

DATED 4 November 2020

THE COUNCIL OF THE BOROUGH OF
KIRKLEES

and

THE TRUSTEES OF THE HILLBROOK
PRINTING INKS LIMITED DIRECTORS
PENSION SCHEME _____

and

HD3 DEVELOPMENTS LIMITED

DEED

Under Section 106 of the Town & Country
Planning Act 1990 relating to at Land at
Former Gees Garage New Hey Road Outlane
Huddersfield HD3 3YJ

Kirklees Council
Second Floor
High Street Buildings
High Street
Huddersfield
HD1 2ND

THIS AGREEMENT is made the 4 day of November 2020

BETWEEN CHARLES ANTHONY HILL of 9 New Road Holmfirth HD9 3XT
STEPHEN HILL of 18 Headland Point Newquay TR7 1EL and MICHAEL JEFFREY
FIELD of 8 St Stephen Street Manchester M3 6AY as trustees of the HILLBROOK
PRINTING INKS LIMITED DIRECTORS PENSION SCHEME (hereinafter called
"the **First Owner**") of the first part;

HD3 DEVELOPMENTS LIMITED incorporated and registered in England and Wales
with company number 11203932) whose registered office is at 4 Greenfield Road
Holmfirth HD9 2JT (hereinafter called "the **Second Owner**") of the second part; and

THE COUNCIL OF THE BOROUGH OF KIRKLEES of the Town Hall, Huddersfield,
West Yorkshire, (hereinafter called "the **Council**") of the third part.

WHEREAS

1. The Council is the local planning authority pursuant to the 1990 Act for the Kirklees district within which the Site is situated and by whom the planning obligations within this Agreement are enforceable.
2. The First Owner is the freehold owner of the First Property and the Second Owner is the freehold owner of the Second Property.
3. By the provisions of Section 106 of the 1990 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 the land.
4. The Council would not have been willing to grant the Planning Permissions but for this Agreement because of the need to:-
 - 4.1. secure the provision of Affordable Housing as part of the Development;
 - 4.2. secure the payment of an Education Contribution; and
 - 4.3. secure the payment of a Public Open Space Contribution.
5. The Site forms a housing allocation within the Kirklees Local Plan adopted on 27th February 2019. Policy LP5 relates to master planning sites where coordination of delivery of infrastructure and other policy mitigation measures are needed and overarching place shaping principles are imperative where there exists multi plot development and multiple owners.

6. The Site is contiguous with other development sites where there is multi plot development and multiple owners such that the Council can apply to the Site the requirements of Policy LP5.
7. The Council therefore requires contributions for the Site which are proportionate to the number of units on the Site as approved by the Reserved Matters Approvals.
8. A note of interpretation for the POS and Education Contributions is set out at the Appendix indicating how a notional calculation of 27 units and a measured area of POS was used to create the flexible formula to be applied to the layout and scale as approved by the Reserved Matters Approvals.

NOW IT IS HEREBY AGREED as follows:-

1. INTERPRETATION

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

“1990 Act” means the Town and Country Planning Act 1990.

“Affordable Dwellings” means those Units which are to be provided as Affordable Housing within the Development.

“Affordable Housing” means subsidised housing that will be available to persons who cannot afford to rent or buy housing generally on the open market and which has the same meaning given to in Annex 2 of the NPPF.

“Affordable Housing Scheme” means a scheme to be submitted to and approved in writing by the Council for the delivery of Discounted Market Sales Housing of 1 and 2 bed units consisting of no less than 20% of the total number of Dwellings to be constructed on the Site pursuant to the Planning Permissions to reflect the housing need in the Kirklees Rural - West Housing Market Area and to include provisions to ensure the Affordable Housing remains at a discount for future eligible households.

“the Applications” means the applications for outline planning permission registered by the Council on 7 September 2018 and 12 September 2018 respectively under reference numbers 2018/92934 & 2018/92935.

“Contributions” means the Education Contribution and the Public Open Space Contribution.

“Development” means the development of the Site in accordance with the Planning Permissions.

“Discounted Market Sales Housing” means Affordable Housing sold at a discount of 20% below Market Value and which has the same meaning given to in Annex 2 of the NPPF.

“Dwellings” means the Affordable Dwellings within the Development and the Market Dwellings.

“Education Contribution” means a sum to be paid by the Owners to the Council towards the provision of educational facilities or school places, the need for which directly arises from the Development. The sum to be paid (in pounds sterling) is to be calculated as follows:

$$A + ([B - 27] \times C)$$

where:

$$A = £71,661.00$$

B = the total number of Dwellings approved by the Reserved Matters Approvals

$$C = £2,741$$

“First Property” mean that part of the Site shown edged blue on the Plan and registered at HM Land Registry with absolute title under title number WYK473464.

“Homes and Communities Agency” means the national housing and regeneration delivery agency for England.

“Implementation” means the implementation of one or both of the Planning Permissions by the carrying out of any material operation as defined by Section

56(4) of the 1990 Act save that the term "material operation" shall not include operations in connection with any works associated with demolition, site clearance, remediation works, archaeological investigations, environmental investigations, site and soil surveys, erection of fencing to the Site boundary, diversion and laying of services, the temporary display of site notices or advertisements and "**Implement**" and "**Implemented**" shall be construed accordingly.

"Index" means the All Items Index of Retail Prices issued by the Office for National Statistics.

"Index Linked" means increased in accordance with the following formula:

Amount payable = the payment specified in this Agreement x (A/B) where:

A= the figure for the Index that applied immediately preceding the date the payment is due; and

B= the figure for the Index that applied when the index was last published prior to the date of this Agreement.

"Market Dwellings" means the Units within the Development excluding the Affordable Housing.

"Market Value" means the estimated price or premium for which the sale of the freehold estate or the grant of a long leasehold interest in land (not being a rack rented lease) for the use thereof specified in this Agreement should complete on the date of valuation between a willing buyer and a willing seller in an arms' length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion.

"Minimum Housing Density" means the minimum density of housing on sites under policy PLP which is 35 houses per hectare.

"NPPF" means the National Planning Policy Framework published by the Department for Communities and Local Government in February 2019.

“Occupation and Occupied” means occupation for the purposes permitted by the Planning Permissions but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and **“Occupy”** shall be construed accordingly.

“Owners” means the First Owner and the Second Owner together or, where the context so requires, either of them.

“Plan” means the plan annexed hereto.

“Planning Permissions” means the planning permissions to be granted pursuant to the Applications or, where the context so requires, either of them.

“Policy LP5” means the policy relating to master planning in the Kirklees Local Plan.

“Public Open Space Contribution” means the sum to be paid by the Owners to the Council towards the enhancement of existing play facilities in the vicinity of the Development, the need for which directly arises as a result of the Development.

The sum to be paid (in pounds sterling) is to be calculated as follows:

$$A + [(B - 27) \times C] - (D \times £19.63)$$

where:

$$A = £50,886.00$$

B = the total number of Dwellings approved by the Reserved Matters Approvals

$$C = £1,885.00$$

D = total on-site provision of public open space in square metres

“Reserved Matters Approvals” means the approval of details in relation to the Planning Permissions.

“Second Property” mean that part of the Site shown edged green on the Plan and registered at HM Land Registry with absolute title under title number YY99716.

“Site” means the land at shown edged red on the Plan at former Gees Garage New Hey Road Outlane Huddersfield HD3 3YJ comprising the First Property and the Second Property.

“Units” means a residential dwelling (including a house flat or maisonette) to be constructed as part of the Development

2. GENERAL

- 2.1. The Owners covenants with the Council to observe the restrictions and perform the obligations contained in this Agreement.
- 2.2. The provisions of this Agreement are planning obligations made pursuant to Section 106 of the 1990 Act and all other powers so enabling to the intent that they shall bind the Owner(s) and each and every part of the Site.
- 2.3. The expressions “the Council”, and “the Owners” shall include their respective successors in title and assigns.
- 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. 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 the Council by its Head of Planning and Development.
- 2.6. 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 Agreement.
- 2.7. No person shall be liable for breach of any covenant contained in this Agreement after he shall have parted with his or its 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.

- 2.8. This Agreement shall not be enforceable against owner-occupiers or tenants of dwellings constructed pursuant to the Planning Permissions nor against those deriving title from them.
- 2.9. Subject to clause 3, this Agreement shall come into effect upon the date hereof
- 2.10. If the Planning Permissions expires or is / are revoked or otherwise withdrawn or modified without the consent of the Owners this Agreement 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.
- 2.11. Nothing in this Agreement 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 Agreement.
- 2.12. This Agreement is a local land charge and shall be registered as such.
- 2.13. The provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.

3. CONDITIONALITY

This Agreement is conditional upon:-

- 3.1 the grant of the Planning Permissions; and
- 3.2 Implementation

save for the provisions of clauses 4.1.1, 9, 10 and 11.

4. OWNERS' OBLIGATIONSThe Owners covenant with the Council:-

- 4.1.1. to pay on the date hereof to the Council its legal fees in the sum of £838.75 in the preparation of this Agreement;
- 4.1.2. not to cause or permit Occupation of more than 25% of the Market Dwellings on the Site until the Education Contribution has been paid to the Council; and

4.1.3. not to cause or permit Occupation of more than 25% of the Market Dwellings on the Site until the Public Open Space Contribution has been paid to the Council

4.2. The Education Contribution and Public Open Space Contribution shall be Indexed Linked.

5. AFFORDABLE HOUSING

The Owners covenant with the Council:-

5.1 not to permit or allow in excess of 50% of the Market Dwellings to be Occupied until the Affordable Dwellings have been constructed in accordance with Clause 5.2 hereof and made available for sale in accordance with the Affordable Housing Scheme

5.2 to construct the Affordable Dwellings to Homes and Communities Agency design and quality standards or Housing Corporation scheme development standards (or such standards as may be agreed between the Owners and the Council) in accordance with the Planning Permissions and plans approved the Reserved Matters Approvals

5.3 to deliver the Affordable Housing Scheme as agreed between the Owners and the Council (each acting reasonably)

5.4 not to Implement or permit Implementation until it has submitted for approval and the Council has approved the Affordable Housing Scheme showing the number type, tenure and location on the Site of the Affordable Housing

6. COUNCIL'S OBLIGATIONS

6.1. The Council hereby covenants:

(a) to pay the Education Contribution into a separately identified interest-bearing section of the Council's combined accounts as soon as reasonably practicable; and

(b) to apply the Education Contribution towards the provision or improvement of educational facilities at Moorlands Primary School to accommodate pupil

growth in the Huddersfield North area which directly arises from the Development

PROVIDED THAT if the whole or any part of the sum has not been spent on such purpose within five years of the date of the receipt of the Education Contribution then the Council will repay the whole sum or any unspent part together with any accrued interest will be repaid to the person who paid the sums or its nominee.

6.2. The Council hereby further covenants:

(a) to pay the Public Open Space Contribution into a separately identified interest-bearing section of the Council's combined accounts as soon as reasonably practicable; and

(b) to apply the Public Open Space Contribution to Outlane Recreation Ground

PROVIDED THAT if the whole or any part of the sum has not been spent on such purpose within five years of the date of the receipt of the Public Open Space Contribution then the Council will repay the whole sum or any unspent part together with any accrued interest will be repaid to the person who paid the sums or its nominee.

6.3. The Council shall provide to the Owners such evidence as the Owners shall reasonably require in order to confirm the expenditure of the sums paid by the Owners under this Agreement.

6.4. At the written request of the Owners the Council shall provide written confirmation of the discharge of the obligations contained in this Agreement when satisfied that such obligations have been performed or at any reasonable time after this Agreement ceases to have effect.

7. WAIVER

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

8. VAT

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

9. JURISDICTION

This Agreement is governed by an 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.

10. LIMITATION OF LIABILITY

The liability of Michael Jeffrey Field (personally) and MJF SSAS Trustees Limited (and its officers and directors) shall be limited to the value of the assets of the Hillbrook Printing Inks Limited Directors Pension Scheme from time to time.

11. 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.

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:-)



013764

~~Service Director - Legal, Governance~~
~~& Commissioning~~ /Authorised Signatory

EXECUTED AS A DEED by)

HD3 DEVELOPMENTS LIMITED)

acting by a director in the presence of:-)

Witness Signature: ✓

Witness Name: ✓

Witness Address: ✓

Witness Occupation: ✓

SIGNED AS A DEED by)

CHARLES ANTHONY HILL)

in the presence of:-)

Witness Signature: ✓

Witness Name: ✓

Witness Address: ✓

Witness Occupation: ✓

SIGNED AS A DEED by)

MICHAEL JEFFREY FIELD

)

in the presence of:-

)

Witness Signature:

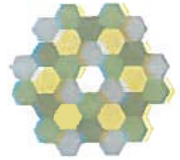
Witness Name:

Witness Address:

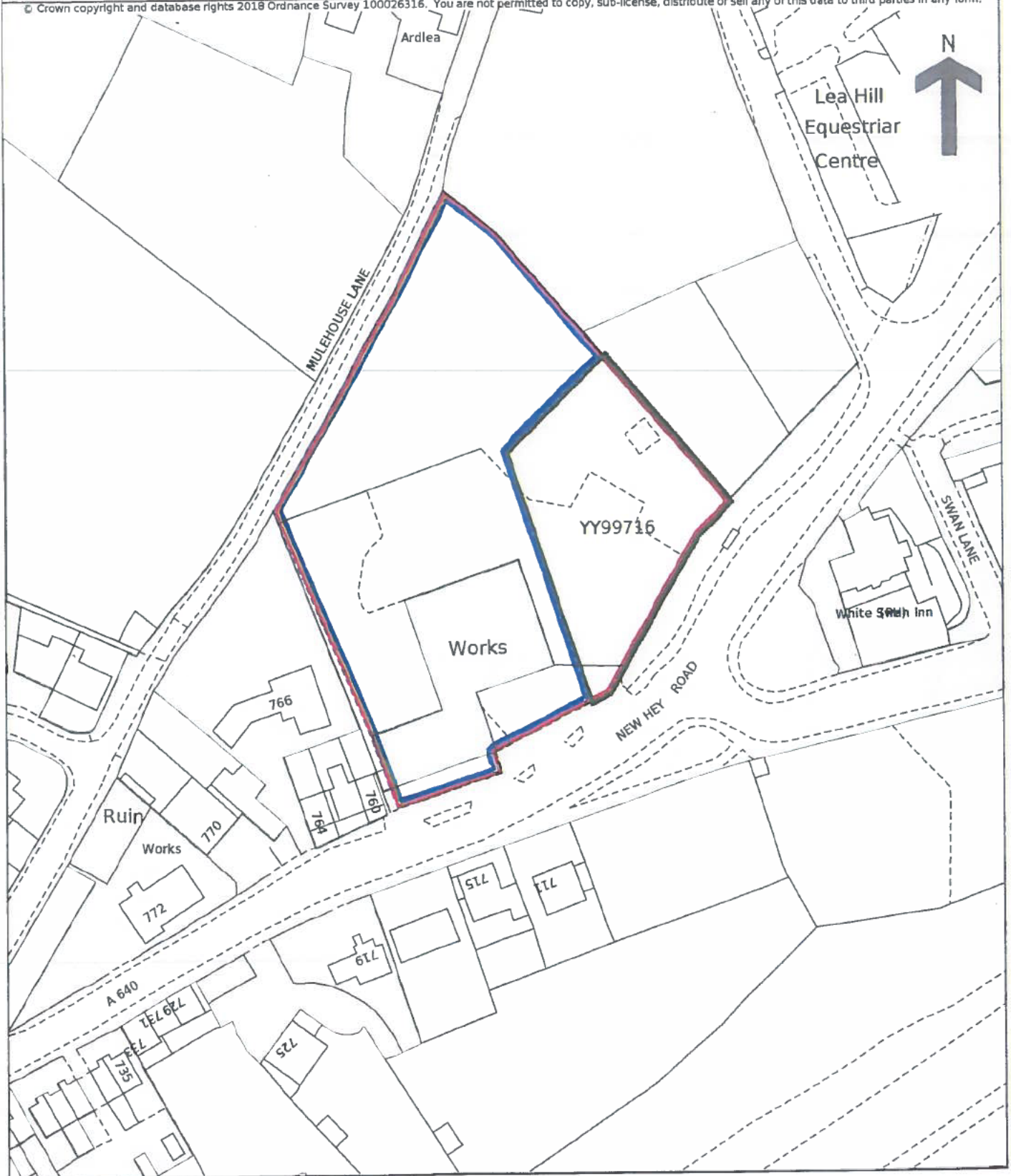
Witness Occupation:

HM Land Registry
Official copy of
title plan

Title number **WYK473464**
Ordnance Survey map reference **SE0818SE**
Scale **1:1250 enlarged from 1:2500**
Administrative area **West Yorkshire :**
Kirklees



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Under Review