



DATED

5th May

2018

PERSIMMON HOMES LIMITED (1)

and

THE COUNCIL OF THE BOROUGH OF KIRKLEES (2)

**DEED OF VARIATION UNDER SECTION 106 OF THE TOWN AND COUNTRY PLANNING ACT 1990**

relating to the development of land at Flockton Hall Farm, Barnsley Road,  
Flockton, West Yorkshire WF4 4DW

This Deed is made the 5<sup>th</sup> May 2018  
between:

- (1) **PERSIMMON HOMES LIMITED** (company number 4108747) of Persimmon House, Fulford, York YO19 4FE ("the Owner")  
and  
(2) **THE COUNCIL OF THE BOROUGH OF KIRKLEES** of 2nd Floor, Civic Centre 3, Market Street, Huddersfield HD1 2YZ ("the Council")

#### **RECITALS**

- A This Deed is made supplemental to the Original Section 106 Agreement
- B The parties are entering into this Deed to vary the terms of the Original Section 106 Agreement.
- C On 3 March 2017 the Original Owners entered into the Original Section 106 Agreement and the Original Planning Permission was granted by the Council by decision notice dated 7 March 2017.
- D The Property originally comprised part of the land owned by the Original Owners registered at the Land Registry under title number WYK858349.
- E On 28 September 2017 the Original Owners transferred the Property to the Owner and the Owner is the freehold owner of the Property registered at the Land Registry under title number YY91668.
- F The Owner has made the Section 73 Application and the Council has resolved to grant the Section 73 Permission subject to amendments to Original Section 106 Agreement.
- G This Deed is supplemental to the Original Section 106 Agreement and is a variation to the Original Section 106 Agreement.

#### **NOW THIS DEED WITNESSES AS FOLLOWS**

##### **1. DEFINITIONS**

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

"Deed" means this deed

|                                      |                                                                                                                                                                                                                                             |
|--------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| "the Original Planning Permission"   | means the planning permission granted by the Council on 7 March 2017, reference 2016/62/92811/E for residential development with associated access, car parking, landscaping, public open space and ancillary works on the Property         |
| "the Original Owners"                | means Thomas Davies, David William Pedley, Allan James Davies and Andrew David Wriglesworth, who were the previous freehold owners of the Property and parties to the Original Section 106 Agreement                                        |
| "the Property"                       | means the freehold land at Flockton Hall Farm, Barnsley Road, Flockton, West Yorkshire WF4 4DW shown edged red on Plan 1 at Annex A of this Deed and which is registered at HM Land Registry with absolute title under title number YY91668 |
| "Section 73 Application"             | means the application reference 2017/91269 validated on 10 April 2017 to vary the approved layout plans of the Original Planning Permission                                                                                                 |
| "Section 73 Permission"              | means the planning permission to be granted pursuant to the Section 73 Application                                                                                                                                                          |
| "the Original Section 106 Agreement" | means an agreement dated 3 March 2017 made between (1) the Original Owners (2) the Owner and (3) the Council                                                                                                                                |

## 2. CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.
- 2.2 Any reference in this Deed to any of the parties is deemed to include their successors in title and assigns.
- 2.3 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.

- 2.4 Clause headings are for reference only and shall not affect the construction of this Deed.
- 2.5 The expression "person" means any person, firm, authority or company or other legal entity.
- 2.6 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 2.7 Where more than one person is included in the expressions "the Council" and "the Owner" agreements and obligations expressed to be made or assumed by such party are made or assumed by all such persons jointly and each of them severally and if the need should arise shall be enforceable against all such persons jointly and each of them severally.
- 2.8 A reference to any party shall include that party's personal representatives, successors in title or permitted assigns and in the case of the Council the successors to their respective statutory functions.
- 2.9 An obligation in this Deed not to do any act or thing includes an obligation not to cause permit or allow or suffer the doing of that act or thing.
- 2.10 Unless the context otherwise requires, the masculine and the feminine and neuter include each of the other genders and the singular includes the plural and vice versa.
- 2.11 A reference to an Act of Parliament refers to the Act as it applies at the date of this Deed and any later amendment or re-enactment of it and any regulations or statutory instrument made under it.

### **3. VARIATION**

The Owner and the Council agree and declare that the Original Section 106 Agreement shall be varied and be read and construed as varied by the provisions set out in Schedule 1 to this Deed.

### **4. CONDITIONALITY**

It is further agreed and declared that:

- 4.1 This Deed will become effective upon the date hereof.
- 4.2 Save as varied by this Deed the provisions of the Original Section 106 Agreement shall remain in full force and effect and the terms of the Original Section 106 Agreement shall have effect as though the variations effected by this Deed had been contained in the Original Section 106 Agreement.

**5. ENDORSEMENT**

Promptly following completion of this Deed the parties shall each endorse a memorandum of variation upon the Original Section 106 Agreement and its counterparts in the following terms

“This Section 106 Agreement has been varied by a Deed of Variation dated [ ] and made between (1) Persimmon Homes Limited and (2) The Council of the Borough of Kirklees ”

**6. LOCAL LAND CHARGE**

Upon completion this Deed shall be registered as a Local Land Charge by the Council

**7. EFFECT OF THIS DEED**

For the avoidance of doubt the provisions of this Deed (other than those contained in this Clause) shall not have any effect until this Deed has been dated.

**8. THIRD PARTIES**

The parties do not intend that any term of this Deed shall be enforceable solely by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to this Deed.

**9. COUNCIL'S COSTS**

The Owner hereby agrees with the Council to pay on execution the Council's costs not exceeding £441.00 incurred in the preparation and settlement of this Deed.

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

## Schedule 1 - Variations to the Original Section 106 Agreement

The following variations shall be made to the Original Section 106 Agreement:

1. In clause 1 of Original Section 106 Agreement, the definition of "Plan" shall be deleted and replaced with:

**"Plan:** means the Planning Layout Drawing ref: FLO-2014:01Y labelled "Plan 1" attached at Annex A of the Deed"

2. In clause 1 of the Original Section 106 Agreement, the definition of "Planning Permission" shall be deleted and replaced with:

**"Planning Permission:** means the Original Planning Permission as amended by the Section 73 Permission"

3. In clause 1 of the Original Section 106 Agreement, the following terms shall be inserted:

**Inspection and Certification Charge:** means the sum of £ 1000 towards the costs to the Council of inspecting the Open Space Area Works and certifying that they are in accordance with the Plan and the Landscape Masterplan

**Landscape Masterplan:** means the Landscape Masterplan drawing number: R/1780/1J labelled "Plan 2" attached at Annex A of the Deed

**Management Company:** means a limited company or companies registered at Companies House which may already be in existence or which may be formed by the Owner for the purposes of carrying out future maintenance of the Public Open Space:

1. which is incorporated in England and Wales; and
2. which has a registered office in England; and
3. whose primary objects permit it to maintain and renew the Public Open Space.

**Management Layout Plan:** means the Management Layout Plan drawing number FLO- 2014-06E labelled "Plan 3" attached at Annex A of the Deed.

**"Public Open Space:** means the land laid out as a public garden or used for the purposes of public recreation as shown on the Plan."

**Open Space Area Works:** means the works to lay out the Public Open Space in accordance with the Plan and the Landscape Masterplan

4. At Schedule 1 of the Original Section 106 Agreement, the following clause 6 shall be inserted into that Schedule:

"6. The Owner covenants with the Council as follows:

6.1 The Public Open Space shall be completed in the first available planting season following Occupation of the 30<sup>th</sup> Dwelling to the Council's reasonable satisfaction in accordance with the Landscape Masterplan.

6.2 Following the inspection by the Council of the completed Open Space Area Works to pay the Inspection and Certification Fee within 12 weeks of the Council's written request for payment

6.2 The Owner will within 6 months of completion of Public Open Space transfer the title for the Public Open Space to a Management Company (having supplied to the Council a certified copy of the Memorandum and Articles of Association of the Management Company) on the terms agreed between the Owner and the Management Company and approved by the Council in consultation with all further maintenance shall be thereafter carried out by the Management Company, provided that it shall be a term of the transfer that the Management Company will:

(a) maintain and manage in perpetuity the Public Open Space in accordance with the Management Layout Plan or any variations that may be agreed in writing by the Council from time to time; and

(b) only allow the use of the Public Open Space for public access and recreation and for no other purpose.

6.3 To allow public access to the Public Open Space but subject to the following provisions:

6.3.1 access shall be subject to such other requirements and regulations as may from time to time be imposed by the Owner/Management Company having regard to overriding reasons of safety, security and prudent building management, provided that such requirements and regulations shall not be imposed without the Council's prior approval (such approval not to be unreasonably withheld or delayed);

6.3.2 the Owner /Management Company may erect notices on the Public Open Space and access to them will be denied by the Owner for one day each year in order to prevent public rights of way or common rights coming into being;

6.3.3 access may be denied by the Owner/Management Company for the maintenance, repair, cleansing or renewal of the Public Open Space or any building or land abutting it subject to the Council's prior approval; and

6.3.4 the Owner/Management Company may close the Public Open Space or any part thereof for reasonable periods by reason of emergency; cleansing, maintenance and repair; at the direction of the emergency services or other lawful authority; or for construction activities whilst the Development is being built.

6.4 The Owner hereby declares that pursuant to Section 31(5) Highways Act 1980 the Public Open Space has not been dedicated to the public nor is any use by the public of any part of the Public Open Space be taken in any way as an intention by the Owner to dedicate the same as highway."

5. Sub-clauses 1.8.1 (i), (ii) and (iii) of Schedule 2 of the Original Section 106 Agreement should be deleted and replaced with the following:

"1.8.1 (i) a tenant of an Affordable Rented Housing Unit who exercises any right to buy or right to acquire such dwelling or acquires the relevant Affordable Rented Housing Unit pursuant to a voluntary sales policy of his landlord and any mortgagee of such a tenant; and

(ii) any tenant of an Affordable Intermediate Housing Unit who exercises a right to staircase out and acquire 100% interest and any mortgagee of such a tenant; and

(iii) any person deriving title through or under such tenant or mortgagee referred to in sub-clauses 1.8.1 (i) and (ii) of this Schedule."

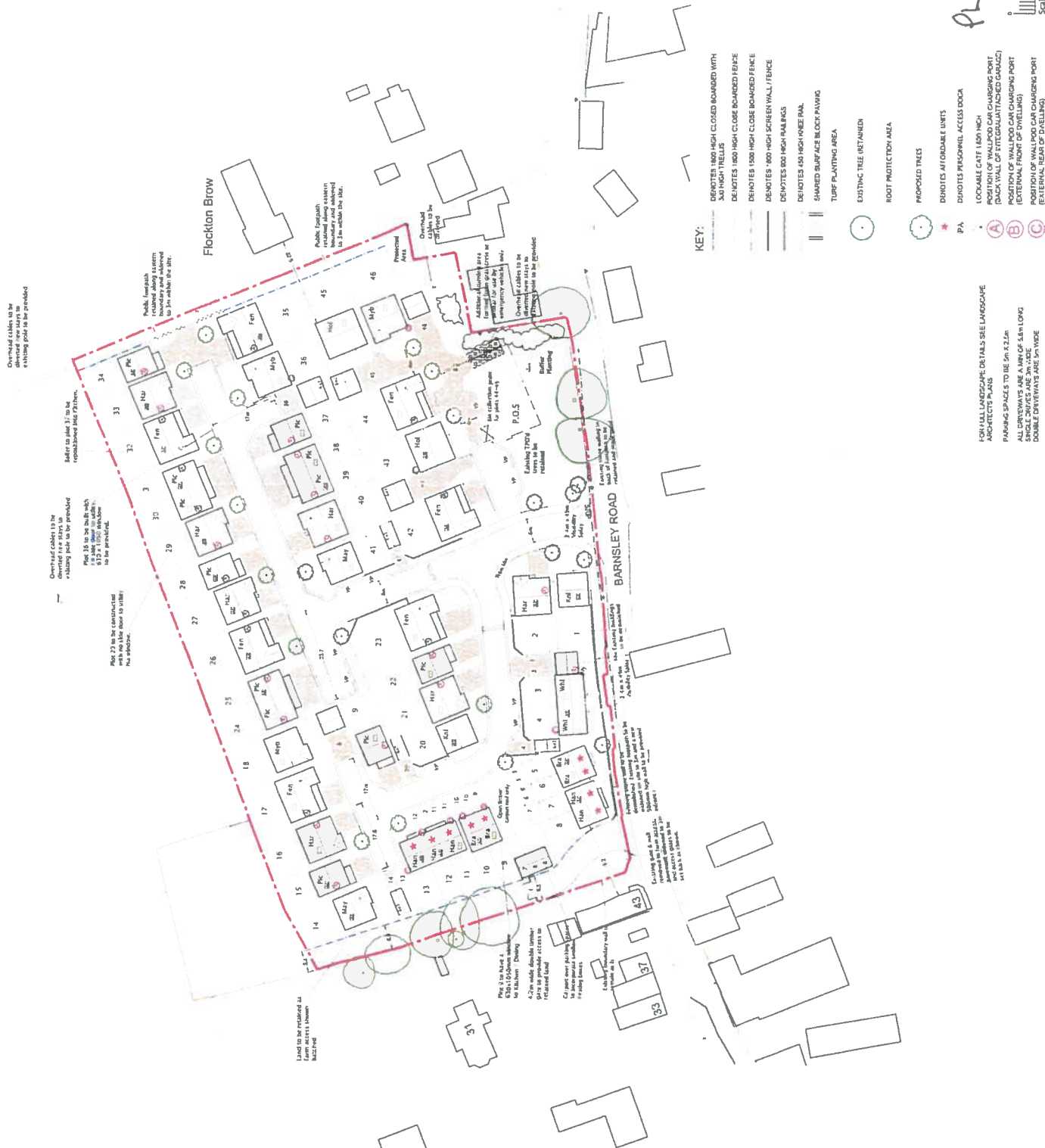
## ANNEX A: PLANS

#### SCHEDULE OF ACCOMMODATION

| House type                                                        | Total  |
|-------------------------------------------------------------------|--------|
| Marybone<br>2 Storey<br>4 bed<br>Detached                         | 3 No.  |
| Fenchurch<br>2 Storey<br>4 bed<br>Detached                        | 7 No.  |
| Majestic<br>2 Storey<br>4 bed<br>Detached                         | 2 No.  |
| Holborn<br>2 Storey<br>3 bed<br>Detached                          | 2 No.  |
| Piccadilly<br>2 Storey<br>3 bed<br>Semi Detached<br>Detached      | 12 No. |
| Halley<br>2 Storey<br>Detached                                    | 7 No.  |
| Kingsbridge<br>2 Storey<br>4 bed<br>Detached                      | 2 No.  |
| Whitehall<br>2 Storey<br>3 bed<br>Detached                        | 2 No.  |
| Blanchton<br>2 Storey<br>3 bed<br>Semi Detached<br>Terraced House | 4 No.  |
| Huntbury<br>2 Storey<br>3 bed<br>Semi Detached                    | 5 No.  |
| <b>Total = 48</b>                                                 |        |

[illegible]

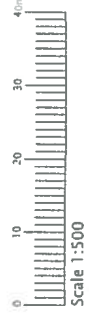
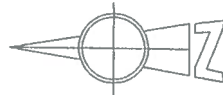
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Flockton Brow



PLAN 3

KEY

- Easements
- Area For Management Company
- Denotes Shared Drives & Paths Surface

Rev E-RLS - 13.02.18 - updated inline with latest planning layout rev Y.  
 Rev D-CJB - 01.11.17 - updated inline with latest planning layout rev X.  
 Rev C-CJB - 05.10.17 - updated inline with latest planning layout rev W.  
 Rev B-CJB - 07.08.17 - Man CO area amended to rear of plots 22-23.  
 Rev A-RLS - 09.02.17 - Easements added - Key amended to show additional areas.

  
**CHARLES CHURCH**

**BARNSELEY ROAD  
FLOCKTON**

**MANAGEMENT PLAN**

|          |          |                |              |
|----------|----------|----------------|--------------|
| Scale    | 1:500@A2 | Drawing Number | FLO-2014-06E |
| Drawn By | RLS      | Checked By     | SAC          |
|          |          | JAN 17         |              |

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SIGNED AS A DEED by )  
PERSIMMON HOMES LIMITED )  
acting by its Attorneys )

..... Attorney

In the presence of:

Signature of witness: .....

Name of witness: M. BURROW

Address of witness: PERSIMMON HOMES W. YORKS  
3 HEPTON COURT, YORK ROAD,  
LEEDS, LS9 6PW

and

|  
In the presence of:

Signature of witness: .....

Name of witness: M. BURROW

Address of witness: PERSIMMON HOMES W. YORKS  
3 HEPTON COURT, YORK ROAD,  
LEEDS, LS9 6PW

THE COMMON SEAL of )  
THE COUNCIL OF THE BOROUGH OF KIRKLEES )  
was hereunto affixed in the presence of )



010736

Service Director: Legal Governance and Commissioning/Authorised Signatory