

Dated

11 June

2024

THE COUNCIL OF THE BOROUGH OF KIRKLEES
and
YORKSHIRE COUNTRY PROPERTIES (DENBY DALE) LIMITED
And
PARAGON DEVELOPMENT FINANCE LIMITED

DEED OF VARIATION

pursuant to Section 106 of the Town and Country Planning Act 1990 relating to land at Inkerman Court,
Denby Dale, Huddersfield

SQUARE ONE.

One Park Row, Leeds LS1 5HN

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2024

- (1) **THE COUNCIL OF THE BOROUGH OF KIRKLEES** of Town Hall, Huddersfield, West Yorkshire HD1 2TA ("the **Council**"); and
- (2) **YORKSHIRE COUNTRY PROPERTIES (DENBY DALE) LIMITED** (Company Registration Number: 10804745) whose registered office is at 1 Dundas Street, Huddersfield, West Yorkshire, United Kingdom, HD1 2EX ("the **Owner**"); and
- (3) **PARAGON DEVELOPMENT FINANCE LIMITED** (Company Registration Number 03901943) whose registered office is 51 Homer Road, Solihull, B91 3QJ ("the **Mortgagee**")

- (A) The Council is the local planning authority for the purposes of the Act for the area in which the Development Site is situated and is the authority by whom the obligations hereby created are enforceable.
- (B) The Existing Planning Permissions were granted for the development of the Development Site and the Wider Site for 34 dwellings subject to the Existing Section 106 Agreements;
- (C) The Owner is the registered proprietor (under HM registered title WYK217745) and owner of the Development Site (and remains the same in respect of the Wider Site) and is intending to develop it under the Existing Planning Permissions varied in accordance with the amendments that are the subject of the New Application for the New Planning Permission.
- (D) This Deed is required to provide that the obligations of the Existing S106 Agreements shall also be applicable to the development undertaken pursuant to the New Planning Permission so far as they shall relate to the area of the Development Site.
- (E) The Owner by entering into this Deed does so to create planning obligations in respect of the Development Site as expressly set out in this Deed in favour of the Council pursuant to Section 106 of the Act and to be bound by and observe and perform the covenants agreements conditions and stipulations hereinafter contained.
- (F) The Mortgagee has a registered charge over the area of the Development Site and the Wider Site dated 18 February 2022 as detailed in paragraphs 2,3 and 4 of HM registered title WYK217745 and is joining in this Deed to consent to its terms and conditions.

1. DEFINITIONS

“Act”	means the Town and Country Planning Act 1990;
“New Application”	means the current application with reference number 2023/62/92871 made by the Owner to the Council to modify the Existing Planning Permissions so far as they relate to the area of the Development Site which sits within the Wider Site;
“Development Site”	The land at Barnsley Road, Denby Dale shown edged RED on the Plan.

"Existing Planning Permissions"	Planning Permission granted for the development of 34 dwellings on the Development Site and the Wider Site under reference 2019/91836 together with non-material amendment thereto under reference 2022/90955, and further planning permission granted under reference 2023/90066 together with further non-material amendments thereto under references 2023/92772 and 2023/92838.
"Existing Section 106 Agreements"	means the agreement under section 106 of the Act dated 1 October 2021 made between Keith Hilton, David Oldham and John Wright (1) Christine Littlewood (2), the Owner (3) and the Council (4) as varied by a supplemental agreement made under section 106 of the Act dated 24 May 2023 made between the parties hereto;
"New Planning Permission"	The planning permission resolved to be granted pursuant to the New Application.
"Plan "	means the plan marked "Plan " attached to this Deed;
"Wider Site"	means the area of land being developed in accordance with the Existing Planning Permissions beyond the Development Site identified edged BLUE on the Plan

2. CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed (unless the context otherwise requires).
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 2.4 Where two or more people form a party to this Deed, the obligations they undertake may be enforced against them all jointly, or against each of them individually unless there is express provision otherwise.
- 2.5 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, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
- 2.6 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 their statutory functions, as local planning authority exercising planning powers under the Act.
- 2.7 The headings and contents list are for reference only and shall not affect construction.

- 2.8 Any covenant by the Owner or the Council not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing.
- 2.9 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.
- 2.10 For the avoidance of doubt, so far as it relates to the Development Site this Deed is supplemental to the Existing S106 Agreements as set out herein.
- 2.11 The Council and the Owner confirm (for the avoidance of doubt) that the provisions of the Existing Section 106 Agreements continue to remain in full effect as set out in the Existing Section 106 Agreements except where varied by this Deed and provided that the New Planning Permission is Implemented.
- 2.12 Unless expressly varied the words and phrases capitalised in this Deed but not expressly defined in this Deed shall have the meanings ascribed to them in the Existing Section 106 Agreements.

3. LEGAL BASIS

- 3.1 This Deed is made pursuant to Section 106 of the Act, Section 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011 and all powers so enabling.
- 3.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the Act and bind its interests in the Development Site and are enforceable by the Council as local planning authority against the Owner in accordance with the Act as set out in this Deed.
- 3.3 Unless and to the extent varied or deleted by this Deed the provisions of the Existing Section 106 Agreements shall continue in force and be enforceable.

4. CONDITIONALITY

The obligations contained in this Deed come into effect on the date of this Deed
RESTATEMENT OF Covenants IN EXISTING S106 AGREEMENTS.

- 4.1 The parties agree and acknowledge that the provisions of the Existing S106 Agreements continue in force and remain enforceable for the Wider Site and as modified in respect of the Development Site notwithstanding the grant of the New Planning Permission.
- 4.2 The Owner covenants with the Council so as to bind its interest in the Development Site to fully observe and perform the obligations in this Deed and hereby agrees that the Development Site shall be subject to the obligations, restrictions and covenants herein, such obligations being planning obligations for the purposes of section 106 of the Act.
- 4.3 Subject always to clause 9 the Parties hereto hereby mutually agree to vary and supplement the terms of the Existing Section 106 Agreement dated 1 October 2021 so that it shall be amended and be read and construed and take effect as if: -
- 4.4 The definition of "Planning Permission" in Clause 1. of the Existing Section 106 Agreement dated 1 October 2021 had been deleted in full and replaced with the following new definition:
- 4.5 "means the permissions granted by the Council pursuant to the Application the New Application or granted hereafter by the Council in relation to the Development Site under section 73 of the 1990 Act."

5. MORTGAGEE

The Mortgagee ACKNOWLEDGES AND DECLARES that this Deed has been entered into by the Owner with their consent and that the Development Site shall be bound by the obligations contained in this Deed and that the security of the mortgage over the Development Site shall take effect subject to this Deed PROVIDED that the Mortgagee shall otherwise have no liability under this Deed unless they take possession of the Development Site in which case they too will be bound by the obligations as if they were persons deriving title from the Owner.

6. FEES

The Owner shall pay to the Council on completion of this Deed its reasonable legal costs incurred in the negotiation, preparation and execution of this Deed, in the sum of £750 ([seven hundred and fifty pounds]).

7. LOCAL LAND CHARGE

7.1 This Deed shall be registrable as a local land charge by the Council.

8. COMMUNICATION AND COUNCIL'S CONSENT OR APPROVAL

Where the agreement, approval, consent or expression of satisfaction is required from the Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction may be given on behalf of the Council by an officer of the Council's Planning Service or Legal Service and any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party.

9. TERMINATION OF THIS DEED

This Deed shall cease to have effect (insofar only as it has not already been complied with) if the New Planning Permission or the Existing Planning Permissions shall be quashed, revoked or otherwise withdrawn, or it is modified by any statutory procedure without the consent of the Owner or expires prior to the implementation of the New Planning Permission or is otherwise for any reason incapable of implementation or being continued to completion beyond such implementation.

10. THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

Save as provided in respect of successors in title to the Development Site or any successor to the relevant statutory function of the Council this Deed shall not be enforceable by any third party pursuant to the Contracts (Rights of Third Parties) Act 1999 and no third party shall acquire any benefit, rights or claims whatsoever thereto.

11. LIABILITIES

12. COUNCIL'S POWERS

Nothing contained or implied in this Deed shall prejudice or affect the rights discretions powers duties and obligations of the Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as local authority.

13. WAIVER

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 from acting upon any subsequent breach or default.

14. VAT

All consideration given in accordance with the terms of this Deed shall be inclusive of any value added tax properly payable.

15. JURISDICTION

This Deed is governed by and interpreted in accordance with the law of England.

IN WITNESS whereof the parties hereto have executed this Deed on the day and year first before written.

THE CORPORATE COMMON SEAL of THE COUNCIL)
OF THE BOROUGH OF KIRKLEES was hereto)
affixed but not delivered until the date hereof in)
the presence of:)

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



EXECUTED as a deed (but not delivered until)
the date hereof) on behalf of)

YORKSHIRE COUNTRY PROPERTIES (DENBY DALE) LIMITED

acting by a Director in the presence of:

Witness Signature

Witness Name

Witness Address

EXECUTED as a deed (but not delivered until)

the date hereof) on behalf of)

PARAGON DEVELOPMENT FINANCE LIMITED acting by its)

attorney...

under a power of attorney dated 19 October 2023 in the presence of

Witness Signature

Witness Name

Witness Address

Witness Occupation

APPENDIX 1 – PLAN



Access Type	Accesses	Files	Index
Local Files	2	3	4
Local Files	3	4	12
Local Files	0.25	7	1.3
Children - 25%			
TOTAL			19.8
ACTUAL PROBABLY			
Local Files	2	3	6
Local Files	3	4	12
Local Files			3
TOTAL			21
25% PROBABLY			1.3

TREE SURVEY LEGEND

GROUP

TREE CATEGORY GRADIES

CATEGORY A
CATEGORY B
CATEGORY C
CATEGORY D
CATEGORY U

KNOT PROTECTION AREA
EXISTING TREES TO BE REMOVED
FOR FURTHER DETAILS OF THESE TREES TO
APPROPRIATELY IN REPORT ADVANTAGE

ACCOMMODATION SCHEDULE	
3	3 BEDROOM DETACHED HOUSE
1	1
2	2 BEDROOM DETACHED HOUSE
1	1
2	2 BEDROOM DETACHED HOUSE

[illegible]

info@report360.it • www.report360.it • 02 51 121 880 YOUNG & RUBICAM PARTNERS PROSPETTO REGIONAL DEVELOPMENT RANDOLPH ROAD DUNFEE TALE	SEE LAYOFF PLAN - REPLAN OFF FUCHS 20-06-16 YES-47-10 E 1500-642 LA - 09/23
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