

DATED

13 June

2023

SUSAN PATRICIA KERSHAW (1)

and

THE PS & SP KERSHAW PARTNERSHIP (2)

TO

THE COUNCIL OF THE BOROUGH OF KIRKLEES

**UNILATERAL UNDERTAKING**

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Under Section 106 of the Town & Country Planning Act 1990  
(as amended) relating to Land at **Bradley Villa Farm, Huddersfield**

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THIS AGREEMENT is made the

13

day of

June

2023

FROM:

**SUSAN PATRICIA KERSHAW** of Bradley Villa Farm, Bradford Road, Huddersfield HD2 2JY ("the Owner"); and

**SUSAN PATRICIA KERSHAW, RICHARD KERSHAW and SAMANTHA GILL trading as THE PS & SP KERSHAW PARTNERSHIP** of Bradley Villa Farm, Bradford Road, Huddersfield HD2 2JY ("the Partnership"); [and

TO:

**THE COUNCIL OF THE BOROUGH OF KIRKLEES** of Town Hall, Ramsden Street, Huddersfield HD1 2TA ("the Council").

**WHEREAS**

1. The Council is the local planning authority for the Kirklees Metropolitan District within which the Site is situated and by whom the planning obligations within this Agreement are enforceable.
2. The Owner is the freehold proprietor at HM Land Registry of the Farmstead under title registration number YY9288 and proposes to enter into the obligations contained in this Deed in relation to the Property which is located on the Farmstead.
3. The Farmstead is immediately adjacent to the Site and the Partnership is the permitted occupier of the Property and is the sole operator using the Property for the purpose of keeping, storage and rearing of live poultry and egg production.
4. Richard Kershaw and Samantha Gill own the freehold interest of the Site and have entered into an agreement to sell part of the Site to Redrow Homes Limited which has submitted the Application.
5. The Owner and the Partnership are entering into this Deed to confirm to the Council the cessation of the use of the Property for the purpose of keeping, storage and rearing of live poultry and egg production should the Planning Permission be issued for the Site.

6. 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 agreement or otherwise enter into a planning obligation in respect of the land.
7. The Council would not have been willing to grant the Planning Permission without this Deed because of the need to secure the cessation of use of the Property for the purpose of keeping, storage and rearing of live poultry and egg production to ensure the quality of the residential amenity for the Development.

1. **INTERPRETATION**

- 1.1 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 (as amended);

**"Application"** means the planning application validated by the Council on 25 May 2021 with reference 2021/92086 for the erection of 277 residential dwellings and associated infrastructure and access (amended scheme);

**"Commencement of Development"** means the actual date upon which the Development is begun by the carrying out on the Site of any material operation as defined by Section 56(4) of the 1990 Act save that the term "*material operation*" shall not for the purpose of this Agreement include operations in connection with any work of or associated with demolition, remediation works, environmental investigation, site and soil surveys, erection of contractors' work compound, erection of site office, erection of fencing to site boundary and reference to "**Commence Development**" shall be construed accordingly;

|                               |                                                                                                                                                                                                                                                                                                                                                  |
|-------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>"Development"</b>          | means the development of the Site in pursuance of the Planning Permission;                                                                                                                                                                                                                                                                       |
| <b>"Dwelling"</b>             | means a residential unit that may be built on the Site as part of the Development and reference to <b>"Dwellings"</b> shall be construed accordingly;                                                                                                                                                                                            |
| <b>"Farmstead"</b>            | means the land shown edged in green on Plan 2 on which the Property is located;                                                                                                                                                                                                                                                                  |
| <b>"Independent Surveyor"</b> | means an independent chartered surveyor of no less than 10 (ten) years post qualification experience unconnected to any of the Parties hereto and experienced in residential development matters who shall be appointed at the Owner's cost but first approved by the Council and <b>"Independent Surveyors"</b> shall be construed accordingly; |
| <b>"Occupation"</b>           | means the beneficial occupation under a sale lease licence or other arrangement for the purpose for which the Dwelling was granted planning permission but shall exclude occupation for the purposes of fit out or marketing or security and reference to <b>"Occupy"</b> shall be construed accordingly;                                        |
| <b>"Plan 1"</b>               | means the plan of the Property shown edged in blue and attached hereto at Annex 1;                                                                                                                                                                                                                                                               |
| <b>"Plan 2"</b>               | means the plan of the Farmstead (edged green) and the Site (edged red) and the land to be retained by the Owners (edged blue) and attached hereto at Annex 2;                                                                                                                                                                                    |
| <b>"Planning Obligations"</b> | means the obligations, conditions and stipulations set out in the First Schedule and <b>"Planning Obligation"</b> shall be construed accordingly;                                                                                                                                                                                                |

|                              |                                                                                                                                                                                          |
|------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>"Planning Permission"</b> | means a planning permission which may be granted by the Council pursuant to the Application;                                                                                             |
| <b>"Property"</b>            | means the building used for the keeping, storing and rearing of live poultry located and egg production on the Farmstead and which shown edged blue on the Plan 1 appended to this Deed; |
| <b>"Site"</b>                | means the land which is subject to the Application at Bradley Villa Farm, Huddersfield which is shown edged red on Plan 2 appended to this Deed                                          |
| <b>"Value Added Tax"</b>     | means value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement and any additional replacement tax;                                                      |

- 1.2 Clause headings are for reference only and shall not affect the construction of this Agreement.
- 1.3 Where more than one person is included in the expressions: "the Owner" and/or "the Partnership" agreements and obligations expressed to be made or assumed by such Party are to be construed as made or assumed by all such persons jointly and each of them severally.
- 1.4 Any covenant by the Owner and the Partnership not to do any act or thing shall be deemed to include a covenant not to cause permit or suffer the doing of that act or thing.
- 1.5 The masculine and the feminine and neuter gender include each of the other genders and the singular includes the plural and vice versa.
- 1.6 A reference to an Act of Parliament refers to the Act as it applies at the date of this Agreement and any later amendment or re-enactment of it and any regulations or statutory instrument made under it which is for the time being in force.
- 1.7 A reference to a clause or schedule or paragraph is a reference to a clause or schedule or paragraph contained in this Agreement and does not affect the interpretation or construction of this Agreement.

## 2 GENERAL

- 2.1 This Deed is a planning obligation made in pursuance of Section 106 of the 1990 Act as substituted by Section 12 of the Planning and Compensation Act 1991 and to the extent that the covenants in this Agreement are not made under Section 106 of the 1990 Act they are made under Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other powers so enabling.
- 2.2 Subject to clause 2.6 the Owner and the Partnership covenant with the Council to observe the restrictions and perform the obligations contained in the First Schedule with the intent that those restrictions and obligations shall bind the Owner and the Partnership and each and every part of the Property.
- 2.3 The expressions "the Owner" and "the Partnership" shall include their successors in title and assigns and the expression "the Council" shall include its respective successor authority.
- 2.4 No person shall be bound by the terms of this Deed or shall be liable for breach of any covenants, restrictions, duties, provisions or obligations contained in this Deed after he or it shall have parted with his or its interest in the Property 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 not become effective, except where otherwise specifically stated in this Deed, until the following conditions are satisfied:
- 2.5.1 the Planning Permission has been granted; and
  - 2.5.2 the Commencement of Development has occurred.
- 2.6 If the Planning Permission expires or is revoked or otherwise withdrawn or (subject to paragraph 2.11 and/or paragraph 2.12) modified without the consent of the Owner or the Partnership or their successors in title this Deed shall cease to have effect from the date of the said expiration revocation withdrawal or (subject to paragraph 2.11 and/or paragraph 2.12) 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 Farmstead including the Property in accordance with a planning permission granted (whether or not on appeal) after the date of this Agreement.
- 2.8 This Deed is a local land charge for the purposes of the Local Land Charges Act 1975 and shall be registered as such on completion.
- 2.9 The provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Deed 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.
- 2.10 Unless otherwise stated this Deed is governed by and interpreted with the law of England.
- 2.11 In the event that a condition or conditions to the Planning Permission is or are varied pursuant to Section 96A of the 1990 Act this Deed shall continue in full force in respect of the Planning Permission with the relevant condition or conditions as so varied.
- 2.12 In the event that an application is made pursuant to Section 73 of the 1990 Act for an amendment to the Planning Permission and planning permission is granted (whether or not on appeal) in respect of the application (and the Council is satisfied that no revised planning obligations are required as a result of such amendment) references to Planning Permission in this Deed shall be to the new planning permission granted pursuant to Section 73 of the 1990 Act and this Deed shall apply to and remain in full force in respect of that new planning permission without the need for a further agreement to be entered into pursuant to Section 106 of the 1990 Act.
- 2.13 The Owners shall pay:
- 2.13.1 the Council's reasonable legal costs incurred in the completion and registration of this Deed; and
- 2.13.2 the sum of £250 as a contribution towards the Council's costs of monitoring the implementation of this Deed.
- 3 VAT**
- 3.1 All consideration given in accordance with the terms of this Deed shall be exclusive of any Value Added Tax properly payable.

#### **4 WAIVER**

- 4.1 No waiver (whether expressed or implied) by the Council of any breach or default in performing or observing any of the covenants, terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

#### **5 NOTICES**

- 5.1 All notices, requests and 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 letter or facsimile transmission or served by the recorded delivery service on or hand delivered 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 (or to such other address as the Party to whom the notices, requests, demands or other written communication is to be given or made shall from time to time notify in writing to the other Parties as its address for the purposes of this clause 5.1):

5.1.1 To the Council: Service Director: Legal Governance and Commissioning Legal Services, 2<sup>nd</sup> Floor, High Street Buildings, High Street, Huddersfield HD1 2<sup>ND</sup> quoting "Bradley Villa Farm" and the Application reference number 2021/92086.

5.1.2 To the Owner at the address stated above at page 2 quoting "Bradley Villa Farm" and the Application reference number 2021/92086.

5.1.3 To the Partnership at the address stated above at page 2 quoting "Bradley Villa Farm" and the Application reference number 2021/92086.

#### **6 DISPUTES**

- 6.1 Any dispute arising between the Parties as to their respective rights, duties or obligations or as to the failure of the Council to give or confirm its consent where required under this Deed or as to any other matter or thing arising out of or connected with the subject matter of this Deed or any failure to agree upon any matter may be referred in accordance with clause 6.2 below to the determination of an Independent Surveyor.

- 6.2 Any reference to an Independent Surveyor in accordance with clause 6.1 above shall be to a reputable Independent Surveyor unconnected to any of the Parties hereto and experienced in developments of this nature who shall be agreed between the Parties to the dispute or appointed on the application of any party to the dispute made at any time by the President of the Royal Institution of Chartered Surveyors or his duly appointed deputy and the decision of such Independent Surveyor shall be final and binding upon the Parties to the dispute and the Parties hereby agree to act in accordance with the decision (save for manifest error) and if the Parties to the dispute shall agree in writing such reference shall be deemed to be a reference to an expert (and not an arbitrator) but shall otherwise be deemed to be a reference to an arbitrator pursuant to the Arbitration Act 1996 and if any Independent Surveyor shall act as an expert pursuant to the terms of this clause 6.2 then each of the Parties to the dispute shall be entitled to submit to him representations and cross representations with such supporting evidence as they shall consider necessary and he shall have regard thereto in making his decision which he shall deliver in writing as expediently as possible and the reference to him shall include authority to determine in what manner all the costs of the referral (whether incurred by the Parties to the dispute or the Independent Surveyor himself) shall be paid.

## **7 JURISDICTION**

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

## **8 DELIVERY**

- 8.1 The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

**FIRST SCHEDULE**  
**(The Planning Obligations)**

The Owner and the Partnership jointly and severally agree and covenant to cease the use of the Property for the keeping, storing and rearing of live poultry and / or egg production prior to Occupation of the first Dwelling on the Development and not to use nor permit the use of the Property at any time thereafter for the keeping, storing and rearing of live poultry and / or egg production.

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

**EXECUTED** as a **DEED** (but not delivered until  
the date first above written) by

**SUSAN PATRICIA KERSHAW**

in the presence of:-

Signature of witness .

**SIGNED** by **SUSAN PATRICIA KERSHAW**,  
on behalf of **THE PS & SP KERSHAW**  
**PARTNERSHIP** in the presence of:-

Signature of witness

**SIGNED** by **RICHARD KERSHAW**  
on behalf of **THE PS & SP KERSHAW**  
**PARTNERSHIP** in the presence of:-

Signature of witness ..

**SIGNED** by **SAMANTHA GILL**  
on behalf of **THE PS & SP KERSHAW**  
**PARTNERSHIP** in the presence of:-

Signature of witness .

## ANNEX 1

### PLAN 1



DO NOT SCALE



NOTES

| REV | DATE | BY | DESCRIPTION |
|-----|------|----|-------------|
|     |      |    |             |
|     |      |    |             |
|     |      |    |             |



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PROJECT NAME

BRADFORD ROAD  
HUDDERSFIELD

CONTRACT PLAN 2

SCALE 1:1000

DATE 16-10-14

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ANNEX 2

PLAN 2

DO NOT SCALE



|     |         |    |             |         |         |
|-----|---------|----|-------------|---------|---------|
|     |         |    |             |         |         |
| 1   | 2016.02 | 20 | 1:1000      | 2016.02 | 2016.02 |
| A   | 100.00  | 10 | 100.00      | 100.00  | 100.00  |
| +   | 0.0000  | 00 | 0.0000      | 0.0000  | 0.0000  |
| REV | DATE    | BY | DESCRIPTION |         |         |

**REDROW HOMES**  
Redrow House, Barns Road, Wakefield WF2 0T  
Tel: 01924 822 598  
www.redrow.co.uk

DATE: 2016.02.20

PROJECT: BRADFORD ROAD  
HUDDERSFIELD

TITLE: SITE LOCATION PLAN

|               |                  |        |         |
|---------------|------------------|--------|---------|
| SCALE: 1:1000 | DATE: 2016.02.20 | BY: 10 | REV: 00 |
| PROJECT: BVF  | DATE: 2016.02.20 | BY: 10 | REV: 00 |

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