

DATED

28 July 2022

**PLANNING OBLIGATION UNDER SECTION 106 OF THE TOWN AND
COUNTRY PLANNING ACT 1990 RELATING TO LAND AT THE EAST
SIDE OF HATFIELD LANE, ARMTHORPE, DONCASTER, DN3
3HA**

between

DONCASTER BOROUGH COUNCIL

and

MICHAEL PARTRICK MURRAY

and

JOHN EDGAR LLOYD NICHOLSON

and

ALBEMARLE HOMES LIMITED

PLANNING REFERENCE: 20/01606/FULM

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THIS DEED is dated 28 July

2022

- (1) **DONCASTER BOROUGH COUNCIL** of Civic Office Waterdale Doncaster DN1 3BU (**Council**).
- (2) **MICHAEL PATRICK MUURRAY and JOHN EDGAR LLOYD NICHOLSON** of 3 Bradford Row, Doncaster, DN1 3NF (**Owner**).
- (3) **ALBEMARLE HOMES LIMITED** incorporated and registered in England and Wales with company number 08525773 whose registered office is at Grove Barn, 11 Silica Court, Kirk Sandall, Doncaster, DN3 1EG (**Developer**).

BACKGROUND

- (A) The Council is the local planning authority for the purposes of the TCPA 1990 for the area in which the Property is situated and is the authority by whom the obligations hereby created are enforceable. .
- (B) The Owner is the freehold owner of the Property free from encumbrances.
- (C) The Developer has an interest in the Property pursuant to a contract for sale dated 10 March 2020 made between (1) the Owner and (2) the Developer
- (D) The Developer has made the Planning Application and is proposing to carry out the Development.
- (E) The Council is minded to grant planning permission subject to the Owner and the Developer entering into this Deed without which the Council would not grant the said Planning Permission.

AGREED TERMS

1. INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in this deed:

Affordable Housing: housing provided to eligible households whose needs are not met by the market in accordance with the definition in Annex 2 of the National Planning Policy Framework (or any successor policy or legislation in respect of affordable housing).

Affordable Housing Contribution: means the Indexed Linked sum of £250,440.19 (two hundred and fifty thousand, four hundred and forty pounds and nineteen pence) in accordance with the provisions of clause 2.5 of Schedule 1 for the provision of new, or the improvement to existing Affordable Housing elsewhere within the Council's area.

Affordable Housing Units: means those 4 Dwellings to be constructed pursuant to the Planning Permission and provided as Affordable Housing comprising 3 Affordable Rented Units and 1 Shared Ownership Unit (unless otherwise agreed with the Council in writing) plot numbers to be agreed in accordance with the provisions

of Schedule 1 and “Affordable Housing Unit” shall mean a single unit of Affordable Housing.

Affordable Rent: a rent which is not subject to the national rent regime but is subject to other rent controls that require a rent of no more than 80% of the local market rent or such other rent that may be permitted by Homes England (or any successor body to which the function of regulation of registered providers is transferred) including target rents (inclusive of service charges).

Affordable Rented Units: means those Affordable Housing Units which are to be let at an Affordable Rent.

Base Rate: the higher of 5% and the base rate from time to time of Barclays Bank plc.

Commencement of Development: the carrying out in relation to the Development of any material operation as defined by section 56(4) of the TCPA 1990 but disregarding for the purposes of this deed and for no other purpose, the following operations: demolition works; site clearance; ground investigations; site survey works; temporary access construction works; archaeological investigation; and erection of any fences and hoardings around the Property.

Commence and Commences shall be construed accordingly.

Commencement Date: the date Development Commences.

Construction of the Roof: means the applying of the final external roof covering to the roof timbers or structure of a Dwelling and for the avoidance of doubt this shall not include any membranes or felt.

Default Interest Rate: 4% per annum above the Base Rate.

Development: the development of the Property authorised by the Planning Permission.

Dwelling: a unit of residential occupation to be constructed pursuant to the Planning Permission.

Index Linked: increased in accordance with the following formula:

Amount payable = the payment specified in this deed x (A/B) where:

A= the figure for the Retail Prices Index (All Items) that applied immediately preceding the date the payment is due.

B= the figure for the Retail Prices Index (All Items) that applied when the index was last published prior to the date of this deed.

Occupation: occupation for the purposes permitted by the 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 operation and “Occupy” and “Occupied” shall be construed accordingly.

Open Market Dwelling: those Dwellings which are to be constructed pursuant to the Planning Permission and which are not Affordable Housing Units.

Plan: the plan attached as Appendix 1.

Planning Application: the application for FULL planning permission registered by the Council on 22 June 2020 under reference number 20/01606/FULM.

Planning Permission: the planning permission to be granted by the Council in respect of the Planning Application.

Practical Completion: the date upon which a certificate of practical completion is issued by the Developer's architect or such other person who is monitoring the Development on behalf of the Developer and "Practically Completed" shall be construed accordingly.

Property: the land at the East Side of Hatfield Lane, Armthorpe, Doncaster, DN3 3HA shown edged red on the Plan and registered at HM Land Registry with absolute title under title number SYK378568.

Protected Tenant: as the case may be:

- a) A tenant who has exercised the right to acquire pursuant to the Housing and Regeneration Act 2008 or any other statutory provision for the time being in force (or equivalent contractual or voluntary right) in respect of an Affordable Rented Unit; or
- b) A tenant who has exercised a statutory right to buy (or equivalent contractual or voluntary right) in respect of an Affordable Rented Unit; or
- c) Has acquired an Affordable Rented Unit from a Registered Provider through Social Homebuy funded pursuant to section 19(3) of the Housing and Regeneration Act 2008, or any amendment or replacement thereof; or
- d) Has been granted a Shared Ownership Lease by a Registered Provider (or similar arrangement where a share of the Affordable Housing Unit is owned by the tenant and a share is owned by the Registered Provider) in respect of a particular Affordable Housing Unit and the tenant has subsequently purchased from the Registered Provider all the remaining shares so that the tenant owns the entire Affordable Housing unit; and
- e) Any person or body and/or their mortgagee deriving title through or from any of the parties mentioned in paragraphs above.

Qualifying Criteria: where a person is in housing need in accordance with the relevant criteria of the Council and meets one or more of the following criteria in descending order of priority immediately prior to this proposed occupation:

- a) Has a local connection in the district of Doncaster
- b) Has a local connection in the surrounding area of the district of Doncaster.

Registered Provider: a registered provider as defined by the Housing and Regeneration Act 2008 (or as redefined by any amendment, replacement, or re-enactment of such Act) and registered under the provisions of the Housing and Regeneration Act 2008 or any company or other body approved by Homes England.

Shared Ownership Lease: such lease as shall from time to time be substantially in accordance with the Homes England model form of shared ownership lease or such other successor bodies model form of lease.

Shared Ownership Unit: those Affordable Housing Units which are to be owned and managed by a Registered Provider such that they shall be occupied on the basis of a Shared Ownership Lease.

TCPA 1990: Town and Country Planning Act 1990.

VAT: value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement and any additional replacement tax.

Working Day: a day (other than a Saturday, Sunday or public holiday in England when banks in London are open for business).

- 1.2 Clause headings shall not affect the interpretation of this deed.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to any party shall include that party's personal representatives, successors or permitted assigns and in the case of the Council the successors to its respective statutory functions.
- 1.8 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time ; provided that, as between the parties, no such amendment, extension or re-enactment shall apply to this deed to the extent that it would impose any new or extended obligation, liability or restriction, on, or otherwise adversely affect the rights of, any party.
- 1.9 A reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.10 A reference to **writing** or **written** does not include faxes or e-mail.
- 1.11 A reference to "this deed" or to any other agreement or document referred to in this deed is a reference to this deed or such other document or deed as varied or novated (in each case, other than in breach of the provisions of this deed) from time to time.

- 1.12 References to clauses, plans, schedules and appendices are to the clauses, plans, schedules and appendices of this deed.
- 1.13 An obligation in this deed on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.14 Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.15 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.

2. STATUTORY PROVISIONS

- 2.1 This deed constitutes a planning obligation for the purposes of section 106 of the TCPA 1990, section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and any other enabling powers.
- 2.2 The covenants, restrictions and obligations contained in this deed are planning obligations for the purposes of section 106 of the TCPA 1990 and are entered into by the Owner and the Developer with the intention that they bind the interests held by those persons in the Property and their respective successors and assigns.
- 2.3 The covenants, restrictions and obligations contained in this deed are enforceable by the Council in accordance with section 106 of the TCPA 1990.

3. CONDITIONALITY

With the exception of clauses 2, 3, 11, 13, 15, 20, 21 and 25 (which take effect immediately), this deed is conditional on the grant and issue of the Planning Permission.

4. COVENANTS TO THE COUNCIL

The Owner and the Developer covenant with the Council to:

- (a) observe and perform the covenants, restrictions and obligations contained in Schedule 1.
- (b) give at least seven Working Days written notice to the Council of the intended Commencement Date.

5. INDEXATION

- 5.1 All financial contributions payable to the Council shall be Index Linked.

5.2 Where reference is made to an index and that index ceases to exist or is replaced or rebased then it shall include reference to any index which replaces it or any rebased index (applied in a fair and reasonable manner to the periods before and after rebasing under this deed) or in the event the index is not replaced, to an alternative reasonably comparable basis or index as the Council shall advise the Owner in writing.

6. RELEASE

No person shall be liable for any breach of a covenant, restriction or obligation contained in this deed after parting with all of its interest in the Property, except in respect of any breach subsisting prior to parting with such interest.

7. DETERMINATION OF DEED

The obligations in this deed (with the exception of clause 10) shall cease to have effect if before the Commencement of Development, the Planning Permission:

- (a) expires;
- (b) is varied or revoked other than at the request of the Owner; or
- (c) is quashed following a successful legal challenge.

8. LOCAL LAND CHARGE

This deed is a local land charge and shall be registered as such by the Council.

9. COUNCIL'S COSTS

The Developer shall pay to the Council on or before the date of this deed the Council's reasonable and proper legal costs in the sum of £1,000 (one thousand pounds) in connection with the preparation, negotiation, completion and registration of this deed.

10. INTEREST ON LATE PAYMENT

Where any sum or amount has not been paid to the Council by the date on which it is due, the Owner shall pay the Council interest at the Default Interest Rate on that amount for the period from the due date to and including the date of payment.

11. OWNERSHIP

11.1 The Owner warrants that no person other than the Owner and the Developer has any legal or equitable interest in the Property.

11.2 Until the covenants, restrictions and obligations in Schedule 1 have been complied with, the Owner will give to the Council within 14 Working Days, the following details of any conveyance, transfer, lease, assignment, mortgage or other disposition entered into in respect of all or any part of the Property:

- (a) the name and address of the person to whom the disposition was made; and
- (b) the nature and extent of the interest disposed of.

12. REASONABLENESS

Any approval, consent, direction, authority, agreement or action to be given by the Council under this deed shall not be unreasonably withheld or delayed.

13. CANCELLATION OF ENTRIES

13.1 On the written request of the Owner or the Developer at any time after each or all of the obligations have been performed or otherwise discharged (and subject to the payment of the Council's reasonable and proper costs) the Council will issue a written confirmation of such performance or discharge.

13.2 Following the performance and full satisfaction of all the terms of this agreement or if this deed is determined pursuant to clause 8 (and subject to the payment of the Council's reasonable and proper costs and charges) the Council will on the written request of the Owner cancel all entries made in the local land charges register in respect of this deed.

14. DISPUTES

If any dispute arises out of this deed, the dispute shall be referred to an arbitrator appointed jointly by the parties. If the parties cannot agree on the arbitrator's identity the arbitrator shall be appointed on either party's request by the President for the time being of the Royal Institution of Chartered Surveyors. The arbitrator shall act in accordance with the Arbitration Act 1996 and the costs of the arbitration shall be payable by the parties in the proportions determined by the arbitrator (or if the arbitrator makes no direction, then equally).

15. NO FETTER OF DISCRETION

Nothing (contained or implied) in this deed shall fetter or restrict the Council's statutory rights, powers, discretions and responsibilities.

16. NO COMPENSATION PAYABLE

No compensation shall be payable by the Council as a result of the obligations contained in this deed.

17. WAIVER

No waiver (whether express or implied) by the Council of any breach or default by the Owner and/or the Developer in performing or observing any of the covenants, restrictions or obligations of this deed shall constitute a continuing waiver and no

such waiver shall prevent the Council from enforcing any of the relevant terms or conditions contained in this deed or acting on any subsequent breach or default of this deed.

18. FUTURE PERMISSIONS

Nothing in this agreement shall prohibit or limit the right to develop any part of the Property in accordance with any planning permission (other than the Planning Permission or modification, variation or amendment thereof) granted after the date of the Planning Permission.

18.1 In the event that any new planning permission(s) are granted by the Council pursuant to Section 73 of the TCPA 1990 and unless otherwise agreed by the parties:

- a) The obligations in this Deed shall relate to and bind any subsequent planning permission(s) in respect of the Site granted pursuant to Section 73 of TCPA 1990 and the Site itself; and
- b) The definitions of definitions of Application, Development and Planning Permission in this deed shall be construed to include reference to any application under Section 73 of TCPA 1990, the planning permissions granted thereunder and the development permitted by such subsequent planning permission(s).

18.2 PROVIDED THAT nothing in this clause shall fetter the discretion of the Council in determining any application(s) under Section 73 of TCPA 1990 or the appropriate nature and/quantum of Section 106 obligations in so far as they are materially different to those contained in this deed and required pursuant to a determination under Section 73 of TCPA whether by way of a new deed or a supplemental deed pursuant to Section 106 of TCPA.

19. AGREEMENTS AND DECLARATIONS

The parties agree that:

- (a) nothing in this deed constitutes a planning permission or an obligation to grant planning permission; and
- (b) nothing in this deed grants planning permission or any other approval, consent or permission required from the Council in the exercise of any other statutory function.

20. NOTICES

20.1 Any notice or other communication required to be given under this deed shall be in writing and shall be delivered personally, or sent by pre-paid first class post or recorded delivery or by commercial courier, to any person required to receive the

notice or communication at its address as set out at the beginning of this deed or as otherwise specified by the relevant person by notice in writing to each other person.

- 20.2 Any notice or other communication shall be deemed to have been duly received:
- (a) if delivered personally, when left at the address and for the contact referred to in this clause;
 - (b) if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Working Day after posting; or
 - (c) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

21. THIRD PARTY RIGHTS

No person other than a party to this deed, and their respective successors and permitted assigns, shall have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this deed.

22. SEVERANCE

- 22.1 If any court or competent authority finds that any provision of this deed (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this deed shall not be affected.
- 22.2 If any invalid, unenforceable or illegal provision of this deed would be valid, enforceable and legal if some part of it were deleted, the parties shall amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the parties' original commercial intention.

23. VALUE ADDED TAX

- 23.1 All consideration given in accordance with the terms of this deed shall be exclusive of any VAT properly paid.
- 23.2 If at any time VAT is or becomes chargeable in respect of any supply made in accordance with the terms of this deed then to the extent that VAT has not been previously charged in respect of that supply the party making the supply shall have the right to issue a VAT invoice to the party to whom the supply was made and the VAT shall be paid accordingly.

24. 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.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

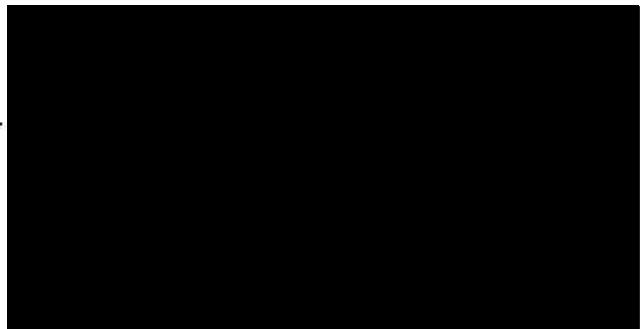
THE COMMON SEAL of)
DONCASTER BOROUGH COUNCIL)
in the presence of:-)
[Redacted])
[Redacted])



Print Name: MICHAEL DORRIS
Authorised by Assistant Director
Legal and Democratic Services

Seal No. 70555

EXECUTED as a DEED by)
MICHAEL PATRICK MURRAY)
in the presence of :)...

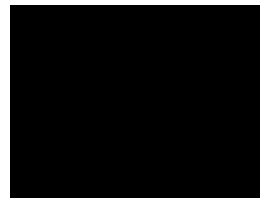


Witness [Redacted]
Name GLYN SMITH

Address 35
WILSIC ROAD
TILK HILL
DONCASTER DN11 9CF

Occupation SURVIVOR

EXECUTED as a DEED by)
JOHN EDGAR LLOYD NICHOLSON)
in the presence of :)

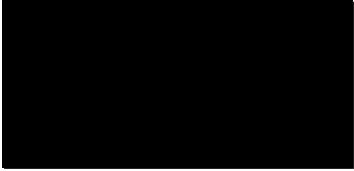


Witness [Redacted]

Name TRACEY JANE JACKSON

Address 27 SHOOTERS HILL DRIVE
ROSSINGTON
DEACASTER
DN11 0FY

Occupation FINANCIAL MANAGER

Executed as a deed by		
ALBEMARLE HOMES LIMITED acting by)	
In the presence of:)	Director (name) <u>DARRYL BARBER</u>
)	
)	(signature)
Witness signature <u>A. Cockin</u>		
Name <u>ALISHA COCKIN</u>		
Address <u>3 SWANLAND CLOSE</u>		
<u>THORNE, DN8 5GB</u>		
Occupation <u>SALES ASSISTANT</u>		

Schedule 1 Covenants to the Council

1. AFFORDABLE HOUSING PROVISIONS

- 1.1 Not to commence Construction of the Roof of more than 4 Dwellings until the plot numbers for the Affordable Housing Units have been submitted to the Council for approval.
- 1.2 Once approved, to provide the Affordable Housing Units in accordance with clause 2 of this Schedule 1.

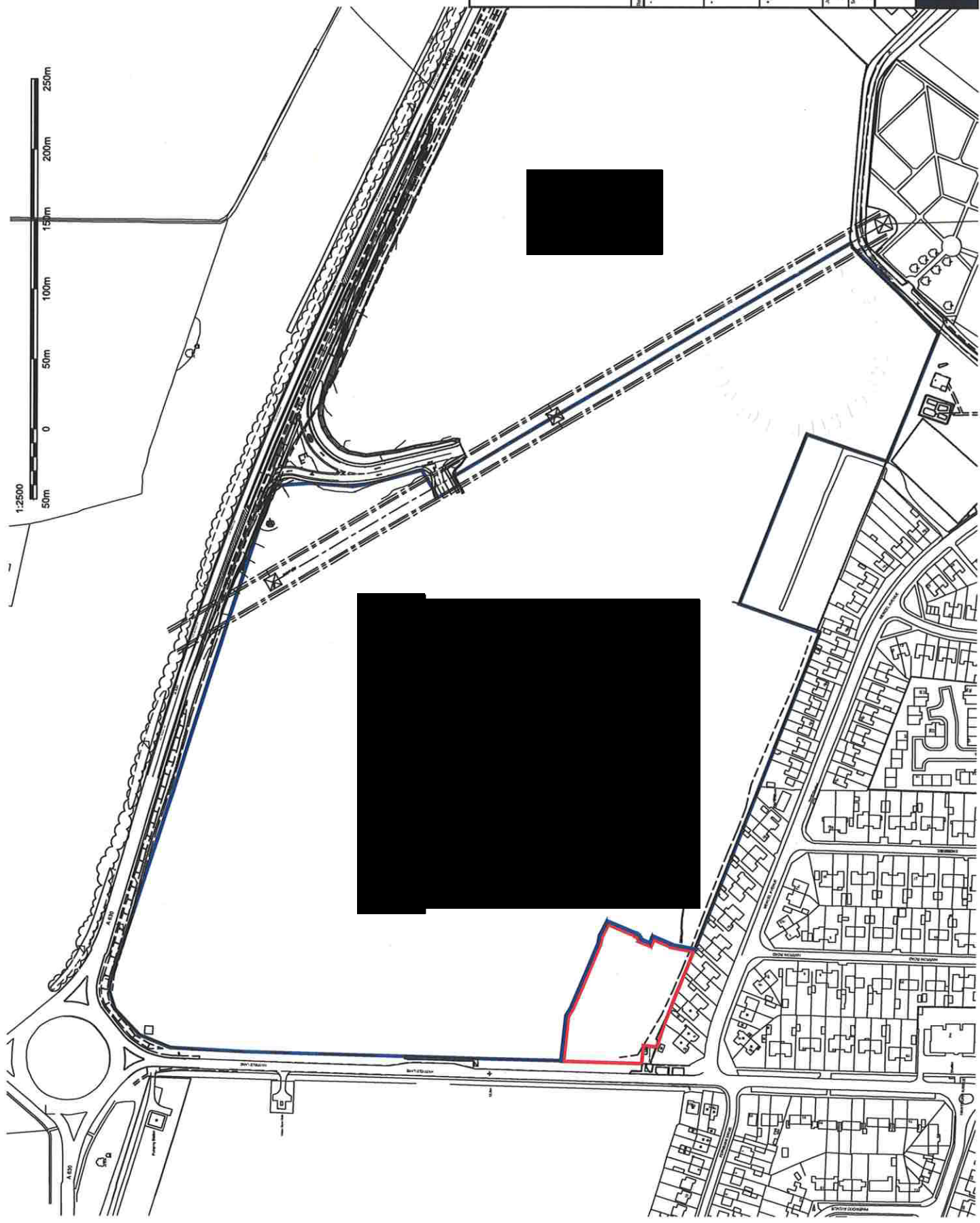
2. AFFORDABLE HOUSING- GENERAL

- 2.1. Subject to paragraph 2.3-2.5 below, not to commence Construction of the Roof of more than 60% (10 units) of the Open Market Dwellings until 50% (2 units) of the Affordable Housing Units have been Practically Completed and made available for Occupation.
- 2.2. Subject to paragraph 2.3-2.5 below, not to commence Construction of the Roof of more than 85% (12 units) of the Open Market Dwellings until the remaining 50% (2 units) of the Affordable Housing Units have been Practically Completed and made available for Occupation.
- 2.3. The Owner shall be free to market the Affordable Housing Units in full accordance with the terms of paragraphs 2.4-2.5 hereof at any point prior to the construction of such Affordable Housing Units being completed and for a period of not less than 3 months and shall use all reasonable endeavours to enter into an unconditional contract for the freehold sale of the same to a Registered Provider.
- 2.4. If after 3 months the Owner has been unable to enter into an unconditional contract for the freehold sale of the Affordable Housing Units to a Registered Provider and upon providing evidence that the Owner has made all reasonable endeavours to sell the Affordable Housing Units to such Registered Provider, the Owner shall in consultation with the Council select an alternative Registered Provider and use all reasonable endeavours to enter into an unconditional contract for the freehold sale of the Affordable Housing Units to the alternative Registered Provider.
- 2.5. If after 3 months the Owner has been unable to sell all or some of the Affordable Housing Units to the alternative Registered Provider and proves to the satisfaction of the Council that it has been unable to enter into an unconditional contract for the freehold sale of all or some of the Affordable Housing Units to the alternative Registered Provider, the Owner shall be entitled to dispose of the relevant Affordable Housing Units as Open Market Dwellings free of all restrictions within this Deed and it shall pay to the Council the Affordable Housing Contribution within 20 Working Days of notifying the Council that it has been unable to enter into a contract for the sale of the Affordable Housing Units as required in this clause.

3. DEALINGS WITH AFFORDABLE HOUSING UNITS

- 3.1. Subject to paragraphs 3.2 and 3.3 hereof upon the disposal of a unit or units of Affordable Housing Units to a Registered Provider such unit or units shall from the date of such disposal and at all times thereafter be Occupied only by individuals meeting the Qualifying Criteria or if no such individuals can be found occupied by such individuals as the Council or the Registered Provider may select.
- 3.2. None of the provisions of this planning obligation relating to Affordable Housing shall be binding upon a Chargee of one or more of the Affordable Housing Units which said Chargee may sell and dispose of the unit(s) free from the terms of this Deed and upon such sale this Deed shall become null and void in respect of that unit(s) and nor shall the terms of this Deed be binding upon any receiver appointed by such Chargee of the unit(s).
- 3.3. The transfer of the Affordable Housing Units to the Registered Provider shall include the following:
 - (a) the grant by the Owner to the Registered Provider of full and free rights of access both pedestrian and vehicular from the public highway to the Affordable Housing Units;
 - (b) the grant by the Owner to the Registered Provider of full and free rights to the passage of water soil electricity gas and other services through the pipes drains channels wires cables and conduits which shall be in the adjoining land up to and abutting the boundary to the Affordable Dwellings all such services to be connected to the mains;
 - (c) a reservation of all rights of access and passage of services and rights of entry reasonably necessary for the purposes of the Development;
 - (d) a covenant by the Registered Provider with the Owner not to use the Affordable Housing Units other than for Affordable Housing other than by any Protected Tenant or any mortgagee or chargee of the Protected Tenant or any person deriving title from the Protected Tenant or any successor in title thereto and their respective mortgagees and chargees, any Chargee, or any purchaser from a mortgagee of an Affordable Housing Unit pursuant to any default by the individual mortgagor of that Affordable Housing Unit.

Annex A. Appendix 1: Plan



LOCATION PLAN	
Hatfield Lane East, Armthorpe.	
1:2500 @ A3 14.02.2020 For Approval	
1:2500 @ A3 14.02.2020	For Approval
19052	18-00
12500 @ A3	14.02.2020
mps planning & design Ltd 14, Welford Park, Armthorpe, Doncaster, YO17 7JH T: 0117 771 700 W: www.mpsplanning.co.uk www.mpsplanning.co.uk	

