

2018

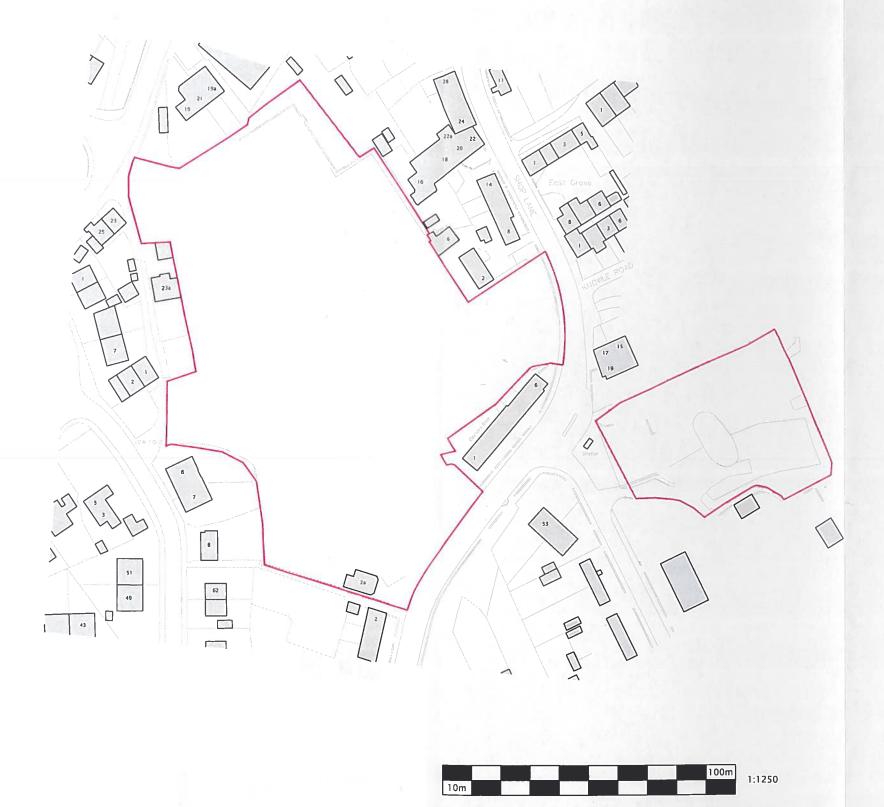
BETWEEN

<u>HARTLEY PROPERTY TRUST LIMITED</u> (company registration number 443554) of Cumberland House, Greenside Lane, Bradford, England, BD8 9TF (hereinafter called "the **Owner**") of the first part and;

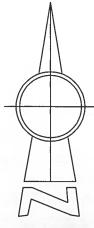
THE COUNCIL OF THE BOROUGH OF KIRKLEES of the Town Hall Huddersfield West Yorkshire (hereinafter called "the Council") of the second part

WHEREAS

- 1. The Council is the local planning authority pursuant to the Town and Country Planning Act 1990 for the Kirklees district within which the Site is situated and by whom the planning obligations within this Deed are enforceable.
- The Owner is the freehold owner of the Site registered under title number WYK650163.
- 3. By the provisions of Section 106 of the Town and Country Planning Act 1990 ("the **Act**") any person interested in land in the area of a local planning authority may by deed or otherwise enter into a planning obligation in respect of such land.
- 4. The Council is willing to grant the Planning Permission subject the completion of this Deed in order to:-
 - (i) secure the provision of affordable housing as part of the Site in accordance with the policies of the Kirklees Unitary Development Plan SPD2 and NPPF;
 - (ii) secure the provision of a financial contribution towards the provision of additional school places in the vicinity of the Site required as a consequence of the Development;
 - (iii) secure the provision of a financial contribution towards the improvement of Off-Site Public Open Space; and



010665



LOCATION PLAN

CLIENT
HARTLEY PROPOERTIES

DRAWING OF

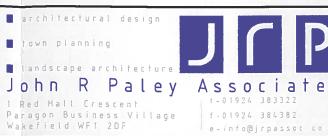
LOCATION PLAN

PROJECT

MARKETING NAME

PROPOSED RESIDENTIAL DEVELOPMENT SHOP LANE, KIRKHEATON, HUDDERSFIELD

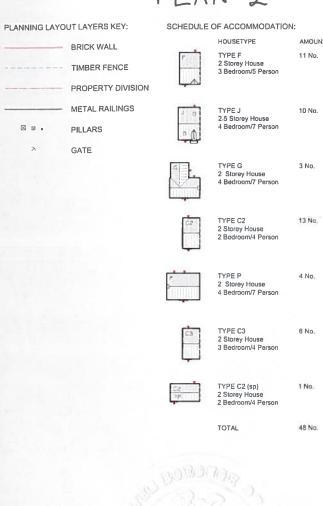
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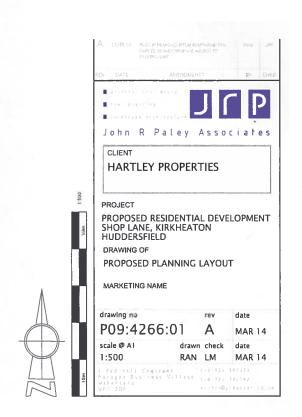


PROPOSED PLANNING LAYOUT

PLAN 2



010665



(iv) regulate the provision and future maintenance of On-Site Public Open Space to serve the Development in accordance with Policy H18 of the Kirklees Unitary Development Plan.

NOW IT IS HEREBY AGREED as follows:-

1. INTERPRETATION

1.1 In this Deed unless the context otherwise requires the following words and expressions shall have the meanings respectively assigned to them in this Clause:-

"the Act" means the Town and Country Act 1990 as amended

"the Affordable Housing" means housing to be provided by way of Starter Homes to Qualifying Buyers whose needs are not met by the open market;

"the Affordable Housing Scheme" means a scheme for the Affordable Housing comprising twenty per cent of the total number of Dwellings to be built on the Site pursuant to the Planning Permission as Starter Homes (up to a maximum of ten Starter Homes) and which specifies:-

(a)the location type and distribution of the Starter Homes within the Site;(b)details of the proposed design and construction of the Starter Homesand which may be amended from time to time with the written approval of the Council.

"the Application" means the outline planning application for the Development submitted to the Council on 27 august 2014 and allocated reference number 2014/92535

"Development" means the development of the Site for the erection of up to 48 dwellings, formation of access, public space and associated infrastructure;

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"Discounted Sale Price" means the sale price for each Starter Home which shall not exceed eighty per cent (80%) of the Open Market Value of that Starter Home and in any event shall not exceed £250,000.00 (two hundred and fifty thousand pounds);

"Disposal" means the sale of the freehold or the grant of a lease or underlease of twenty one years or more or the assignment of a lease or underlease with more than 21 years left to run;

"Dwellings" means the dwellings to be built on the Site pursuant to the Planning Permission including the Starter Homes and the Open Market Dwellings

"Education Contribution" means the sum of £113,891.00 (one hundred and thirteen thousand eight hundred and ninety one pounds) to be used only towards the provision of additional school places in the vicinity of the Site required as a consequence of the Development;

"Implementation" means the implementation of the Planning Permission by the carrying out of any material operation as defined by Section 56(4) of the Act PROVIDED THAT the following shall not be regarded as material operations:

- (a) demolition of existing structures on the Site;
- (b) the erection of boundary structures, fencing and/or hoardings or other site security measures or safety measures;
- (c) diversion of services;
- (d) site and ground investigations and/or surveys;
- (e) archaeological investigations or works;
- (f) ecological, landscaping and/or noise attenuation mitigation measures;
- (g) any operations undertaken by the Council.

and Implement and Implemented shall be construed accordingly

"Index" means All Items Index of Retail Prices issued by the Office for National Statistics or any successor organisation;

"Management Company: means any public body, statutory undertaker or organisation (which in the case of an organisation shall include a company constituted in connection with the Development whose members are the purchasers and future purchasers of the Dwellings) with the purpose of managing and maintaining the On-Site Open Space in accordance with the On-Site Open Space Management Plan (as approved) and the obligations herein;

"NPPF" means the National Planning Policy Framework published by the Department for Communities and Local Government;

"Open Market Dwellings" means those Dwellings within the Development constructed pursuant to the Planning Permission which are not identified as Starter Homes in the Affordable Housing Scheme;

"Occupation" occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in the construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations;

"Off-Site Open Space Contribution" means the sum of £129,950.00 (one hundred and twenty nine thousand nine hundred and fifty pounds) towards Bankfield Lane Recreation and Fields Ways play areas necessary as a result of the Development;

"On-Site Open Space" means that area of land within the Development shown coloured green on Plan 2 or such other area as may be agreed between the Council and the Owner and detailed in the approved On-Site Open Space Scheme;

"On-Site Open Space Management Plan" a scheme for the future management and maintenance of the On-Site Open Space that identifies the maintenance requirements for the On-Site Open Space including all ongoing maintenance operations, specifically identifying the management objective, task and the timing and frequency of the operation of all the features of the On-Site Open Space and

details of who is to undertake the on-going future maintenance of the On-Site Open Space

"On-Site Open Space Scheme" a scheme to be submitted to and approved by the Council detailing (i) the size location and type of On-Site Open Space (ii) details and specifications for works and materials showing how the On-Site Open Space will be graded, drained, landscaped, seeded, planted, laid out and provided fit for use by the public;

"Open Market Value" means the open market value of a Starter Home being the price at which the sale of an interest in the Starter Home would have been completed unconditionally for cash consideration on the date of valuation assuming:

- (a) a willing seller;
- (b) that any restrictions imposed on the Starter Home by reason of this Deed are disregarded;
- (c) that there are no restrictions as to the persons who may occupy the Starter Home or to whom a Disposal may be made; and
- (d) that both parties to the transaction had acted knowledgeably prudently and without compulsion;

"Plan 1" means the plan annexed hereto marked Plan 1

"Plan 2" means the plan annexed hereto marked Plan 2

"Planning Permission" means the outline planning permission to be granted by the Council for the Development pursuant to the Application.

"Qualifying Buyer" means a person who is:-

- (a) a first-time buyer which shall have the meaning given by section 57AA(2) of the Finance Act 2003.
- (b) is at least 23 years old but has not yet reached the age of 40; and
- (c) will occupy the Starter Home as a sole or main residence.

"Service Charge" means an estate service charge forever charged on and issuing out of the Site and representing a fair and proper proportion of the expenditure applicable to that particular Dwelling and payable annually to the Management Company in respect of its administration and of insuring and maintaining, repairing and as necessary renewing the On-Site Open Space in accordance with the approved On-Site Open Space Management Plan;

"Site" means the land at Shop Lane, Kirkheaton, Huddersfield shown edged red on Plan 1:

"Starter Home(s)" means a Dwelling(s) to be constructed on the Site as Affordable Housing in accordance with the provisions of clauses 3 and 4 of this Deed;

"SPD2" means the Council's Supplementary Planning Document number 2 – Affordable Housing adopted by Kirklees Council on 18 November 2008.

2.GENERAL

- 2.1 The Owner covenants with the Council to observe the restrictions and perform the obligations contained in this Deed.
- 2.2 The provisions of this Deed are planning obligations made pursuant to Section 106 of the Act and all other powers so enabling to the intent that they shall bind the Owner and each and every part of the Site.
- 2.3 The expressions "the Council" and "the Owner" shall include their successors in title and assigns.
- 2.4:1 No person shall be liable for breach of any covenant contained in this Deed after he shall have parted with all interest in the Site or the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest.
- 2.4:2 This Deed shall not be enforceable against owner-occupiers or tenants of Dwellings or against those deriving title from them save that the obligations in clauses 3.4 and 4.1 to 4.6 of this Deed shall be enforceable against owner-occupiers or tenants of the Starter Homes on the terms set out in those clauses.

- 2.5 This Deed is conditional upon the grant of the Planning Permission and the Implementation of the Development save for the provisions of clauses 2.10 and 2.11 which shall come into effect immediately upon completion of this Deed.
- 2.6 If the Planning Permission expires or is revoked or otherwise withdrawn or modified without the consent of the Owner this Deed shall cease to have effect from the date of the said expiration revocation withdrawal or modification (as the case may be) but without prejudice to any rights liabilities or obligations which may have been incurred by or shall have accrued to any party prior to such date.
- 2.7 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission granted (whether or not on appeal) after the date of this Deed.
- 2.8 This Deed is a local land charge and shall be registered as such
- 2.9 The provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Deed
- 2.10 The Owner shall pay to the Council its legal fees reasonably incurred in the preparation of this Deed
- 2.11.1 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.
- 2.11.2 In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to Clause 2.11.1 or as to the appropriateness of the

professional body then such question may be referred by either party 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.

- 2.11.3 Any expert howsoever appointed shall be subject to the express requirement that a decision is 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.
- 2.11.4 The expert shall be required to give notice to each of the said parties requiring them to submit to him within fifteen 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 fifteen working days.
- 2.11.5 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.

3. AFFORDABLE HOUSING

The Owner covenants with the Council:-

- 3.1 Not to Implement the Development until the Owner has submitted the Affordable Housing Scheme for approval by the Council and until the Council has approved in writing the Affordable Housing Scheme;
- 3.2 20% of the Dwellings permitted by the Planning Permission shall be constructed as Starter Homes (up to a maximum of ten) pursuant to the Affordable Housing Scheme;
- 3.3 To ensure that the Starter Homes are constructed as part of the Development in accordance with the Planning Permission;

- 3.4 The Starter Homes shall not be used or Occupied other than in accordance with the requirements of this Deed and the Affordable Housing Scheme.
- 3.5 Not to Occupy more than 50% of the Open Market Dwellings until all the Starter Homes have been completed in accordance with the Planning Permission, this Deed and the Affordable Housing Scheme and made available for Occupation.
- 4. The Owner further covenants with the Council as follows:-
- 4.1 To provide the Council with the notice of sales release date not less than six (6) weeks before the date upon which it proposes to release the Starter Homes for Disposal;
- 4.2.1 Prior to the Disposal of any Starter Home to seek to agree with the Council the Open Market Value of the relevant Starter Home and the Discounted Sale Price;
- 4.2.2 If the Owner and the Council are unable to agree the Open Market Value of the Starter Home the Open Market Value will be determined by averaging the written opinions as to the Open Market Value of two independent surveyors to be instructed by the Owner and the Council and the Discounted Sale Price shall be calculated from that Open Market Value;
- 4.2.3 In the event of a dispute as to the calculation of Open Market Value and the Discounted Sale Price the provisions of clause 2.11 shall apply.
- 4.3 Not to Dispose of any Starter Home:-
 - (a) for an amount which exceeds the Discounted Sale Price; or
 - (b) to any person other than a Qualifying Buyer;
- 4.4 No Disposal of a Starter Home shall be completed and no such Disposal shall be registered at the Land Registry unless the Council has first consented in writing to such registration PROVIDED THAT such consent shall be given forthwith upon
 - (a) evidence being furnished that the disponee (or in the case of joint disponees one of the disponees) is a Qualifying Buyer; and
 - (b) the Solicitor or Licensed or other authorised Conveyancer acting for the disponee(s) has certified to the Council that any consideration expressed to be given for the Starter Home by the disponee(s) did not exceed the Discounted Sale Price as evidenced by the certificate given by a valuer not more than six (6) months before the date of such Disposal; and

- (c) the reasonable administrative and legal costs incurred by the Council in consideration of the disponee's application and provision of Land Registry certificate shall be paid by the disponee.
- 4.5 Any subsequent owner shall on each and every subsequent Disposal of a Starter Home submit to the Council for approval the calculation of the Open Market Value and the Discounted Sale Price of the Starter Home prior to the Starter Home being offered for sale and the Council hereby covenants that the approval hereby required to be obtained shall not be unreasonably withheld or delayed.
- 4.6 The provisions of clauses 3.4 and 4 hereof shall apply to each Starter Home for a period of five years from the date of first Disposal. After the expiry of that five year period the obligations and restrictions contained in those clauses shall cease to be of effect and the Starter Homes shall be treated as Open Market Dwellings which may be Disposed of at Open Market Value to persons other than a Qualifying Buyer.

5. ON-SITE OPEN SPACE

- Not to Implement the Development unless and until the On-Site Open Space Scheme has been submitted to the Council and has been approved in writing by the Council
- Not to permit or allow Occupation of more than 50% of the Open Market Dwellings until the On-Site Open Space has been provided in complete accordance with the approved On-Site Open Space Scheme so that it is available and safe for immediate public use
- 5.3 Not to allow or permit Occupation of the Development until the On-Site Open Space Management Plan has been submitted to and approved in writing by the Council
- 5.4 As soon as is reasonably practicable after the completion of On-Site Open Space the Owner shall notify the Council in writing that such works have been completed

- 5.5 Not later than one calendar month following receipt of the relevant notice referred to in Clause 5.4 above the Council shall inspect the On-Site Open Space and if the On-Site Open Space has been carried out to the reasonable satisfaction of the Council it shall as soon as reasonably practicable notify the Owner in writing thereof
- 5.6 If upon notification by the Owner pursuant to Clause 5.4 above the On-Site Open Space has not been carried out to the reasonable satisfaction of the Council it shall notify the Owner as soon as reasonably practicable in writing specifying the measures reasonably necessary to satisfactorily complete the On-Site Open Space and the Owner shall within such period as is reasonably specified by the Council carry out those works and shall notify the Council pursuant to Clause 5.4 hereof (such procedure being repeated as often as is necessary until such time as the Council confirms satisfactory completion thereof)
- 5.7 Following written confirmation by the Council of the satisfactory completion of the On-Site Open Space, the Owner shall thereafter maintain the On-Site Open Space in accordance with the approved On-Site Open Space Management Plan and the rules of good horticulture and husbandry keeping it properly maintained and shall replace trees shrubs and plants which shall die or become diseased or are damaged or removed and shall trim prune mow and feed the On-Site Open Space.
- To keep the On-Site Open Space open, unbuilt upon and available for public recreational use in perpetuity save for access to any wildlife area to which access is restricted in the approved On-Site Open Space Management Plan.
- Not to amend the approved On-Site Open Space Management Plan without the prior written approval of the Council.

MANAGEMENT COMPANY

The Owner covenants to establish the Management Company in accordance with this Agreement.

- Not to Dispose of any individual Dwelling comprised in the Development until the Management Company has been formed and the Owner has provided evidence of such formation in writing to the Council (including a certified copy of the Memorandum and Articles of Association of each Management Company).
- 6.3 The Owner covenants that the principal objects of the Management Company will be to maintain, repair, replace and renew the On-Site Open Space in accordance with the approved On-Site Open Space Management Plan and the principles of good estate management.
- 6.4 The Owner covenants that the Management Company shall prepare and administer the annual Service Charge.
- 6.5 The Owner shall appoint a managing agent to establish and manage the Management Company (such managing agent to be approved in writing by the Council).
- Not to wind up the Management Company or alter its constitution without the prior written consent of the Council.
- 6.7 The Owner will procure that the purchaser or tenant of each Dwelling comprised in the Development enters into a lease or deed of covenant containing a covenant substantially in the form set out below (or in such other form as agreed in advance by the Council in writing) direct with the Owner and Management Company under which the buyer shall covenant to:
 - 6.7.1 pay annually in advance to the Management Company the Service Charge (or an appropriate proportion of it in respect of the payment due on the date of the transfer/lease)
 - 6.7.2 not to dispose (other than by way of mortgage or assured shorthold tenancy) of the Dwelling unless the disponee enters into and delivers direct to the Owner and Management Company a direct covenant with the Owner and Management Company in the form set out in this clause 6.7
 - 6.7.3 to procure that an application is made to the Land Registry for entry of a restriction onto the register of the title of each Dwelling comprised in the

Development in standard form L in Schedule 4 of the Land Registration Rules 2003 namely

"No disposition of the registered estate (other than a charge) by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge registered before entry of this restriction is to be registered without a certificate signed by a conveyancer that the provisions of paragraph [the provisions referred to at paragraph [] above] of a transfer dated [] and made between [name] (1) and [name] (2) have been complied with or that they do not apply to the disposition"

- 6.8 Upon completion of the Development the Owner shall procure that:-
 - 6.8.1 the ownership of the On-Site Open Space is transferred to the Management Company for a nominal consideration;
 - 6.8.2 the control of the Management Company is transferred to the purchasers of the Dwellings (unless otherwise agreed in writing by the Council) but shall procure that a Managing Agent is retained to manage and administer the Management Company.

OFF-SITE OPEN SPACE CONTRIBUTION

The Owner further covenants and agrees with the Council as follows:-

- 7.1 Subject to paragraph 7.2 below to pay to the Council the Off-Site Open Space Contribution on or prior to Occupation of more than 50% of the Dwellings and not to allow or permit Occupation of more than 50% of the Dwellings until the Off-Site Open Space Contribution has been paid in full.
- 7.2 Save where the Off-Site Open Space Contribution is paid within six (6) months of the date of this Deed, the said contribution shall be increased (but not decreased) in line with the increase in the Index from the date of this Deed until the date on which such contribution is payable.

EDUCATION CONTRIBUTION

The Owner further covenants and agrees with the Council as follows:-

8.1 Subject to paragraph 8.2 below to pay to the Council the Education Contribution on or prior to Occupation of more than 50% of the Dwellings and not to allow or permit Occupation of more than 50% of the Dwellings until the Education Contribution has been paid in full.

8.2 Save where the Education Contribution is paid within six (6) months of the date of this Deed, the said contribution shall be increased (but not decreased) in line with the increase in the Index from the date of this Deed until the date on which such contribution is payable.

THE COUNCIL'S COVENANTS

The Council covenants and agrees with the Owner as follows:-

- 9.1 To pay the Education Contribution and Off-Site Open Space Contribution into an interest-bearing account as soon as reasonably practicable.
- 9.2 Not to use any part of the Education Contribution and/or Off-Site Open Space Contribution other than for the purposes for which it was paid.
- 9.3 In the event that any part of the Education Contribution and/or Off-site Open Space Contribution either (i) has not been spent or committed for expenditure by the Council within five (5) years of receiving payment of the Education Contribution and/or Off-Site Open Space Contribution; or (ii) has been used for any purpose other than the purposes for which it was paid, the Council shall refund to the Owner any such part of the Education Contribution and/or Off-Site Open Space Contribution, together with any accrued interest.
- 9.4 Upon request, to account to the Owner in writing for the expenditure of the Education Contribution and/or Off-Site Open Space Contribution.

IN WITNESS WHEREOF the parties hereto have caused this Deed to be executed as a Deed

THE CORPORATE COMMON SEAL of THE COUNCIL OF THE BOROUGH OF KIRKLEES was hereunto affixed but not delivered until the date hereof In the presence of:-

Assistant Director Legal, Covernance & Monitoring /Authorised Signatory



EXECUTED AS A DEED by HARTLEY PROPERTY TRUST LIMITED in the presence of:-

occupation: CHIEF OF STAFF

Director For+ on behalf of Im Directors LTD

Date: 23 MARCH 2018

Witness:

DAVID BRESCIA

Address: 3 STANHOPE GATE LONDON WIK IAG

THE COUNCIL OF THE BOROUGH OF KIRKLEES

and

HARTLEY PROPERTY TRUST LIMITED

DEED

Under Section 106 of the Town & Country Planning Act 1990 relating to land at Shop Lane, Kirkheaton

Julie Muscroft
Assistant Director: Legal, Governance & Monitoring
Kirklees Council
Second Floor
High Street Buildings
High Street
Huddersfield
HD1 2ND