Variation to Planning Obligation by Deed of Undertaking under Sections 106 and 106A of the Town and Country Planning Act 1990 relating to land on the south side of Yew Tree Road, Birchencliffe, Huddersfield

Date 30 April 2025

(1) THE COUNCIL OF THE BOROUGH OF KIRKLEES

(2) NORTH PARK (BIRCHENCLIFFE) LIMITED

(3) YORKSHIRE PROPERTY FINANCE LIMITED

Walton & Co
2nd Floor
4 York Place
Leeds
LS1 2DR

THIS DEED is made the 30 day of April 2026

BETWEEN:

(1) **THE COUNCIL OF THE BOROUGH OF KIRKLEES** of the Town Hall Huddersfield West Yorkshire (**"the Council"**);

(2) **NORTH PARK (BIRCHENCLIFFE) LIMITED** (Company Registration Number 13596384) of West House, King Cross Road, Halifax HX1 1EB (**"the Owner"**);

(3) **YORKSHIRE PROPERTY FINANCE LIMITED** (Company Registration Number 07591488) of 1 The Mews Little Brunswick Street Huddersfield HD1 5JL (**"the Mortgagee"**); and

WHEREAS:

(1) The Council is the local planning authority for the purposes of the Town and Country Planning Act 1990 ("TCPA 1990") for the area in which the Site is situated and is the authority by whom the planning obligations in the Principal Agreement (as varied by this Deed) are enforceable.

(2) The Owner is the freehold owner of the Site which is registered at HM Land Registry under title number WYK480951.

(3) The Mortgagee is the mortgagee of the Site subject to a legal charge dated 16 October 2025.

(4) The S73 Application has been submitted to the Council under reference. 2025/70/90890/W.

(5) The Council has resolved to grant the S73 Permission subject to the prior completion of this Deed.

(6) The parties to this Deed wish to amend the provisions of the Principal Agreement as set out in this Deed.

NOW THIS DEED WITNESSES AS FOLLOWS:

OPERATIVE PART

1. DEFINITIONS

Unless defined in this Deed or the context otherwise requires, a term defined in the Principal Agreement shall have the same meaning in this Deed. In this Deed the following expressions shall have the following meaning:

"Principal Agreement"	means a planning obligation by Agreement under Section 106 of the TCPA 1990 dated 9 May 2024 which relates to the Site and was entered into by (1) the Owner; and (2) Nigel John Lee and Janet May Lee; and (3) the Council;

"S73 Application"	means the planning application validated by the Council on 1 April 2025 under reference 2025/70/90890/W for *"variation of conditions 1 (Plans), 2 (Materials), 6 (Landscape Works). 7 (Landscape Management Plan), and 14 (Ecological Design Strategy) of previous permission 2021/94363 for reserved matters application pursuant to outline permission 2018/90151 for erection of 17 dwellings"*;
"S73 Permission"	means the planning permission which may be granted by the Council pursuant to the S73 Application;

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.

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 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an 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 and the County Council any successor to their statutory functions.

3. LEGAL BASIS

3.1 This Deed is made pursuant to Sections 106 and 106A of the TCPA 1990 as substituted by Section 12 of the Planning and Compensation Act 1991 and Section 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011 and all other enabling powers.

3.2 The covenants, restrictions and requirements imposed under this Deed create planning obligations pursuant to section 106 of the TCPA 1990 and are enforceable by the Council as local planning authority in respect of the Site.

3.3 This Deed is supplemental to the Principal Agreement.

4. CONDITIONALITY

4.1 This Deed shall take effect upon the date of the grant of the S73 Permission.

5. VARIATION OF THE PRINCIPAL AGREEMENT

5.1 The parties hereby agree that the Principal Agreement shall be varied in accordance with the provisions of the First Schedule of this Deed.

5.2 The Principal Agreement is in all other respects hereby confirmed and shall (subject always to the provisions therein) remain in full force and effect.

5.3 This Deed shall be read in conjunction with and alongside the Principal Agreement.

6. MISCELLANEOUS

6.1 Upon completion of this Deed the Owner shall pay to the Council the reasonable legal costs of the Council incurred in the negotiation, preparation and execution of this Deed.

6.2 A person who is not a party to this Deed shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

6.3 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.

6.4 This Deed shall cease to have effect if the S73 Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of the Development.

6.5 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the S73 Permission) granted (whether or not on appeal) after the date of this Deed.

6.6 This Deed shall be registrable as a Local Land Charge by the Council.

7. WAIVER

7.1 No waiver (whether expressed or implied) by the Council or the 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 waiver shall prevent the Council or the Owner from enforcing any of the relevant terms or conditions or from acting upon any subsequent breach or default.

8. MORTGAGEE'S CONSENT

8.1 The Mortgagee acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Site shall be bound by the obligations contained in the Principal Agreement as varied by this Deed and that the security of the charge over the Site shall take effect subject to this Deed PROVIDED THAT the Mortgagee shall otherwise have no liability under the Principal Agreement and this Deed unless it takes possession of the Site in which case it too will be bound by the obligations as if it were a person deriving title from the Owner.

9. JURISDICTION

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

10. DELIVERY

10.1 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
Variation of the Principal Agreement

The Principal Agreement shall be varied as follows:

1. The following definitions shall be inserted into clause 1.1 of the Principal Agreement:

"S73 Application"	means the planning application validated by the Council on 1 April 2025 under reference 2025/70/90890/W for *"the variation of conditions 1 (Plans), 2 (Materials), 6 (Landscape Works). 7 (Landscape Management Plan), and 14 (Ecological Design Strategy) of previous permission 2021/94363 for reserved matters application pursuant to outline permission 2018/90151 for erection of 17 dwellings"*;
"S73 Permission"	means the planning permission which may be granted by the Council pursuant to the S73 Application;

2. The definition of "Biodiversity Contribution" in clause 1.1 of the Principal Agreement shall be deleted and replaced with the following definition:

"Biodiversity Contribution"	means either: (a) where the Development is carried out pursuant to the Planning Permission the sum of £12,190 (twelve thousand one hundred and ninety pounds); or (b) where the Development is carried out pursuant to the S73 Permission the sum of £17,595 (seventeen thousand five hundred and ninety five pounds) in either case such sum to be paid by the Developer to the Council pursuant to paragraph 5.1 of Schedule 5 as a contribution towards off-site mitigation and compensation for ecological impacts in order to achieve a biodiversity net gain.

3. The definition of "Development" in clause 1.1 of the Principal Agreement shall be deleted and replaced with the following definition:

"Development"	means the development of the Site pursuant to either the Planning Permission or the S73 Permission, as the case may be.

IN WITNESS WHEREOF the parties hereto have caused this Deed to be executed as a Deed on the day and year first before written

EXECUTED AS A DEED by affixing)
THE COMMON SEAL of)
KIRKLEES COUN( )
in the presence of:)



.....Authorised Signatory

023095

EXECUTED AS A DEED
by **NORTH PARK (BIRCHENCLIFFE) LIMITED**
acting by a Director
in the presence of:

Witness Signature:

Witness Name: DAGMARA BAJERSKA

Witness Address:

Witness Occupation: CLEANING SERVICE

EXECUTED AS A DEED
by **YORKSHIRE PROPERTY FINANCE LIMITED**
acting by a Director
in the presence of:

Witness Signature:

Witness Name: J. A. HOWARTH

Witness Address:

Witness Occupation: CHARTERED SURVEYOR