

Dated

10/08/2021

RIBBLE VALLEY BOROUGH COUNCIL

and

LANCASHIRE COUNTY COUNCIL

and

BDW TRADING LIMITED

and

JIGSAW HOMES NORTH

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

This Agreement is made on the *teenth* day of *August* 2021

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 (company registration number 03018173)** of Barratt House, Cartwright Way, Forest Business Park, Bardon Hill, Coalville, Leicestershire, LE67 1UF ("the First Owner") and
4. **JIGSAW HOMES NORTH (Registered Society Number 16668R)** of Cavendish 249, Cavendish Street, Ashton under Lyne, Tameside OL6 7AT ("the Second 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. The First Owner is the Registered Proprietor of that part of the Site (save in respect of a number of Dwellings which have been sold to individual owner-occupiers) and whose title is registered as a freehold title at the Land Registry under Title Number LAN223498. The Second Owner is the freehold owner of part of the Site pursuant to transfers dated 15 December 2020 in respect of those Affordable Housing Units to be known as 4, 6, 14 and 16 Malkin Street, Clitheroe BB7 2RW.
- D. The Original Agreement was entered into on 24 February 2015.
- E. The Original Permission was granted on 6 March 2015 subject to the Original Agreement.
- F. The Second Permission was granted on 22 July 2019 to vary conditions 27 and 28 of the Original Planning Permission to allow 49 houses to be occupied on the Site before all S.278 works (highway adoption/improvements) have been completed under reference 3/2019/0056
- G. The Original Agreement was varied pursuant to the First Deed of Variation on 22 July 2019 in order to bind the Second Permission.

- H. The Second Deed of Variation was entered into on 18 November 2020 to amend the affordable housing provisions in the Original Agreement as varied by the First Deed of Variation.
- I. The parties hereto have agreed to enter into this Deed with the Council and the County Council to amend the Original Agreement as varied by the First Deed of Variation and the Second Deed of Variation.
- J. Subject to the variations as set out in this Deed, the Original Agreement as varied by the First Deed of Variation and the Second Deed of Variation shall remain in full force and effect in respect of the Site.

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. **DEFINITIONS**

Unless defined in this Deed or the context otherwise requires, a term defined in the Original Agreement as varied by the First Deed of Variation and the Second Deed of Variation shall have the same meaning in this Deed. In this Deed (including for

the avoidance of doubt the recitals) the following expressions shall have the following meaning:

First Deed of Variation

means the deed of variation made under Section 106A of the 1990 Act (and other enabling provisions) dated 22 July 2019 between (1) Ribble Valley Borough Council (2) Lancashire County Council and (3) BDW Trading Limited

Original Agreement

means the planning obligation by deed of agreement made under Section 106 of the 1990 (and other enabling provisions) dated 24th February 2015 between (1) Nicholas Guy le Gendre Starkie (2) Clitheroe Auction Mart Company Ltd (3) John Howard Taylor Sarah Jane Howard and Samantha Anne Howard (4) Ribble Valley Borough Council and (5) Lancashire County Council

Original Permission

means the outline planning permission subject to conditions granted by the Council on 6 March 2015 for the construction of up to 275 dwellings with access from to the Site under reference number 3/2014/0597

Owner

means the First Owner and the Second Owner jointly and severally

Second Permission

means the planning permission subject to conditions granted pursuant to section 73 of the 1990 Act granted by the Council on 22 July 2019 for the variation of conditions 27 and 28 of the Original Permission under reference 3/2019/0056

Second Deed of Variation

means the deed of variation made under Section 106A of the 1990 Act (and other enabling provisions) dated 18 November 2020 between (1) Ribble Valley Borough Council (2) Lancashire County Council and (3) BDW Trading Limited

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 supplemental and collateral to the Original Agreement as varied by the First Deed of Variation and the Second Deed of Variation and is made pursuant to Sections 106 and 106A of the 1990 Act and the covenants, restrictions and obligations imposed on the Owner under this Deed are planning obligations for the purposes of Section 106 of the 1990 Act and are enforceable by the Council as local planning authority and their successors in title.
- 3.2 Insofar as any of the covenants, restrictions and obligations contained in this Deed are not planning obligations within the meaning of the 1990 Act they are entered into pursuant to the powers in Section 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011 and all other enabling powers.

4. CONDITIONALITY

- 4.1 This Deed shall take effect from the day it is dated.

5. VARIATIONS

- 5.1 The parties agree that the Original Agreement (as varied by the First Deed of Variation and the Second Deed of Variation) shall be varied in accordance with the provisions of the Schedule of this Deed.
- 5.2 Save as varied by this Deed, the Original Agreement as varied by the First Deed of Variation and the Second Deed of Variation shall remain in full force and effect and the Owner covenants with the Council and the County Council that it shall fully perform and observe the covenants set out in the Original Agreement as varied by the First Deed of Variation and the Second Deed of Variation (as varied by this Deed).

6. MISCELLANEOUS

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

6.2 Upon completion of this Deed the First Owner shall pay to the County Council the legal costs of the County Council incurred in the negotiation, preparation and execution of this Deed up to the sum of [REDACTED]

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

6.4 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 unenforceability of the remaining provisions of this Deed.

6.5 Nothing in this Deed shall be construed or implied so as to prejudice or affect the rights, discretions, powers, duties and obligations of the Council and the County Council under all statutes, bylaws, statutory instruments, orders and regulations or any exercise of their functions as a local authority.

7. 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.

8. 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.

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

THE SCHEDULE

Variations to the Original Agreement (as varied by the First Deed of Variation and the Second Deed of Variation)

1. The parties hereby agree that the following amendments shall be made to the Original Agreement as varied by the First Deed of Variation and the Second Deed of Variation:-
 - a. Paragraph 4 of Schedule 5 shall be deleted in its entirety.

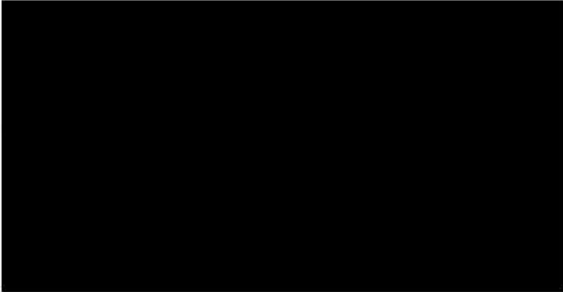
EXECUTED AS A DEED

(but not delivered until the date hereof) by the affixing of

THE COMMON SEAL OF

RIBBLE VALLEY BOROUGH COUNCIL:

In the presence of:



EXECUTED AS A DEED

(but not delivered until the date hereof) by the affixing of

THE COMMON SEAL OF

LANCASHIRE COUNTY COUNCIL:

In the presence of:



Authorised Signatory



29856

**Executed as a Deed on behalf
of BDW Trading Limited by**

(Name)



in exercise of the powers

conferred on them by a

Power of Attorney dated [02/03/21]

who have hereto set the name

of BDW Trading Limited

in the presence of

Witness Signature

Witness Name

Witness Address



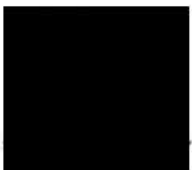
And

**Executed as a Deed on behalf
of BDW Trading Limited by**

(Name)



(Signature).....



in exercise of the powers

conferred on them by a

Power of Attorney dated [02/03/21]

who have hereto set the name

of BDW Trading Limited

in the presence of

Witness Signature

Witness Name

Witness Address

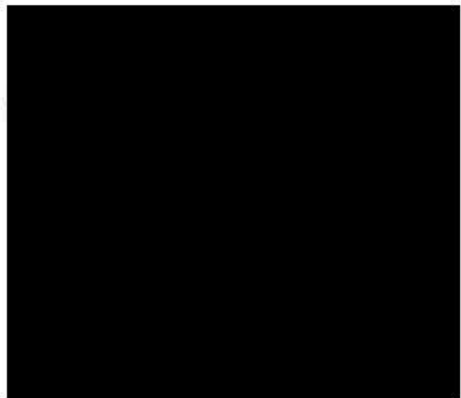


EXECUTED as a DEED by
affixing the Common Seal of
JIGSAW HOMES NORTH in the presence of:



198-1CM

Authorised Signatory



Authorised Signatory