

DATED

21ST JUNE 2019

THE COUNCIL OF THE BOROUGH OF KIRKLEES

- and -

KIRKLEES NEIGHBOURHOOD HOUSING

**SECTION 111 AGREEMENT
Relating to**

**Land off Fernside Avenue Almondbury West Yorkshire
Planning Application Ref: No. 2019/90502**

THIS AGREEMENT is made on 21ST day of JUNE 2019

BETWEEN:-

- (1) THE COUNCIL OF THE BOROUGH OF KIRKLEES of the Town Hall Huddersfield West Yorkshire (hereinafter called "the Council")
- (2) KIRKLEES NEIGHBOURHOOD HOUSING (Co. Regn. No. 04394471) of Perseverance House St Andrew's Road Huddersfield HD1 6RZ (hereinafter called the Applicant")

WHEREAS

- (A) The Council is the Local Planning Authority for the purposes of the Planning Act for the area within which the Site is situated and is also entitled to the freehold thereof
- (B) The Applicant is intending to acquire ownership of the Site
- (C) The Applicant intends to carry out the Development of the Site and has submitted the Application to the Council for that purpose
- (D) The Council considers and the Applicant accepts by the terms of this Deed that the Development should not take place without the Applicant entering into the obligations contained in this Deed

NOW THIS DEED WITNESSES as follows:-

1. **STATUTORY PROVISIONS**

This Deed is made pursuant to the provisions of Section 111 of the Local Government Act 1972 and Section 2 of the Local Government Act 2000 and all other powers enabling which may be relevant for the purpose of giving validity hereto or facilitating the enforcement of the obligations herein contained with intent to bind the Applicant and the Council to observe and perform the obligations or their respective parts as hereinafter contained

2. INTERPRETATION

2.1 In this Deed in addition to the parties hereinbefore referred to the following words and expressions shall where the context so requires or admits have the following meanings:-

"Application"	Planning application reference No. 2019/90502
"Development"	Erection of ten dwellings
"Development Site"	All that land shown edged red on the Plan being the land the subject of the Development
"Plan"	The Plan annexed hereto as Appendix 1
"Planning Act"	The Town and Country Planning Act 1990 as amended
"Planning Agreement"	The agreement between the parties hereto pursuant to Section 106 of the Planning Act in the form annexed as Appendix 2 (subject to such revisions or modifications as may be agreed between the parties as being appropriate or relevant)
"Planning Permission"	The planning permission to be issued by the Council pursuant to the Application

2.2 In this Deed where the context so requires:-

2.2.1 the singular includes the plural and vice versa

2.2.2 references to clauses schedules and paragraphs are references to clauses schedules and paragraphs in this Deed except where otherwise specified

2.2.3 title headings to the clauses schedules and paragraphs are for convenience only and shall not affect the interpretation of this Deed

2.2.4 references to any statute or statutory instrument shall except where otherwise specifically provided include reference to any statutory modification or re-enactment thereof for the time being in force

3. COMMENCEMENT

The provisions of this Deed shall have immediate effect upon the completion of this Deed

4. COVENANT BY THE APPLICANT

4.1 The Applicant covenants to provide the Council with executed engrossments of the Planning Agreement and authority to complete the same, together with reasonable and proper fees, the completed undertaking in the form annexed hereto as Appendix 3 and such ancillary documents necessary to facilitate completion of the Planning Agreement pursuant to Clause 4.2 of this Deed, at least 5 working days prior to completing the acquisition of the Site (or such other timescale as may be agreed between the parties)

4.2 The Applicant covenants that upon acquiring any legal interest in the Site it shall simultaneously enter into the Planning Agreement

5. COUNCIL'S COVENANT

5.1 The Council shall within 10 working days of the completion of this Deed grant the Planning Permission **SAVE THAT** the Council shall not be in breach of this covenant if it shall be prevented from issuing the Planning Permission by Order of the Court

6. MISCELLANEOUS

6.1 Nothing herein contained or implied shall prejudice or affect the rights discretionary powers duties and obligations of the Council under all statutes by-

laws statutory instruments orders and regulations in the exercise of its functions as a local authority

- 6.2 If the Planning Permission is quashed or revoked or otherwise withdrawn or modified by any statutory provision without the consent of the Applicant or if the Planning Permission expires this Deed shall cease to have effect (but without prejudice to the rights of either party against the other in respect of any antecedent breach)
- 6.3 In the event that any of the provisions of this Deed are unenforceable this shall not affect the enforceability of the remaining provisions hereof
- 6.4 No waiver (whether express or implied) by the Council or any breach or default by the Applicant in performing or observing any of the obligations terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the said obligations terms or conditions or from acting upon any subsequent breach or default in respect thereto by the Applicant

7. NOTICES

- 7.1 All notices requests demands or other written communications to or upon the parties pursuant to this Deed shall be deemed to have been properly given or made if dispatched by first class recorded delivery letter or facsimile transmission to the party to which such notice request demand or other written communication is to be given or made under this Deed and addressed as follows:-
- 7.1.1 if to the Council to the Council, for the attention of the Projects Co-ordinator (or such other officer for the time being performing those functions)
- 7.1.2 if to the Applicant to its address specified at the commencement hereof
- 7.1.3 or such other address for service as shall have been previously notified to the other party

7.2 Any notice request or demand or other written communication shall be deemed to have been served as follows:-

7.2.1 if posted recorded delivery at the expiration of 48 hours after the envelope containing the same was delivered into the custody of the postal authority within the United Kingdom

7.2.2 if sent by facsimile transmission at the time of the successful transmission provided that if any means of service shall be outside normal working hours such service shall be deemed to have taken place upon the day the recipient's office is next open for business

and in proving such service it shall be sufficient to prove that the envelope containing such notice request demand or other written communication was properly addressed and delivered into the custody of the postal authority in a pre-paid first class or recorded delivery envelope (as appropriate) or that the facsimile was successfully transmitted on a tested line as the case may be

8. ARBITRATION

8.1 If any difference shall arise between the parties hereto touching their respective rights or liabilities under this Deed the matter in dispute shall be determined by a single arbitrator to be agreed between the Council and the Applicant or in default of agreement to be appointed upon application of either party hereto by the President for the time being of the Law Society of England and Wales (or if he is not available the Vice-President or next senior officer of the said Society then available and able to make such appointment) in accordance with the Arbitration Acts 1996 or any statutory modification extension or re-enactment thereof for the time being in force

8.2 The determination of the arbitrator shall be binding on the parties (as defined above) save for fraud or manifest error

8.3 The fees of the arbitrator shall be payable as he shall direct or otherwise be borne equally between the parties hereto

9. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

It is hereby agreed and declared that unless specifically agreed the Contract (Rights of Third Parties) Act 1999 shall not apply to this Deed

10. LEGAL COSTS

The Applicant shall prior to completion of this Deed pay the Council's legal and administrative costs in connection with the preparation and completion of this Deed

11. JURISDICTION

This Agreement is governed by and interpreted in accordance with the Law of England and Wales

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:-

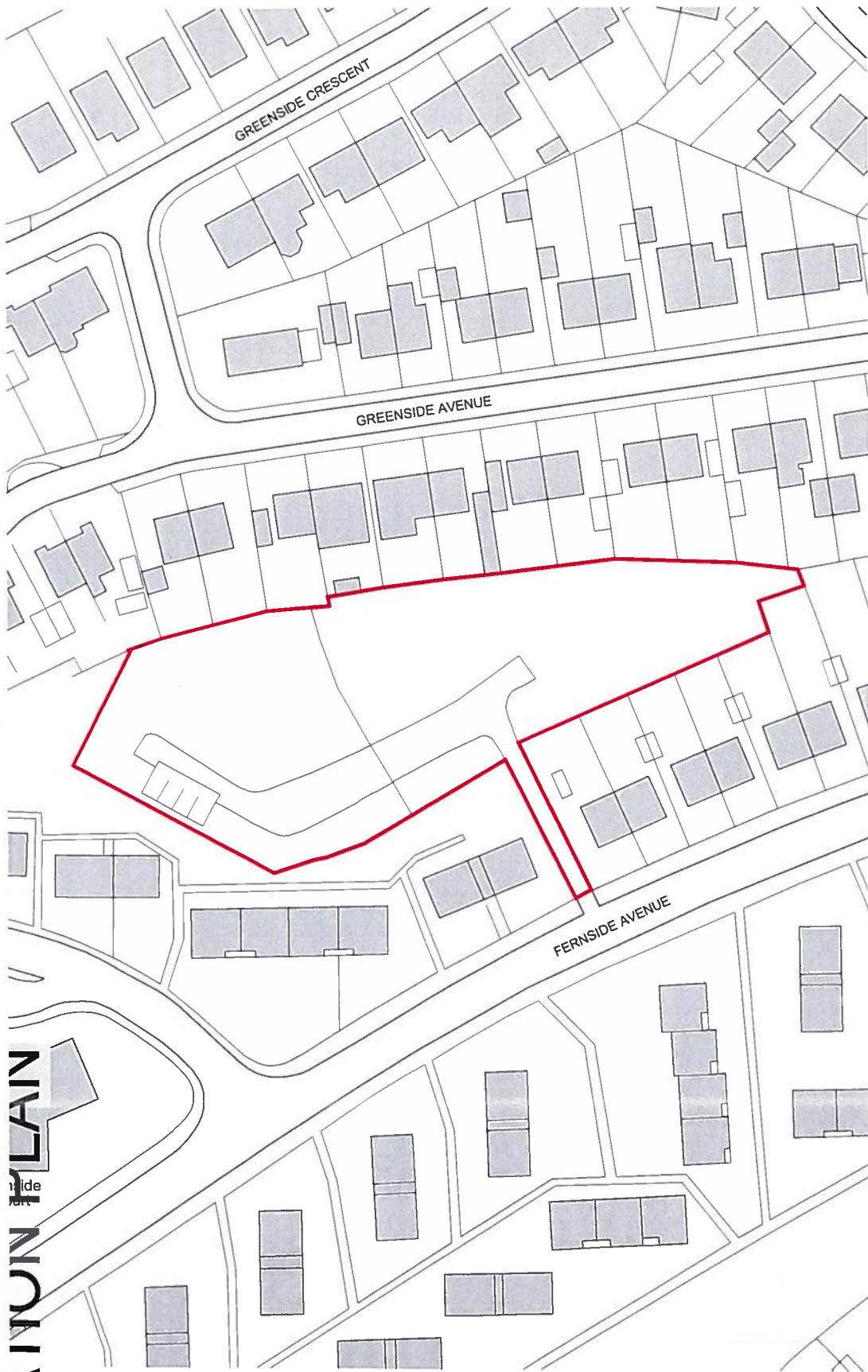
EXECUTED AS A DEED by
KIRKLEES NEIGHBOURHOOD
HOUSING

Acting by ASAD BHATTI

Authorised Signatory

APPENDIX 1

The Plan



UCA IN UN PLAIN
 side
 and

PROJECT INFORMATION

Client.
Kirklees Neighbourhood Housing (KNH)

Address.
Land of Fernside Avenue, Almondbury,
Huddersfield

Project Title.
PROPOSED RESIDENTIAL DEVELOPMENT

DRAWING DETAILS

Project Ref.
T-0220.A

Drawing Title.
Location Plan

Drawing Type.
Existing

Drawing No.
GA100

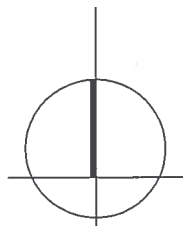
Scale.
1:1250 @ A4

Drawn/Checked.	Description.
AI/FA	Feasibility

NOTES

This drawing is for information only.

SITE LOCATION



— Site Boundary.



The Studio. No. 96 Blacker Road, Huddersf
HD1 5HN

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APPENDIX 2

Planning Agreement

THIS AGREEMENT is made the _____ day of _____ Two Thousand and Nineteen **BETWEEN KIRKLEES NEIGHBOURHOOD HOUSING** (registered company number 04394471) whose registered address is Perseverance House St Andrew's Road Huddersfield HD1 6RZ (hereinafter called "the Applicant") 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 obligation within this Deed is enforceable
2. The Applicant owns of the Development Site
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 the land
4. The Council would not have been willing to grant the Planning Permission but for this Deed because of the need to provide an off site public open space contribution and the need to have arrangements for the long term maintenance of the drainage of Site

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:-

"Development" means the development of the Site in pursuance of the Planning Permission

"Occupation" means occupation for trading or residential purposes as the case may be provided that this shall not include occupation for fitting out purposes or occupation for any show house for the purpose of marketing, as the case may be and **"Occupiers"** and **"Occupied"** shall be construed accordingly.

“Off Site Public Open Space Contribution” means the sum of £ £64,456 (sixty four thousand four hundred and fifty six pounds)

“Plan” means the plan annexed hereto

“Planning Permission” means the planning permission to be granted under Ref No. 2019/90502

“Site” means the land at land off Fernside Avenue Almondbury Huddersfield DD5 8PH shown outlined in red on the Plan

“Drainage Specification” means a specification for a drainage system (together with such revisions as shall be required by the Council to necessitate its approval) for the sustainable drainage of the Site and a scheme for its long term management and maintenance

2. GENERAL

- 2.1 The Owner covenants with the Council to observe the restrictions and perform the obligations contained in the Schedule
- 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 Trustees and each and every part of the Site
- 2.3 The expressions “the Council” and “the Applicant” shall include their successors in title and assigns
- 2.4 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
- 2.5 This Deed shall come into effect upon the date hereof
- 2.7 If the Planning Permission expires or is revoked or otherwise withdrawn or modified without the consent of the Applicant 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

- 2.8 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
- 2.9 This Deed is a local land charge and shall be registered as such
- 2.10 The provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Deed
- 2.11 The Applicant shall pay to the Council its legal fees reasonably incurred in the preparation of this Deed

The Schedule

The Applicant's Covenants

- 1. Not to occupy or permit Occupation of the Development until the Off Site Public Open Space Contribution has been paid to the Council to be applied by the Council to improve off site public open space in the vicinity of the Site
- 2. Prior to Commencement of the Development to submit to the Council the Drainage Specification

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/Authorised Signatory

EXECUTED AS A DEED by)
KIRKLEES NEIGHBOURHOOD)
HOUSING)

Acting by: ASAD BHATTI (Authorised Signatory)

DATED

2019

THE COUNCIL OF THE BOROUGH OF
KIRKLEES

and

KIRKLEES NEIGHBOURHOOD HOUSING

DEED

**Under Section 106 of the Town & Country
Planning Act 1990 relating to land off
Fernside Avenue Almondbury Huddersfield
HD5 8PH**

Julie Muscroft
Director – Legal, Governance &
Commissioning
Kirklees Council
Second Floor
High Street Buildings
High Street
Huddersfield
HD1 2ND

APPENDIX 3

Undertaking

Our Ref:
Your Ref:
Date:

Kirklees Council
Legal Services
High Street Buildings
High Street
Huddersfield
HD1 2ND

Dear Ms Muscroft

SECTION 111 AGREEMENT

PLANNING APPLICATION ref 2019/90502 - Erection of ten dwellings

I confirm that I am instructed on behalf of Kirklees Neighbourhood Housing in respect of the above matter.

I undertake to expeditiously procure that Kirklees Neighbourhood Housing is registered at the Land Registry as the proprietor of the Development Site. Furthermore, I undertake to provide you with Land Registry official copy entries indicating that Kirklees Neighbourhood Housing has been so registered as soon as the registration has been completed.

SIGNED:

PRINT NAME:

DATE:

Please complete this section.