

Dated

11 December

2018

THE COUNCIL OF THE BOROUGH OF SOUTH TYNESIDE

and

BDW TRADING LIMITED

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**Deed of Variation**

pursuant to Section 106A of the Town and Country  
Planning Act 1990 relating to land at the former  
Bedewell Industrial Park/Baker Perkins Sports Ground  
and Car Park, Red House Road, Hebburn, Tyne &  
Wear

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**Sintons**  
Law

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SN-2862057\_1

This Deed of Variation is made the 11<sup>th</sup> day of December 2018

By

1. **THE COUNCIL OF THE BOROUGH OF SOUTH TYNESIDE** of Town Hall and Civic Offices, Westoe Road, South Shields, Tyne and Wear NE33 2RL (hereinafter called the "Council"); and
2. **BDW TRADING LIMITED** (CRN 03018173) whose registered office is at Barratt House, Cartwright Way, Forest Business Park, Bardon Hill, Coalville, Leicestershire LE67 1UF (hereinafter called the "Developer")

Whereas

- A. The Council is the local planning authority for the purposes of the Act for the area in which the Land is situated and the Authority entitled to enforce the obligations in this Deed of Variation.
- B. The Developer is the freehold owner of the Land now registered at HM Land Registry under title numbers TY537283, TY538598 and TY556811.
- C. A Section 106 Agreement made between (1) the Council (2) Maro Developments Limited (3) the Developer and (4) The Royal Bank of Scotland Plc was entered into on 16 May 2016 and was subsequently varied by a Deed of Variation made between the same parties on 9<sup>th</sup> February 2017 ("the Varied Agreement").
- D. Full planning permission was granted on 17 May 2016 by the Council for "Erection of 335 residential dwellings (Use Class C3) and associated access, landscaping and engineering works" on the Land under reference ST/0539/15/FUL ("the Original Planning Permission") and condition 2 of the Original Planning Permission was varied on 10 February 2017 by the grant of a full planning permission under reference ST/0533/16/VC in order to achieve an amendment to house types ("the Varied Planning Permission").
- E. The Developer has submitted an application on 7 August 2018 under Section 73 of the Act to vary condition 2 of the Varied Planning Permission in order to achieve a further amendment to house types to allow the approved "Roseberry" house types to be replaced within "Kenley" house types together with the relocation of plots 174 - 184 2 metres eastwards and the relocation of plots 171 – 173 and the adjacent parking courtyard 1 metre eastwards and has been allocated planning application reference ST/0780/18/VC ("the Second Section 73 Application").
- F. The Council supports the principle of the development to be carried out pursuant to the Second Section 73 Application but is unable or unwilling to approve the Second Section 73 Application or to grant planning permission pursuant to it in the absence of this Agreement, which makes provision for regulating the development to be carried out and securing the matters referred to in this Agreement.
- G. This Deed of Variation is entered into to ensure that the provisions of the Varied Agreement as varied by this Deed of Variation continues to bind the Developer's interest in the Land at the date hereof so far as the Land is developed pursuant to the Original Planning Permission and / or the Varied Planning Permission and / or the planning permission to be granted pursuant to the Second Section 73 Application.

- H. All references, clauses, definitions and paragraphs refer to the Varied Agreement (unless expressly stated otherwise) and are used in this Deed of Variation.

**NOW THIS DEED** is made pursuant to sections 106 and 106A of the Act and contains planning obligations for the purposes of those sections and **WITNESSES** as follows:

1. The parties expressly agree that the Varied Agreement shall remain in full force and effect save as expressly varied by this Deed of Variation.
2. Save for clause 5 (legal costs) this Deed of Variation is conditional upon Commencement of Development authorised by the Second Section 73 Planning Permission.
3. This Deed of Variation shall cease to have effect (in so far only as it has not already been complied with) if the Second Section 73 Planning Permission is quashed, revoked or otherwise withdrawn or (without the consent of the Developer) it is modified by any statutory procedure or expires for any reason prior to Commencement of the Development authorised by the Second Section 73 Planning Permission.
4. It is hereby agreed between the parties that the Varied Agreement shall be modified (or as the case may be construed) as follows:
  - 4.1. The definition of "Dwelling" at clause 1 is to be deleted and replaced by the following:

**"Dwelling"** means a dwelling (including a house flat or maisonette) to be constructed on the land shown edged in red on the Plan pursuant to the Planning Permission and / or the Section 73 Planning Permission and / or the Second Section 73 Planning Permission;
  - 4.2. Within the definition of "Land" at clause 1, the words "TY338319, TY323419, TY33790, TY232741, TY219489, TY350578, TY522140, TY209117 and" shall be omitted and replaced by "TY538598, TY556811 and".
  - 4.3. The definition of "Occupation" and "Occupied" at clause 1 is to be deleted and replaced by the following:

**"Occupation" and "Occupied"** occupation of any Dwelling for the purposes permitted by the Planning Permission and / or the Section 73 Planning Permission and / or the Second Section 73 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;
  - 4.4. A new definition of "Second Section 73 Planning Application" shall be inserted into the Varied Agreement at clause 1 as follows:

**“Second Section 73 Planning Application”** the application submitted on the 7 August 2018 under Section 73 of the Act and carrying reference ST/0780/18/VC for the erection of 335 dwellings and associated access, landscaping and engineering works but with variation of condition 2 of planning permission reference number ST/0533/16/VC, to allow the approved “Roseberry” house types to be replaced within “Kenley” house types together with the relocation of plots 174 - 184 2 metres eastwards and the relocations of plots 171 – 173 and the adjacent parking courtyard 1 metre eastwards;

- 4.5. A new definition of “Second Section 73 Planning Permission” shall be inserted into the Varied Agreement at clause 1 as follows:

**“Second Section 73 Planning Permission”** the planning permission to be granted by the Council in pursuance of the Second Section 73 Planning Application.”

- 4.6 Clause 8.5 of the Varied Agreement is to be deleted and replaced by the following:

8.5 Nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission the Section 73 Planning Permission and the Second Section 73 Planning Permission) granted (whether or not on appeal) after the date of this Deed.

- 4.7 Clause 8.7 of the Varied Agreement is to be deleted and replaced by the following:

8.7 In the event that a condition or conditions to the Planning Permission the Section 73 Planning Permission or the Second Section 73 Planning Permission is or are varied pursuant to Section 96A of the Act this Deed shall continue in full force in respect of the Planning Permission the Section 73 Planning Permission and the Second Section 73 Planning Permission with the relevant condition or conditions as so varied.

- 4.8 Clause 11.2 of the Varied Agreement is to be deleted and replaced by the following:

11.2 This Deed shall not be enforceable against the owners, lessees, occupiers or tenants (or their mortgagees) of the Dwellings constructed pursuant to

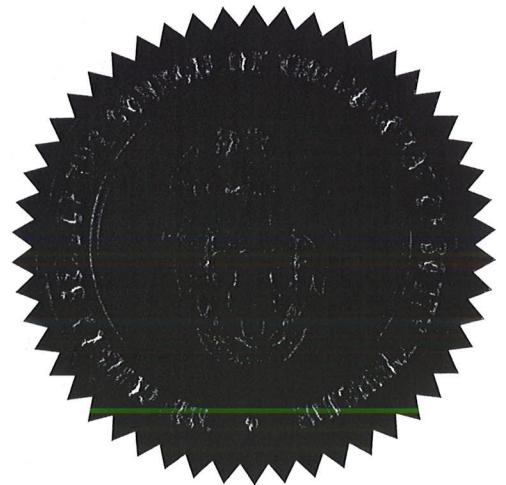
the Planning Permission the Section 73 Planning Permission and the Second Section 73 Planning Permission nor against those deriving title from them.

5. **Legal costs**

The Developer shall pay the Council's reasonable legal costs in the negotiation and completion of this Deed of Variation in the sum of £650.

**IN WITNESS** of which the parties have executed this Deed of Variation on the date first written above

**EXECUTED as a DEED** (but not delivered until the date of it) by the affixing of the **COMMON SEAL** of the **COUNCIL OF THE BOROUGH OF SOUTH TYNESIDE** in the presence of:



[Redacted signature]

Mayor/Authorised Signatory

[Redacted signature]

Head of Legal Services/Authorised Signatory

EXECUTED as a DEED on behalf of )

BDW TRADING LIMITED by [redacted] )

and [redacted] )

as joint attorneys in exercise of the powers )

conferred on them by a Power of Attorney )

dated ~~4<sup>th</sup> May~~ <sup>5<sup>th</sup> September</sup> 2018 who have hereunto )

set the name of **BDW TRADING LIMITED** )

in the presence of: )

Attorney [redacted]

Attorney [redacted]

Witness Signature..... [redacted] .....

Witness Full Name..... [redacted] .....

Witness Address..... 47 MIDLOTHIAN COURT .....

..... WORSPELL DRIVE .....

..... GATESHEAD .....

..... NE8 2FA .....

Witness Occupation ..... PLANNING MANAGER .....