

Dated

24 January

2024 5

THE COUNCIL OF THE BOROUGH OF KIRKLEES

and

HIGHSTONE HOMES LIMITED

and

MOMENTUM FINANCE GROUP SPV1 LIMITED

**Section 106 Deed of Variation in relation to Land at Former Hoyle Ing Dyeworks, Hoyle Ing,
Linthwaite, Huddersfield, HD7 5QS**

THIS DEED is made the 24 day of January 2024

BETWEEN:-

- (1) **THE COUNCIL OF THE BOROUGH OF KIRKLEES** of Town Hall, Huddersfield, West Yorkshire HD1 2TA ("the **Council**");
- (2) **HIGHSTONE HOMES LIMITED** (Co. Regn. No. 09462248) of Broadstone Farm, Browns Edge Road, Ingbirchworth, Penistone, Sheffield S36 7GR. ("the **Owner**"); and
- (3) **MOMENTUM FINANCE GROUP SPV1 LIMITED** (Co. Regn. No. 15327847) of 1 Mariner Court, Calder Business Park, Wakefield, WF4 3FL ("the **Chargee**").

hereinafter called the "Parties" and reference to "Party" shall be construed accordingly.

WHEREAS

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.

The Existing Planning Permission was granted for the development of the Development Site and is subject to the Existing Section 106 Agreement;

The Owner is the registered proprietor (under HM Land Registry title numbers YY171606 and YY45136) and owner of the Development Site.

The Chargee is the legal owner of two registered charges over those parts of the Original Development Site registered under HM Land Registry title number YY171606 dated 11 January 2024; and YY45136 dated 29 October 2024 respectively. An application to register the first charge was submitted to HM Land Registry on 26 January 2023 and is pending; and an application to register the second charge is to be made in due course.

The Chargee acknowledges that the Site shall be bound by the provisions of this Deed.

The Development Site forms part of the Original Development Site authorised by the Existing Planning Permission. The Owner is intending to develop the Original Development Site under the Existing Planning Permission as varied by the New Planning Permission.

The Council and the Owner have agreed that this Deed is required to vary the Existing Section 106 Agreement to ensure that the planning obligations set out in the Existing Section 106 Agreement are also applicable to the development undertaken pursuant to the New Planning Permission so far as they relate to the area of the Development Site.

This Deed is supplemental to the Existing Section 106 Agreement and varies the terms of the Section 106 Agreement only to the extent set out in this Deed.

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.

NOW THIS DEED WITNESSES AS FOLLOWS:

1. DEFINITIONS

For the purposes of this Deed the following expressions shall have the following meanings:

"Act"	means the Town and Country Planning Act 1990;
"Development Site"	The land at Former Hoyle Ing Dyeworks, Hoyle Ing, Linthwaite, Huddersfield, HD7 5QS shown edged red on Plan 1;
"Existing Planning Permission"	Planning Permission granted for the development of Demolition of existing building and development of the former Dyeworks comprising 9 apartments, 4 bungalows and 2 maisonettes under reference 2021/62/94664/W;
"Existing Section 106 Agreement"	means the agreement under section 106 of the Act dated 10th August 2022, made between (i) the Council and (ii) Highstone Homes Limited;
"New Application"	means the planning application received by the Council on 12 th October 2023 and validated 23 rd October 2023 and registered by the Council under reference number 2023/62/93025/W for the change of use and alterations to convert existing mill building to 3 apartments with associated parking (within a conservation area);
"New Planning Permission"	The planning permission resolved to be granted pursuant to the New Application;
"Original Development Site"	The land edged red on Plan 2;
"Plan 1"	means the plan marked "Plan 1" attached to this Deed at Annex 1;
"Plan 2"	means the plan marked "Plan 2" attached to this Deed at Annex 2;

2. CONSTRUCTION OF THIS DEED

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).

Words importing the singular meaning where the context so admits include the plural meaning and vice versa.

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.

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.

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.

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.

The headings and contents list are for reference only and shall not affect construction.

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.

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.

For the avoidance of doubt, so far as it relates to the Development Site this Deed is supplemental to the Existing Section 106 Agreements as set out herein.

The Council and the Owner confirm (for the avoidance of doubt) that the provisions of the Existing Section 106 Agreement continue to remain in full effect as set out in the Existing Section 106 Agreement except where varied by this Deed in accordance with clause 3.

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 Agreement.

3. LEGAL BASIS

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.

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.

Unless and to the extent varied or deleted by this Deed the provisions of the Existing Section 106 Agreement shall continue in force and be enforceable.

4. CONDITIONALITY

The obligations contained in this Deed come into effect upon Commencement of Development of the New Planning Permission.

Subject always to clause 9, the Parties hereto hereby mutually agree to vary and supplement the terms of the Existing Section 106 Agreement dated 10th August 2022 so that it shall be amended and be read and construed and take effect as if: -

1. The definition of "Planning Permission" in Clause 1. of the Existing Section 106 Agreement had been deleted in full and replaced with the following new definition:

"means the First Planning Permission and Second Planning Permission"

2. A new definition of "First Planning Permission" had been inserted into Clause 1. of the Existing Section 106 Agreement between "Dwelling" and "Homes England":

"means a planning permission which may be granted by the Council pursuant to the Application"

3. A new definition of "Second Planning Application" had been inserted into Clause 1. of the Existing Section 106 Agreement between "Registered Provider" and "Site" as follows:

"means the planning application received by the Council on 12th October 2023 and validated 23rd October 2023 and registered by the Council under reference number 2023/62/93025/W for the change of use and alterations to convert existing mill building to 3 apartments with associated parking (within a conservation area)"

4. A new definition of "Second Planning Permission" had been inserted into Clause 1. of the Existing Section 106 Agreement between "Second Planning Application" and "Site" as follows:

"means a planning permission which may be granted by the Council pursuant to the Second Planning Application"

5. The definition of Affordable Dwellings had been deleted in full and replaced with the following new definition:

"means all 16 (sixteen) of the Dwellings which are to be provided as Supported Living Units and which shall be provided in accordance with the provisions of paragraph 1 of the First Schedule and reference to "Affordable Dwelling" shall be construed accordingly."

5. CHARGEES CONSENT

The Chargee consents to its interest in the Original Development Site being bound by this Deed provided that it shall not be obliged to carry out the covenants or planning obligations in the Existing

Section 106 Agreement or this Deed unless and until it takes possession of the Original Development Site.

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

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 Permission 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. MISCELLANEOUS

The provisions of the Section 106 Agreement shall continue to be enforceable by the Council and to bind the Development Site in all respects save for as varied by this Deed and for the avoidance of doubt where there is any conflict between the provisions of the Existing Section 106 Agreement and this Deed the provisions of this Deed shall override the provisions of the Section 106 Agreement.

12. COUNCIL'S POWERS

13. WAIVER

14. VAT

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

HIGHSTONE HOMES 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

MOMENTUM FINANCE GROUP SPV1 LIMITED

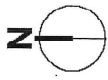
acting by a Director in the presence of:

Witness Signature

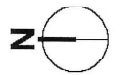
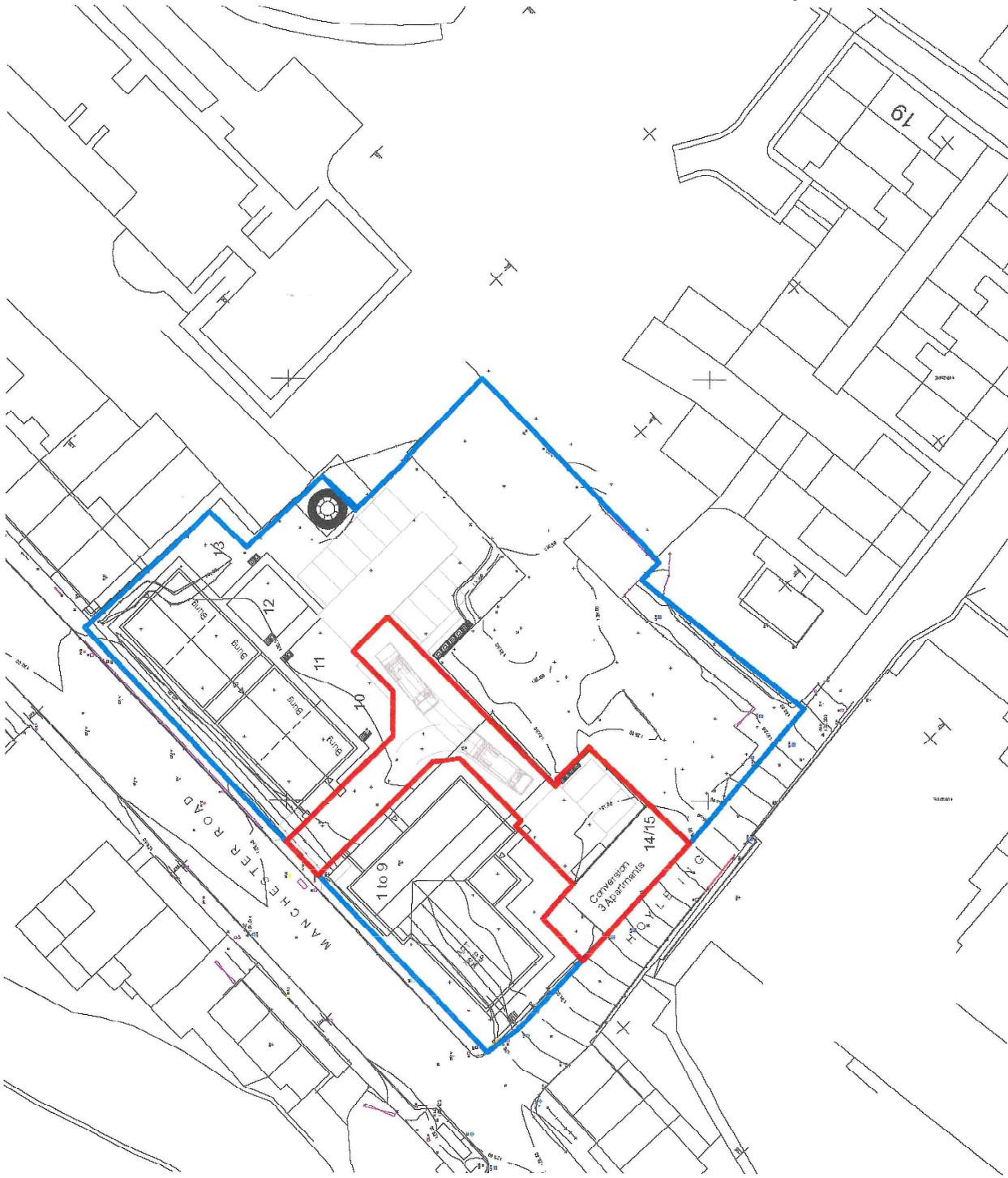
Witness Name

Witness Address

ANNEX 1 – PLAN 1



1/2



Rev/Date | Note

LAND OFF MANCHESTER ROAD, LINTHWAITE LOCATION PLAN



| DATE: 11-10-23 | SCALE @ A3 1:500 | DWG: HAMRLW-001 REV D

ANNEX 2 – PLAN 2

