BOROUGH SECRETARY'S DEPARTMENT

BARNSLEY
Metropolitan Borough Council

LEGAL SERVICES DIVISION

To: Executive Director (Planning and Transportation)
(FAO Elaine Ward, Matthew Smith)
Neighbourhood Services (FAO Shaun Wright)

My Ref: JF/LMH/PG/254/00250 **Your Ref:**

Date: 12th February 2010 **Enquiries to:** Jason Field **Ext:** 2651

Re: Section 106 at 65 and 67 Bellbrooke Avenue, Darfield, Barnsley
Completion Memo 2009/0007

Please find attached a copy of the Section 106 that was completed on the 29th January. Apologies for the delay in sending this memo but other more urgent matters have intervened. The Agreement provides that the developer Chevin Housing Association Limited pays £34,820 upon commencement of development, £10,000 is to be spent towards the provision of a fence to enclose the multi-use games area at Bellbrooke Avenue Open Space, reference GS994 and the further sum of £24,820 is to be spent towards the provision of play equipment at The Longbow Open Space area, reference GS147.

Jason Field
for the Borough Secretary.

DATED 29th January 2010

BARNSLEY METROPOLITAN BOROUGH COUNCIL

and

CHEVIN HOUSING ASSOCIATION LIMITED

AGREEMENT

under Section 106 of the Town and Country Planning Act 1990 (as amended)
relating to development on land «LAND» Barnsley in the County of South Yorkshire

A.C. Frosdick, LL.B. DipLG,
Borough Secretary,
Town Hall,
Barnsley S70 2TA.

THIS DEED OF AGREEMENT is made the 29th day of January Two Thousand and ~~Nine~~ Ten

BETWEEN

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

(2) **CHEVIN HOUSING ASSOCIATION LIMITED** Industrial & Provident Company number IP 2868R whose registered office is situate at Harrison Street Wakefield WF1 1PS ("the Owner") of the second part and

RECITALS

(1) The Council is the Local Planning Authority for the purposes of this Agreement for the area within which the land described in the First Schedule hereto ("the Land") is situated and is the authority by whom the obligations contained in this Agreement are enforceable

(2) The Owner is the registered proprietor with Title Absolute of the Land under Land Registry Title Number SYK 572130

(3) The Mortgagee is mortgagee of the Land under a Legal Charge dated the and made between the Owner and the Mortgagee

(4) The Application has been submitted 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) This Deed is entered into in order to comply with planning condition 7 of the Planning Permission

NOW THIS DEED WITNESSETH AS FOLLOWS:-

DEFINITIONS

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

"**the 1990 Act**" means the Town and Country Planning Act 1990 (as amended)

"**the Application**" means the application for planning permission received 18 December 2009 submitted to the Council for residential development with the reference number 2009/0007

"**the Commencement of Development**" means the actual date upon which the Development is begun by the carrying out of any material operation as defined by Section 56(4) of the Town and Country Planning Act 1990 and "Commence Development" is to be construed accordingly

"**the Development**" means the development of the Land for residential development as set out in the Application

"**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 index as the Council reasonably nominates

"**Interest**" means interest at 4 per cent above the base lending rate of Barclays Bank Plc from time to time or should this rate cease to exist such other bank lending rate as the Council may reasonably nominate

"**the Open Space Commuted Sum**" means the sum of thirty four thousand eight hundred and twenty pounds (£34,820.00) apportioned as to £10,000 towards the

provision of a fence to enclose the multi use games area at Bellbrooke Avenue open space (reference GS994) and the further sum of £24,820 towards the provision of play equipment at the Long Bow open space (reference GS147)

"**the Plan**" means the plan annexed hereto

"**the Planning Permission**" means the planning permission granted or to be granted pursuant to the Application

CONSTRUCTION OF THIS DEED

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

2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.

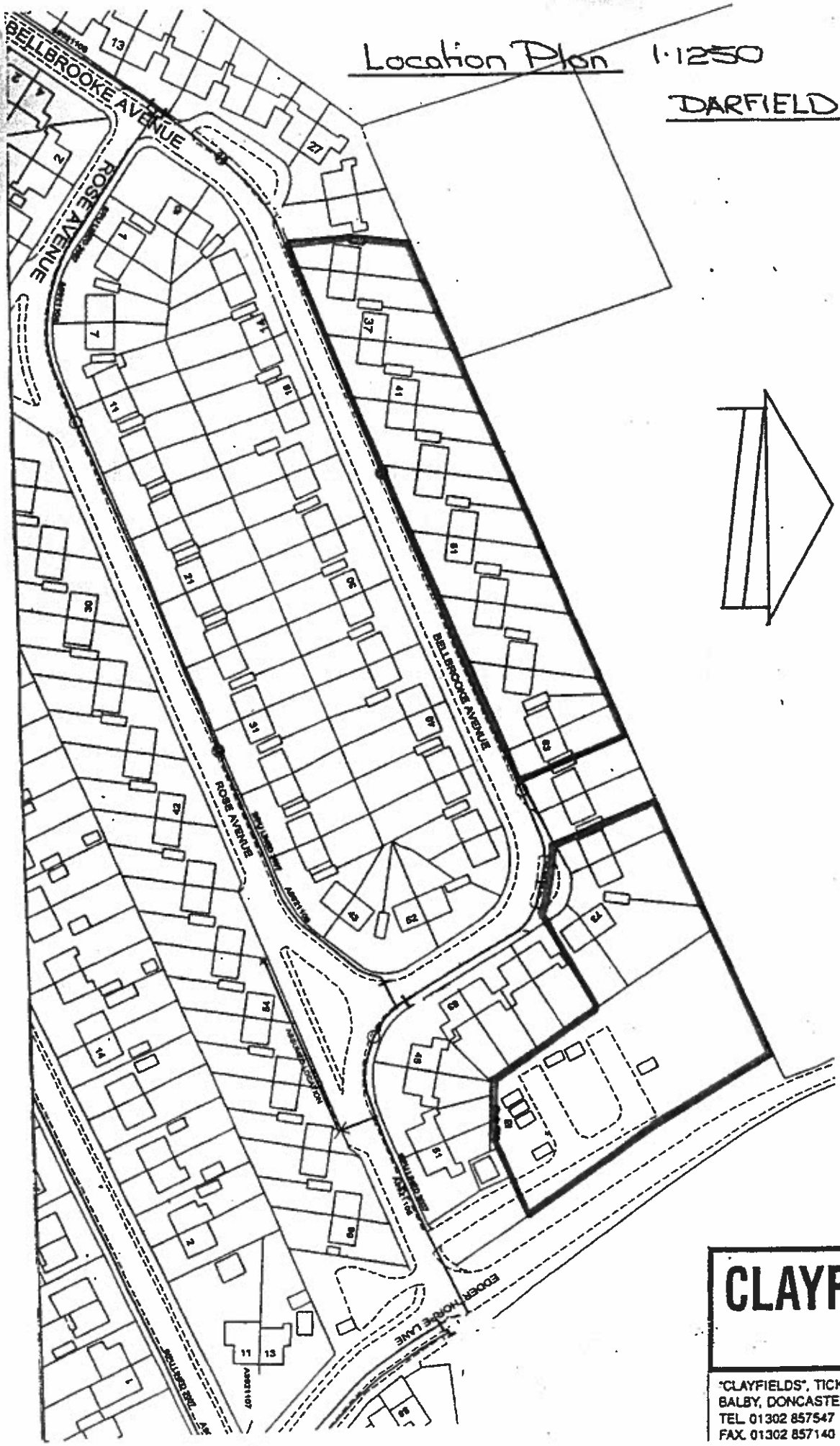
2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.

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

2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.

Location Plan 1:1250

DARFIELD



CLAYFIELD

"CLAYFIELDS", TICKHILL RD.
BALBY, DONCASTER, DN4 8QG
TEL 01302 857547
FAX 01302 857140

2.6 References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council the successors to its statutory functions.

LEGAL BASIS

3 This Agreement is made pursuant to section 106 of the Town and Country Planning Act 1990 section 111 of the Local Government Act 1972 section 2 of the Local Government Act 2000 and all other enabling powers o and is a planning obligation for the purposes of and as defined in the said Section 106 and the covenants restrictions and requirements imposed on the Owner herein are enforceable by the Council as local planning authority against the Owner

COMMENCEMENT

4 The provisions of this Deed shall have immediate effect upon the completion of this Deed Other than the obligations in Clause 5 which shall have effect upon the Commencement of Development

OWNER COVENANTS

5 The Owner covenants with the Council as set out in the Second Schedule

MISCELLANEOUS

6.1 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.

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

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

6.4 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Council or by the Council from the Owner under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction shall be given on behalf of the Council by the Assistant Director of Planning and Transportation 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.

6.5 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall upon receipt of a written request by the Owner effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.

6.6 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.

6.7 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Land but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

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

6.9 No waiver (whether expressed or implied) by the Council of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

6.10 This Deed is governed by and interpreted in accordance with the law of England and Wales.

INDEXATION

7 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.

INTEREST

8 If any payment due by the Owner under this Deed is paid more than 21 days after the date it was due, Interest will be payable from the date payment is due to the date of payment.

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

FIRST SCHEDULE

All that land at Bellbrooke Avenue Darfield South Yorkshire S73 9BP for the purpose of identification shown edged red on the Plan

SECOND SCHEDULE

The Owner shall pay to the Council upon Commencement of Development the Open Space Commuted Sum

THE COMMON SEAL of Barnsley)
Metropolitan Borough Council was)
hereunto affixed to this Deed in the)
presence of:-)

Borough Secretary

AUTHORISED SIGNATORY

No. 849 IN REGISTER

THE COMMON SEAL of)
CHEVIN HOUSING)
ASSOCIATION LIMITED)

was affixed to this Deed in the)
presence of:-)

1301

Member of Committee

Secretary