

Dated 27th January 2025

THE COUNCIL OF THE BOROUGH OF KIRKLEES

and

C. C. PROJECTS

**Second Supplemental Deed pursuant to Section 106
of the Town and Country Planning Act 1990**

Land South of Heybeck Lane, Chidswell, Dewsbury

This Second Supplemental Deed is made on 27th day of February 2025

Between

- (1) **The Council of the Borough of Kirklees** of Town Hall, Huddersfield, West Yorkshire HD1 2TA ("the Council");
- (2) **C.C. Projects** (CRN: 01765782) (an unlimited company) of 29 Great Smith Street, London, SW1P 3PS ("the Owner").

Whereas

- (A) The Council is the local planning authority for the area in which the Site is situated and by which the obligations in the Original Agreement as supplemented by the Supplemental Deed are enforceable.
- (B) The Owner is the registered freehold proprietor of the Site registered under Title Numbers WYK187209 and WYK64771, and of the Ancient Woodland Land and the Skylark Land each of which is registered at HM Land Registry under Title Number WYK187209.
- (C) On 17 October 2024 the Council and the Owner entered into the Original Agreement.
- (D) On 19 December 2024 the Council and the Owner entered into the Supplemental Deed.
- (E) The Owner is the person against whom the obligations in the Original Agreement as supplemented by the Supplemental Deed which are varied by this Deed are enforceable.
- (F) The parties hereto have agreed to enter into this Deed in order to vary the Supplemental Deed.

AGREED TERMS

1. **Definitions**

1.1. For the purposes of this Deed:

1.1.1. terms and expressions defined in the Original Agreement as supplemented by the Supplemental Deed shall have the same meaning in this Deed; and

1.1.2. the following words and expressions shall have the following meanings:

Original Agreement the agreement made under Section 106 of the Town and Country Planning Act 1990 between the Council and the Owner dated 17 October 2024; and

Supplemental Deed the supplemental deed made under Section 106 of the Town and Country Planning Act 1990 between the Council and the Owner dated 19 December 2024.

- 1.2. References in this Deed to any enactment shall be construed as a reference to that enactment as amended extended or re-enacted or repealed by or under any other enactment and shall include all instruments orders and regulations for the time being made, issued or given under that enactment.
- 1.3. Words importing the singular shall be construed as importing the plural and vice versa.
- 1.4. Any words denoting natural persons shall include legal persons and vice versa.
- 1.5. Clause headings shall not affect the construction of this Deed.
- 1.6. Any phrase introduced by the terms "including" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

2. **Statutory Basis**

- 2.1. This Deed is a planning obligation made pursuant to Section 106 of the 1990 Act and varies the Supplemental Deed and is enforceable by the Council as the local planning authority for the purposes of the 1990 Act.
- 2.2. The Original Agreement as supplemented by the Supplemental Deed remains fully enforceable pursuant to the 1990 Act against the Owner and any person claiming or deriving title to the Site (or any part or parts thereof) through or under the Owner as if that person had been a covenanting party to the Original Agreement and Supplemental Deed.

3. **Variation of Supplemental Deed**

- 3.1. The Owner and the Council agree that the first paragraph of clause 3.1 of the Supplemental Deed shall be deleted and replaced with the following paragraph:

"The Owner covenants with the Council that notwithstanding Clause 3.2 of the Original Agreement the Owner shall not begin the Development (within the meaning of Section 56 of the 1990 Act) or otherwise undertake any works associated with the Development including the works identified as "enabling works" in Condition 1 of the Planning Permission or otherwise commence clearance of hedgerows, trees and shrubs, or any other features of potential ecological importance within the Site, until:"

- 3.2. The Owner and the Council agree that a new Clause 3.3 shall be inserted into the Supplemental Deed as follows:

"3.3 For the avoidance of any doubt the Owner and the Council agree that the reference to "the pre-development biodiversity value" in the definition of "Biodiversity Assessment" in paragraph 1.1 of Schedule 5 of the Original Agreement is and shall be interpreted as a reference to the biodiversity value of the Site prior to the earlier of i) the beginning of the Development (within the meaning of Section 56 of the 1990 Act), ii) the undertaking of any works associated with the Development including the works identified as "enabling works" in Condition 1 of the Planning Permission, and, iii) the commencement of the clearance of hedgerows, trees and shrubs, or any other features of potential ecological importance within the Site."

4. **Severance**

- 4.1. If any provision in this Deed shall in whole or in part be held to be invalid, illegal or unenforceable under any enactment or rule of law such provisions shall to the extent required be severed from this Deed and shall not affect the validity or enforceability of the remaining provisions of this Deed.

5. **Third Party Rights**

- 5.1. No person who is not a party to this Deed may enforce any terms of it pursuant to the Contracts (Rights of Third Parties) Act 1999 **PROVIDED THAT** this clause shall not affect any right of action of any person to whom this Deed has been lawfully assigned or becomes vested in law including successors in title to the Site.

6. **Registration**

- 6.1. This Deed is registrable as a local land charge by the Council.

7. **Jurisdiction**

- 7.1. This Deed is governed by and interpreted in accordance with the law of England and the parties submit to the exclusive jurisdiction of the courts of England.

8. **Exclusions and Release**

- 8.1. No party shall be bound by the terms of this Deed after it has parted with its interest in the Site (but without prejudice to liability for any subsisting breach prior to parting with such interest).
- 8.2. If the Planning Permission expires before the Commencement of Development or is at any time modified (without the consent of the Owner), quashed or revoked this Deed shall determine and cease to have effect.
- 8.3. No obligation in this Deed shall be binding on or enforceable against any chargee or mortgagee from time to time who shall have the benefit of a charge or mortgage of or on any part of the Site (or any receiver appointed by such chargee or mortgagee) unless and until such chargee, mortgagee or receiver (or any person appointed by them) has taken or entered into possession of the Site or part thereof in which case it will also be bound by the covenants, restrictions and obligations in this Deed as if it were a person deriving title from an original covenanting party.

9. **Registration**

- 9.1. Following the determination of this Deed in accordance with clause 8.2 of this Deed the Council shall as soon as reasonably practicable upon the written request of the Owner effect the cancellation of all entries made in the Register of Local Site Charges in respect of this Deed.

10. **Disputes**

- 10.1. Clause 11 of the Original Agreement shall apply to any dispute under this Deed.

IN WITNESS of which the parties have executed this Deed on the date first written above

Executed as a Deed

(but not delivered until the date hereof)

by affixing the common seal of

**THE COUNCIL OF THE BOROUGH OF
KIRKLEES**



021844

In the presence of:

.....

Authorised Sealing Officer

(A permanent Officer of the Council)

Executed as a Deed

(but not delivered until the date hereof) by