

Dated 22nd July 2019

RIBBLE VALLEY BOROUGH COUNCIL

and

LANCASHIRE COUNTY COUNCIL

and

BDW TRADING LIMITED

Deed of Variation

pursuant to Section 106A of the Town and Country
Planning Act 1990 relating to land off Waddington Road
Clitheroe Lancashire BB7 2DE

Planning Ref. 3/2019/0056

WE HEREBY CERTIFY THIS TO
BE A TRUE COPY OF THE ORIGINAL

Ward Hadaway
WARD HADAWAY
SOLICITORS
102 QUAYSIDE
NEWCASTLE UPON TYNE, NE1 3DX
DATED 24 July 2019

This Agreement is made on the 22nd day of July 2019

By

1. **RIBBLE VALLEY BOROUGH COUNCIL** of Council Offices Church Walk Clitheroe Lancashire BB7 2RA ("the Council") and
2. **LANCASHIRE COUNTY COUNCIL** of PO Box 78 County Hall Preston Lancashire PR1 8XJ ("the County Council") and
3. **BDW TRADING LIMITED** of Barratt House, Cartwright Way, Forest Business Park, Bardon Hill, Coalville, Leicestershire, LE67 1UF ("the Owner")

Whereas

- A. The Council is the local planning authority for the purposes of the 1990 Act (as defined in the Original Agreement) for the area in which the Site (as defined in the Original Agreement) is situated and the authority by whom the obligations contained in this Deed and the Original Agreement are enforceable.
- B. The County Council is the highway authority for the area within which the Site is situated and is also a local planning authority for the purposes of the 1990 Act by whom the obligations under Schedule Five of the Original Agreement are enforceable.
- C. Further to a transfer dated [28 June 2019] the Owner is the freehold owner of the Site.
- D. A Section 106 Agreement was entered into between Nicholas Guy le Gendre Starkie (1), The Clitheroe Auction Mart Company Limited (2), John Howard Taylor, Samantha Anne Howard and Sarah Jane Howard (3), the Council (4) and the County Council (5) on 24 February 2015 ("the Original Agreement")
- E. Outline planning permission was granted on 6 March 2015 for the construction of up to 275 dwellings with access from to the Site under reference number 3/2014/0597 ("the Original Planning Permission").
- F. An application was made to the Council and validated by the Council on 18 January 2019 under reference number 3/2019/0056 for a variation of conditions 27 and 28 of the Original Planning Permission to allow 49 houses to be occupied on the Site before all S278 works (highway adoption/improvements) have been completed. ("the Second Application").
- G. The parties hereto have agreed to enter into this Deed with the Council and the County Council to amend the Original Agreement.
- H. All references, clauses, definitions and paragraphs refer to the Original Agreement (unless expressly stated otherwise) and are used in this Deed.

NOW THIS DEED is made pursuant to section 106A of the 1990 Act and is a planning obligation for the purposes of that section and **WITNESSES** as follows:

1. **VARIATIONS**

The parties hereby agree that the Original Agreement shall remain in full force and effect save as expressly varied by the Schedule.

2. **REGISTRATION AS A LAND CHARGE**

The Council shall register this Deed as a local land charge.

3. **GOVERNING LAW**

This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

4. **CONTRACTUAL RIGHTS OF THIRD PARTY**

No term of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a third party.

5. **CONDITIONALITY**

This Deed is conditional upon the grant of planning permission pursuant to the Second Application.

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

THE SCHEDULE
Variations to the Original Agreement

1. The parties hereby agree that the following amendments shall be made to the Original Agreement:-

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

"Original Planning Permission" the outline planning permission granted by the Council on 6 March 2015 with reference number 3/2014/0597

"Second Application" the application registered by the Council on 18 January 2019 with reference number 3/2019/0056 for the variation of conditions 27 and 28 of the Original Planning Permission to allow 49 houses to be occupied on the Site before all S278 works (highway adoption/improvements) have been completed

"Second Planning Permission" the planning permission granted by the Council pursuant to the Second Application;

1.2. The definition of "Planning Permission" in clause 1 of the Original Agreement shall be deleted in its entirety and replaced with the following:

"Planning Permission" the Original Planning Permission and/or the Second Planning Permission.