strategy Policy CSP 29.

6 The development hereby permitted shall not begin until a scheme has been submitted to and approved in writing by the Local Planning Authority for the provision of or enhancement to off-site public open space in accordance with Core Strategy policy CSP35 and the Open Space Provision on New Housing Developments SPD. The provision or enhancement of the off-site open space shall be provided prior to completion of the development in accordance with the approved scheme.
Reason: In the interests of residential and visual amenity to ensure adequate provision of public open space in accordance with Core Strategy Policy CSP 29.

7 No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
-The parking of vehicles of site operatives and visitors
-Means of access for construction traffic
-Loading and unloading of plant and materials
-Storage of plant and materials used in constructing the development
-The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
-Wheel washing facilities
-Measures to control the emission of dust and dirt during construction
-Measures to control noise levels during construction
Reason: In the interests of highway safety, residential amenity and visual amenity and in accordance with Core Strategy Policy CSP 26, New Development and Highway Improvement, and CSP 29, Design.

8 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.

9 No development shall take place until:

(a) Full foul and surface water drainage details, including a scheme to reduce surface water run off by at least 30% and a programme of works for implementation, have been submitted to and approved in writing by the Local Planning Authority:

(b) Porosity tests are carried out in accordance with BRE 365, to demonstrate that the subsoil is suitable for soakaways;

(c) Calculations based on the results of these porosity tests to prove that adequate land area is available for the construction of the soakaways;

Thereafter no part of the development shall be occupied or brought into use until the approved scheme has been fully implemented. The scheme shall be retained throughout the life of the development.
Reason: To ensure proper drainage of the area in accordance with Core Strategy Policy CSP 40, Pollution Control and Protection.

10 No piped discharge of surface water from the application site shall take place until works to provide a satisfactory outfall for surface water have been completed in accordance with details to be submitted to and approved in writing by the Local Planning Authority before development commences.
Reason: To ensure that the site is properly drained and surface water is not discharged to the foul sewerage system, which will prevent overloading in accordance with Core Strategy Policy CSP 40, Pollution Control and Protection.

11 All on-site vehicular areas shall be surfaced and drained in an approved manner prior to the development being brought into use.
Reason:
To prevent mud/debris from being deposited on the public highway to the detriment of road safety in the interests of policy CSP26.

12 Pedestrian intervisibility splays having the dimensions of 2 m by 2 m shall be safeguarded at the drive entrance/exit such that there is no obstruction to vision at a height exceeding 1m above the nearside channel level of the adjacent highway.
Reason: In the interest of road safety in accordance with Core Strategy Policy CSP 26, New Development and Highway Improvement.

13 Visibility splays, having the dimensions 2.4mm x 43m, shall be safeguarded at the junction of the access road with Lidgget Lane, such that there is no obstruction to visibility and forming part of the adopted highway,
Reason: In the interest of road safety in accordance with Core Strategy Policy CSP 26.

14 Prior to any works commencing on-site, a condition survey (including structural integrity) of the highways to be used by construction traffic shall be carried out in association with the Local Planning Authority. The methodology of the survey shall be approved in writing by the Local Planning Authority and shall assess the existing state of the highway. On completion of the development a second condition survey shall be carried out and shall be submitted for the written approval of the Local Planning Authority, which shall identify defects attributable to the traffic ensuing from the development. Any necessary remedial works shall be completed at the developer's expense in accordance with a scheme to be agreed in writing by the Local Planning Authority.
Reason: To ensure a safe and adequate highway network, in accordance with Core Strategy Policy CSP 26.

Signed
Date
Committee **Sub-Committee**
Delegated **Section** **Date**
Signed
Principal Planning Officer
Date
Signed
Development Control Manager
Date

15 Vehicular and pedestrian gradients within the site shall not exceed 1:12 to ensure safe and adequate access
Reason:
In the interest of road safety in accordance with Core Strategy Policy CSP 26.

16 Within 6 months of the occupation of any dwelling a detailed Travel Plan shall be submitted to and approved in writing by the Local Planning Authority. The plan shall indicate measures that will be put in place to encourage travel by modes other than the private car, and allow for regular reporting and monitoring to be undertaken. Once approved the Travel Plan shall be fully implemented.
Reason: In the interest of promoting use of public transport, in accordance with Core Strategy Policy CSP 25.

17 Prior to the commencement of development, details shall be submitted to and approved in writing by the Local Planning Authority of arrangements which secure the following highway improvement works:

Widening of Lidgett Lane to provide a 5.5m carriageway and a 2m wide parking layby;
Provision of 2m wide footway along entire site frontage;
Measures to prevent parking at the junction of Lidgett Lane/Pilley Green;
Provision of roundabout at junction of Pilley Green/New Road/Carr Lane;
Provision of/ any necessary changes to street lighting;
Provision of/ any necessary changes to highway drainage;
Reconstruction/resurfacing as necessary.

The works shall be completed in accordance with the approved details and a timetable to be submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of highway safety, residential amenity and visual amenity, in accordance with Core Strategy Policies CSP 26 and CSP 40.

18 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking or re-enacting that Order with or without modification), no building or structure shall be placed or erected within 3 metres, measured horizontally, of any sewer or culverted watercourse.
Reason: To prevent damage to the existing [sewer, watercourse or culverted watercourse] in accordance with Core Strategy Policy CSP 40, Pollution Control and Protection.

19 No development works shall begin until a report, endorsed by a competent engineer experienced in ground contamination and remediation, has been submitted and agreed with the Local Planning Authority. The report shall, amongst other matters, include the following:-
1. A survey of the extent, scale and nature of contamination.
2. An assessment of the potential risks to human health, property, adjoining land, groundwaters and surface waters, ecological systems and archaeological sites and ancient monuments.
3. An appraisal of remedial options, and proposal of the preferred option(s).
4. A remediation statement summarising the works to be undertaken (if required).
The above must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'. The development shall thereafter be undertaken in full accordance with the submitted report. For further information, see BMBC's

Supplementary Planning Guidance 28, "Developing Contaminated Land".
Reason: To protect the environment and ensure the site is suitable for the proposed use

20 Prior to the commencement of development a Phase 2 intrusive site investigation must be undertaken and submitted for approval in writing by the Local Planning Authority. The site investigation and subsequent development should be undertaken in compliance with CIRIA publication 32 "Construction over abandoned mine Workings" where applicable.
Reason: To accord with sections 120 & 121 of NPPF and Policy CSP29 of the Core Strategy.

21 No development or other operations being undertaken on site shall take place until the following documents in accordance with British Standard 5837:2012 has been submitted to and approved in writing by the Local Planning Authority:

Tree Survey
Tree protective barrier details
Tree protection plan
Arboricultural method statement

No development or other operations shall take place except in complete accordance with the approved methodologies.
Reason: To ensure the continued well being of the trees in the interests of the amenity of the locality.

22 No development shall take place until there has been submitted to and approved in writing by the Local Planning Authority, full details of both hard and soft landscaping works, including details of the species, positions and planted heights of proposed trees and shrubs; together with details of the position and condition of any existing trees and hedgerows to be retained. The approved hard landscaping details shall be implemented prior to the occupation of the properties.
Reason: In the interests of the visual amenities of the locality.

23 The dwelling(s) shall achieve a Code Level 3 in accordance with the requirements of the Code for Sustainable Homes: Technical Guide (or such national measure of sustainability for house design that replaces that scheme). No dwelling shall be occupied until a Final Code Certificate has been issued for it certifying that Code Level 3 has been achieved.
Reason: In the interest of sustainable development in accordance with Core Strategy Policy CSP2.

24 Prior to commencement of development, details of a scheme to reduce the developments carbon dioxide emissions by at least 15% by using decentralised, renewable or low carbon energy sources or other appropriate design measures shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with

Signed
Date
Committee **Sub-Committee**
Delegated **Section** **Date**
Signed
Principal Planning Officer
Date
Signed
Development Control Manager
Date

the approved details and upon completion of the development a report shall be submitted to and approved by the Local Planning Authority demonstrating that at least a 15% reduction in carbon dioxide emissions has been achieved. In the event that the use of other decentralised, renewable or low carbon energy sources or other appropriate design measures are also required to achieve a 15% reduction in carbon dioxide emissions, full details of such proposals and a timetable for their implementation shall be submitted to and approved in writing by the Local Planning Authority prior to installation. The approved details shall be implemented in accordance with the approved timetable and all the approved measures shall be retained as operational thereafter.
Reason: In the interest of sustainable development, in accordance with Core Strategy policy CSP5.

25 Notwithstanding the details submitted within the ecological assessment detailed plans shall be submitted with the Reserved Matters application indicating biodiversity mitigation and enhancement measures. Thereafter the development shall proceed in accordance with the approved details.
Reason: To conserve and enhance biodiversity in accordance with Core Strategy Policy CSP 36.

26 The development hereby permitted shall not begin until a scheme has been submitted to and approved in writing by the Local Planning Authority for the provision of a footpath linking the site to New Road. The approved details shall be implemented prior to the occupation of the first dwelling.
Reason: In the interests of highway safety, to provide a safe pedestrian link to and from the site in accordance with policy CSP26.

Reason(s) for Granting Permission

Informative(s)

1	The proposed development lies within an area that has been defined by The Coal Authority as containing potential hazards arising from former coal mining activity. These hazards can include: mine entries (shafts and adits); shallow coal workings; geological features (fissures and break lines); mine gas and previous surface mining sites. Although such hazards are seldom readily visible, they can often be present and problems can occur in the future, particularly as a result of development taking place. It is recommended that information outlining how the former mining activities affect the proposed development, along with any mitigation measures required (for example the need for gas protection measures within the foundations), be submitted alongside any subsequent application for Building Regulations approval (if relevant). Your attention is drawn to the Coal Authority policy in relation to new development and mine entries available at www.coal.decc.gov.uk Any intrusive activities which disturb or enter any coal seams, coal mine workings or coal mine entries (shafts and adits) requires the prior written permission of The Coal Authority. Such activities could include site investigation boreholes, digging of foundations, piling activities, other ground works and any subsequent treatment of coal mine workings and coal mine entries for ground stability purposes. Failure to obtain Coal Authority permission for such activities is trespass, with the potential for court action.

	Property specific summary information on past, current and future coal mining activity can be obtained from The Coal Authority's Property Search Service on 0845 762 6848 or at www.groundstability.com If any of the coal mining features are unexpectedly encountered during development, this should be reported immediately to The Coal Authority on 0845 762 6848. Further information is available on The Coal Authority website www.coal.decc.gov.uk
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	If the developer is to make discharge flows to the existing watercourse he must gain the written agreement of the Land Drainage Authority to discharge flows at an agreed rate - Contact Derek Bell (01226 787654)
4	If the developer is to carry out works within or in the proximity of any watercourse he must gain the relevant permissions from the Lead Local Flood Authority - Contact Derek Bell (01226 787654)

Signed
Date
Committee **Sub-Committee**
Delegated **Section** **Date**
Signed
Principal Planning Officer
Date
Signed
Development Control Manager
Date

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

THE COMMON SEAL of)
BARSNLEY METROPOLITAN)
BOROUGH COUNCIL was)
hereunto affixed to this Deed in the)
presence of:-)

Director of Legal and Governance/Authorised Signatory

No. 1176
IN REGISTER

EXECUTED AS A DEED by)
JAGUAR & WORTLEY)
DEVELOPMENTS LIMITED)
acting by:)

Director

Director/Secretary