

DATED 20 September 2023

THE COUNCIL OF THE BOROUGH OF KIRKLEES (1)

AND

CAMPBELL HOMES LIMITED (2)

AGREEMENT

Pursuant to Section 106 of the Town & Country Planning Act 1990 relating to 5-7 Ossett Lane. Earlsheaton, Dewsbury WF12 8LU

Kirklees Legal Services
PO Box 1720
Huddersfield
HD1 9EL

THIS DEED is made the 20th day of September 2023

BETWEEN:-

- (1) **THE COUNCIL OF THE BOROUGH OF KIRKLEES** of the Town Hall, Ramsden Street, Huddersfield HD1 2TA (the "Council") of the first part;
- (2) **CAMPBELL HOMES LIMITED** (Company Reg No : 05827565) of 4 Hussar Court, 4 Hillsborough Barracks, Penistone Road, Sheffield S6 2GZ (the "Owner") of the second part

BACKGROUND:-

1. The Council is the local planning authority for the Kirklees District within which the site is situated and by whom the planning obligations within this Deed are enforceable.
2. The Owners are the freehold owners of the site registered at the Land Registry under title number WYK940973
3. The Council would not have been willing to grant the Planning Permission but for this Deed because of the need to secure the following obligations:-
 - 3.1. Setting up of a Management Company for the management and maintenance of land of any land not within private curtilages or adopted by other parties and of infrastructure (including surface water, drainage until formally adopted by the statutory undertaker or appropriate NAV).

NOW IT IS HEREBY AGREED:-

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 "1990 Act" means the Town & Country Planning Act 1990 (as amended):-

"Application"	Means the Development submitted to the Council and allocated references 2023/90833
"Commencement of Development"	means the carrying out of any material operation as defined by

Section 56(4) of the 1990 Act under the planning permission 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, site investigations or surveys for assessing the purposes of ground conditions, archaeological works, excavation works, erection of fence into site boundary works for the provision of or diversion or drainage or main works to prepare for development, the construction of access and service roads and "commence development" shall be construed accordingly.

"Development"

means the outline application for residential development at 5-7 Ossett Lane, Earlsheaton, Dewbury

"Management Company"

means a limited company or companies registered at Companies House which may already be in existence or may be formed by the Owners:-

- i. Which is incorporated in England, Wales or Scotland;
- ii. Which has its registered office in England, Wales or Scotland;
- iii. Whose primary objective is to permit for the maintenance of

	any land not within private curtilage, adopted by other parties and infrastructure (including surface water drainage until formal adoption by the statutory undertaker or NAV).
“Management Plan”	means the surface and land water drainage and Management Plan to be submitted to and approved by the Council in accordance with the First Schedule.
“NPPF”	means the National Planning Policy Framework (July 2021) published by the Department for Communities and Local Government Plan means the plan attached and so marked.
“Planning Permission”	means any planning permission granted pursuant to the Application.
“Plan 1”	means the land at Ossett Lane, Earlsheaton, Dewsbury WF12 8LU as shown edged red on Plan 1.
“Yorkshire Water”	means Yorkshire Water of Western House, Halifax Road, Bradford BD6 2SZ or its successor in statutory function.

2. CONSTRUCTION OF THIS DEED

- 2.1. Where in this Deed reference is made to any clause, paragraph, schedule or recital such references (unless the context otherwise requires) is a reference to a clause, paragraph, schedule or recital in this Deed.
- 2.2. Words importing the singular meaning where the context so admits includes the plural meaning and vice versa.

- 2.3. Words of the masculine gender include the feminine and neuter genders and words denoting actual persons including companies, corporations and firms and all such words shall be construed interchangeable in that matter.
- 2.4. Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans, regulations, permission and directions for the time being made, issued or given under the Act or deriving validity from it.
- 2.5. References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council the successors to its statutory function.
- 2.6. In the event that an application is made in respect of the development pursuant to Section 73 of the 1990 Act ("Section 73 Application") and planning permission is granted (whether or not on appeal) in respect of the Section 73 Application ("Section 73 Permission") and the Council is satisfied that no revised planning obligations are required as a result of the Section 73 Permission then the definition of "Planning Permission" in this Deed shall be construed to include the Section 73 Permission and this Deed shall apply to and remain in full force in respect of that Section 73 Permission without the need for a further agreement to be entered into pursuant to Section 106 or 106a of the Act.

Nothing in this Clause shall fetter the discretion of the Council in determining any planning application for a Section 73 Consent and the appropriate planning obligations required in connection with the determination of the same.

3. LEGAL BIAS

- 3.1. This Deed is made pursuant to Section 106 of the 1990 Act Section 111 of the Local Government Act 1972 and all other enabling powers.
- 3.2. The covenants, restrictions and requirements imposed upon the Owner under this deed are planning obligations pursuant to Section 106 of the 1990 Act which bind the site and each and every part thereof as set out in this Deed are enforceable by the Council against the Owner and Applicant.
- 3.3. The provisions of this Deed are planning obligations made pursuant to Section 106 of the 1990 Act to the intent that they shall bind the Owner and

each part of the Site and the expressions the Council and the Owner shall include their successors in title and assigns.

4. CONDITIONALITY

4.1. This Deed is conditional upon:-

4.1.1. The grant of the planning permission; and

4.1.2. The commencement of development other than paragraph 7.4 and 7.5 which shall take effect immediately.

5. OWNERS COVENANTS

5.1. The Owner covenants with the Council to observe the restrictions and perform the obligations on its part contained in this Deed.

6. COUNCIL'S COVENANTS

6.1. The Council covenants with the Owner to observe the restrictions and perform the obligations contained in this Deed.

7. MISCELLANEOUS

7.1. No person shall be liable for any breach of any covenant, restriction or obligation contained in this Deed after he shall have parted with his 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.

7.2. If the planning permission expires or is revoked or quashed following successful legal challenge or is otherwise withdrawn or modified without the express written consent of the Owner 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.

7.3. Nothing in this Deed shall prohibit the right to develop any part or part of the site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.

7.4. This Deed shall be registered by the Council as a Local Land Charge as soon as reasonably practicable on or after the date hereof.

7.5. The Owner shall pay to the Council a maximum of £800 (Eight Hundred Pounds) towards its legal fees reasonably and properly incurred in the preparation of this Deed.

- 7.6. Any dispute arising between the parties with regard to their respective rights and obligations as to any matter or thing in anyway arising out of or connected with this Deed shall be referred to the decision of a single arbitrator to be agreed by the parties or failing agreement between them the be nominated by the president for the time being of the Law Society and any such reference shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 1996 or any statutory modification or re-enacting for the time being in force.
- 7.7. In the event that a condition or conditions attached to the planning permission is or are amended 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 so amended.
- 7.8. No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 7.9. For the purpose of this Deed parties are required to give confirmation approval or consent, express satisfaction with, agree to vary or to give notice of any matter, such request, confirmation, approval, consent, expression of satisfaction, agreement to vary, or notice shall not be unreasonably withheld or delayed.
- 7.10. Following the performance and satisfaction of all the obligations contained in this Deed, the Council shall forthwith effect cancellation of all entries made in the register of Local Land Charges in respect of this Deed.

8. WAIVER

- 8.1. No waiver (whether expressed or implied) by the Council or Owner 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 waivers shall prevent the Council from enforcing any of the relevant terms or conditions for acting on any subsequent breach of default.

9. VOID PROVISIONS

- 9.1. Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid, illegal or unenforceable then such invalidity, illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.

10. GOVERNING LAW AND JURISDICTION

10.1. This Deed is governed by and interpreted in accordance with the Law of England and the parties submit to the non-exclusive jurisdiction of the Courts of England.

11. DELIVERY

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

FIRST SCHEDULE
Owner's Covenants

1. The Owner covenants with the Council as follows:-
 - 1.1. To submit to the Council the land drainage plan prior to commencement of development.
 - 1.2. Not to commence development until the land drainage plan has been approved by the Council (such approval not to be unreasonably withheld or delayed)
 - 1.3. Prior to commencement of development to submit to the Council for approval the Management Plan.
 - 1.4. Not to occupy the development until the Management Plan has been approved by the Council (such approval not to be unreasonably withheld or delayed)
 - 1.5. The Management Plan shall include:-
 - 1.5.1. Detailed measures setting out how the surface and foul water drainage and land drainage shall be maintained and managed prior to adoption by Yorkshire Water.
 - 1.5.2. Details and a programme for the long-term management of maintenance works to cover all aspects of the surface and foul water drainage and land drainage works including a schedule in accordance with CDM Regulations 2015 whereby operational safety has been fully risk assessed and a method statement determine access to the tank with appropriate equipment, recommended maintenance and the frequency of maintenance (including removing silt, checking release valves and replacement of component parts such as neoprene seals).
 - 1.5.3. A detailed maintenance schedule and methodology for all individual components to maintain the functionality of the drainage works.
 - 1.5.4. A detailed schedule of methodology for the inspection, maintenance and replacement as required of engineering features including inlet and outlet structures, flow controls, tanks and channels.

- 1.5.5. A detailed schedule of methodology for the inspection, maintenance and replacement as required of the drainage works.
- 1.5.6. Plans at 1:1200 scale which show the extent of the drainage works, the extent of the landscape features and details of connection to the relevant drainage networks.
- 1.5.7. Detailed maintenance schedules to be provided shall include details of the frequency of all actions and routine maintenance activities, the timing of all inspections (including annual routine inspections) and the timing of management works arising from inspections.
- 1.5.8. Details of the maintenance regime that will be adopted during the construction phase up until the point at which the Council confirms the surface and foul water drainage and land drainage works are complete in accordance with the land drainage plan (such confirmation not to be unreasonably withheld or delayed).
- 1.5.9. Details of vehicular and pedestrian access arrangements relating to inspection and maintenance of the surface and foul water drainage and land drainage works.
- 1.5.10. In the event that the Council (acting reasonably) considers that it is unable to approve the submitted version of the Management Plan then the Owner shall submit a revised version of the Management Plan to the Council taking into account any reasonable comments that the Council has provided for the Council's approval and this procedure shall be repeated as often as necessary until the Council approves the Management Plan (such approval not to be unreasonably withheld or delayed)

2. MAINTENANCE AND MANAGEMENT OF THE DRAINAGE WORKS

2.1. The Owner covenants with the Council:-

- 2.1.1. To fully comply with the Management Plan insofar as it relates to the surface and foul water drainage.
- 2.1.2. To maintain and manage the surface and foul water drainage and Management Plan until the plan when the surface and foul water drainage has been adopted by Yorkshire Water.

- 2.1.3. The Management Company shall assume responsibility for the maintenance of the land drainage in accordance with the approved surface and foul water drainage and land drainage maintenance and management insofar as it relates to the land drainage from the date of completion of the drainage for the lifetime of the development.
 - 2.1.4. To allow the Council access to the site upon reasonable notice for the purposes of monitoring compliance with the Management Plan insofar as it relates to surface and foul water drainage
- 2.2. In the event that the Council (acting reasonably) considers that the requirements of the Management Plan are not been complied with and until the surface and foul water drainage has been adopted by Yorkshire Water then the Council may serve a notice on the Owner requiring the Owner to take such remedial steps as specified in such notice in order to secure compliance with the Management Plan.
- 2.3. The Owner shall comply with the terms of any notice served by the Council pursuant to paragraph 2.2 above within 20 working days of the date of service of the same by the Council on the Owner or within such longer period (as in all other circumstances should be fair and reasonable) which may be agreed by the Council in writing.
- 2.4. To notify the Council of the identity of any transferee or lessee to which the Owner intends to transfer or lease any part of the site on which the surface and foul water drainage is located including to a Management Company.
- 2.5. The Owner shall ensure that the Council is provided with upto date contact details (including the contact name, address, email address and telephone number or any third party or person which is engaged or contracted to carry out any maintenance or management works in respect of the surface and foul water drainage.
- 2.6. Following adoption of the surface and foul water drainage by Yorkshire Water, the obligations in paragraph 2 of this First Schedule shall cease to have effect.
- 2.7. Where it is the case that sewers are not offered for adoption by the statutory undertaker and are to remain private, then the Management Company will be responsible for the maintenance and management of surface water

drainage and shall take responsibility from the Owner for complying with the obligations in paragraph 2 of this First Schedule on the second anniversary of first occupancy on the Development in according with the Management Plan, submitted and agreed with the local planning authority/lead local flood authority for the lifetime of the site.

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 **CAMPBELL HOMES LIMITED**)
in the presence of:-) ...

.....
Witness Signature

.....
Witness Name

.....
Witness Address

.....

.....

.....
Witness Occupation



020798



SITE LOCATION PLAN

Drawing no: **13125-SA-ZZ-DR-A-200**



Client: **Campbell Homes**

CONCEPT DESIGN

Project: **Residential Development at 5-7 Ossett Lane**

4 More
London Riverside
London
SE1 2AU
0207 642 7979

Quayside House 111 Piccadilly
Furnival Road
Sheffield,
S4 7YA
0114 226 0255

Manchester
M1 2HY



Scales@A4:	Drawn:	Date:	Checked:
1:250	SJ	March 2023	

selfarchitects.co.uk