

DATED

9 June

2022

MALCOLM HARTLEY

AND

LINDA HARTLEY

AND

THE COUNCIL OF THE BOROUGH OF KIRKLEES

AGREEMENT

UNDER 106 OF THE TOWN & COUNTRY PLANNING ACT 1990

RELATING TO

LAND ADJACENT TO 52 UPPER BATLEY LOW LANE, UPPER BATLEY,

BATLEY WF17 0AP

Julie Muscroft

Service Director - Legal, Governance & Commissioning

Kirklees Council

Legal Services

PO Box 1720

Huddersfield

HD1 9EL

Ref: D31-1638

THIS AGREEMENT is made the 9 day of June 2022

BETWEEN:-

1. **MALCOLM HARTLEY** and **LINDA HARTLEY** of 52 Upper Batley Low Lane, Batley, West Yorkshire WF17 0AP (hereinafter called the "Owner") of the first part; and
2. **THE COUNCIL OF THE BOROUGH OF KIRKLEES** of The Town Hall, Ramsden Street, Huddersfield HD1 2TA (hereinafter called the "Council") of the second 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 Owner is the freehold owner of the Site which is registered at HM Land Registry under title number WYK615755
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 Application has been submitted to the Council on behalf of the Owner and the Council and the Owner have agreed to enter into this Agreement to secure the planning obligations contained in this Agreement which will bind the Site having regard to the provisions of the Council's Local Plan and planning considerations affecting the Site.
5. The Council would not have been willing to grant the Planning Permission but for this Agreement because of the need to:-
 - 5.1 Secure an Affordable Housing Contribution in accordance with Local Plan Policy LP11
 - 5.2 Secure an Education Contribution in accordance with Local Plan Policy LP49
 - 5.3 Secure an Off-Site Public Open Space Contribution in accordance with Local Plan Policy LP63
6. The Site forms a housing allocation within the Kirklees Local Plan adopted on 27 February 2019.

NOW IT IS HEREBY AGREED AS FOLLOWS:-

1. INTERPRETATION

1.1. In this Agreement unless the context otherwise requires the following words and expressions shall have the means respectively assigned to them in this clause:-

“1990 Act” means the Town & Country Planning Act 1990 (as amended);

“Affordable Housing” means subsidised housing that will be available to persons who cannot afford to rent or buy housing generally on the open market as defined in Annex 2 of the National Planning Policy Framework (as maybe updated or superseded);

“Affordable Housing Contribution” means the sum of £23,061.67 (twenty-three thousand and sixty-one pounds and sixty-seven pence);

“Application” means the outline application for the Development submitted to the Council and allocated reference 2021/92413outline application for erection of residential development;

“Contributions” means the Affordable Housing Contribution, the Education Contribution and the Off-Site Public Open Space Contribution;

“Development” means the development of the site in pursuance of the Planning Permission;

“Dwelling”	means the dwelling to be erected pursuant to the Development;
“Education Contribution”	means the financial contribution of £1,079.76 (one thousand and seventy-nine pounds and seventy-six pence) to be paid by the Owner to the Council to be applied towards the provision or improvement of Educational Facilities within the vicinity of the Development the need for which arises directly from the Development in accordance with Policy LP49 of the Local Plan;
“Implementation”	means the implementation of the Planning Permission 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, environmental investigation, site and soil surveys, erection of fences to site boundary and “Implement” and “Implemented” shall be construed accordingly;
“Local Plan”	means the Kirklees Local Plan Strategy & Policies adopted on 27 February 2019 and any replacement thereof;
“NPPF”	means the National Planning Policy Framework published by the Department for Communities & Local Government July 2021 and includes any revisions or replacement document;

“Occupation”	means occupation for the purposes permitted by the Planning Permission 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;
“Plan 1”	means the Plan so marked and attached hereto;
“Planning Permission”	means the Planning Permission which may be granted by the Council pursuant to the Application;
“POS Contribution”	means a financial contribution of £2,240.24 (two thousand two hundred and forty pounds and twenty-four pence) to be paid by the Owner to the Council to be applied to Off-Site Public Open Space in accordance with Policy LP63 of the Local Plan and required as a result of the Development;
“Reserved Matters Application”	means the subsequent application pursuant to the Planning Permission comprising details of layout, scale, appearance and landscaping;
“Reserved Matters Approval”	means the subsequent approval pursuant to the Reserved Matters Application;
“Site”	means the land adjacent to 52 Upper Batley Low Lane, Upper Batley, Batley WF17 0AP shown edged red on Plan 1.

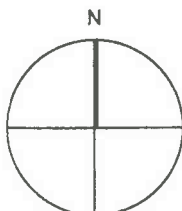


Drawn Scale 1:1250



Batley

014 881



Issue Purpose: PLANNING APPLICATION

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Client Mr D Hartley
Project 1914: Upper Batley Low Lane: Outline
Title Location Plan

Issued From
Date April 19
Scale 1:1250 @ A4
Drawn BH Auth BH

Drawing Number

Revision

1903 - D - 20 - 001

Do not scale from this drawing. What is
shown dimensions, and any boundaries
is as registered to the Landlord.
Refer to larger scale drawings where
available.

2. GENERAL

- 2.1. The Owner covenants with the Council to observe the restrictions and perform the obligations contained in this Agreement.
- 2.2. This Agreement is a planning obligation made in pursuance of Section 106 of the 1990 Act Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other powers so enabling to the intent that they shall bind the Owner and each and every part of the Site.
- 2.3. The expression the "Council" and the "Owner" shall include their successors in title and assigns.
- 2.4. No person shall be liable for any 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 response of which such breach occurs but without prejudice for liability for any subsisting breach of covenant prior to parting with such interest.
- 2.5. This Agreement shall take effect on the date hereof save for the covenants on the part of the Owner contained in clause 3 of this Agreement which are conditional upon the grant of the Planning Permission and Implementation.
- 2.6. This Agreement shall cease to have effect (insofar as it has not already been complied with) if the Planning Permission expires or is quashed revoked or otherwise withdrawn or modified by any statutory procedure without the consent of the Owner or expires prior to Implementation but without prejudice to any rights, liabilities or obligations which may have occurred by or shall have accrued to any party prior to such date.
- 2.7. 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.
- 2.8. This Agreement is a Local Land Charge and shall be registered by the Council as such.
- 2.9. The provisions of the Contract (Rights of Third Parties) Act 1999 shall not apply to this Agreement.
- 2.10. In the event that an application is made pursuant to Section 73 of the 1990 Act for an amendment to the Planning Permission ("**Section 73 Application**") and planning permission is granted (whether or not on

appeal) in respect of the Section 73 Application ("**Section 73 Permission**") if the Council is satisfied that no revised Planning Obligations are required as a result of the grant of the Section 73 Permission references to "Planning Permission" in this Agreement shall also be to the Section 73 Permission and this Agreement shall apply to and remain in full force in respect of the Section 73 Permission without the need for a further Agreement to be entered into pursuant to Section 106 of the 1990 Act.

2.11. The Owner shall pay to the Council its legal fees reasonably and properly incurred in the preparation of this Agreement which will be less than £1,000 (one thousand pounds).

3. CONTRIBUTIONS

3.1. The Owner covenants with the Council:-

- 3.1.1. To pay the Contributions prior to first Occupation; and
- 3.1.2. Not to first Occupy until the Contributions have been paid.

4. COUNCIL'S COVENANTS

4.1. The Council covenants with the Owner;

- 4.1.1. To use the Contributions only for the purposes expressed in this Agreement;
- 4.1.2. That upon the reasonable written request of the Owner to provide written confirmation of the discharge of the Owner's covenants contained in this Agreement once such covenants have been discharged;
- 4.1.3. If the whole or any part of the sum of the Contributions has not been spent on such purpose within 10 years of the date of the payment of the relevant sum then the whole sum or any unspent part plus interest will be repaid to the person who paid the sum or its nominees;
- 4.1.4. That following the performance and satisfaction of all the obligations contained in this Agreement the Council shall as soon as reasonably practicable effect the cancellation of all entries made in the register of Local Land Charges in respect of this Agreement.

IN WITNESS WHEREOF the parties hereto have caused this Agreement 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:-)



~~Service Director~~ – Legal, Governance and Commissioning/Authorised Signatory

EXECUTED AS A DEED by the said)
MALCOLM HARTLEY in the presence)
of:-)

Witness Signature.....

Witness Name.....

Witness Address.....

.....
Witness Occupation....

EXECUTED AS A DEED by the said)
LINDA HARTLEY in the presence of:-)

Witness Signature

Witness Name.....

Witness Address.....

.....
Witness Occupation.....P