

Dated 28 May 2025

High Peak Borough Council

and

Derbyshire County Council

and

BDW Trading Limited

and

Jigsaw Homes Tameside

and

Macclesfield Road Management Company Limited

Deed of Variation

Pursuant to Section 106A of the Town and Country
Planning Act 1990 relating to development of land to
the South of Macclesfield Road, Whaley Bridge,
Derbyshire

This Deed of Variation is made on 28 day of May 2025

Between

- (1) **High Peak Borough Council** of Town Hall, Market Street, Buxton, Derbyshire SK17 1EL (the "Council");
- (2) **Derbyshire County Council** of County Hall, Matlock, Derbyshire DE4 3AG (the "County Council");
- (3) **BDW Trading Limited** (Company Registration Number 03018173) whose registered office is at Barratt House, Cartwright Way, Forest Business Park, Bardon Hill, Coalville, Leicestershire LE67 1UF ("the Developer");
- (4) **Jigsaw Homes Tameside** (Company Registration Number 03807022) whose registered office is at Cavendish 249, Cavendish Street, Ashton under Lyne, Tameside OL6 7AT ("Jigsaw");
- (5) **MACCLESFIELD ROAD MANAGEMENT COMPANY LIMITED** (Company Registration Number 14331923) whose registered office is at Adamson House Towers Business Park, Wilmslow Road, Manchester M20 2RY ("Management Company").

Whereas

- (A) The Council is the local planning authority for the area in which the Site is situated and by which the obligations in the Original Undertaking (as amended) are enforceable.
- (B) The County Council is the local highway authority, the local education authority, and a local planning authority for the area in which the Site is situated.
- (C) The Developer is the freehold owner of part of the Site registered with the Land Registry under title number DY537064 and is successor in title to the "Owner" as defined in the Original Undertaking and as such is bound by the terms of the Original Undertaking (as amended).
- (D) Jigsaw is the freehold owner of part of the Site (that part of the Site being plots 18-29, 32-33) and applications for registration of Jigsaw's ownership are currently pending with regard to plots 43-46, 49-52, 54-57 and 62-67 and is or will be successor in title to the "Owner" as defined in the Original Undertaking and as such is bound by the terms of the Original Undertaking (as amended).
- (E) The Management Company will be the freehold owner of the Open Space following legal transfer of the Open Space from the Developer and will be successor in title to the "Owner" as defined in the Original Undertaking and as such is bound by the terms of the Original Undertaking (as amended).
- (F) The Original Undertaking was entered into on 9 March 2015 in order to secure the grant of outline planning permission reference HPK/2014/0119.
- (G) On 17 July 2018 the Original Undertaking was varied by the First Deed of Variation in order to secure the grant of planning permission reference HPK/2017/0694.
- (H) On 9 January 2020 the Original Undertaking was further varied by the Second Deed of Variation in order to amend the definition of "Chargee".

- (I) The Section 73 Application was submitted by the Developer to the Council and validated on 15 November 2022 under reference HPK/2022/0495.
- (J) This Deed is required to vary the Original Undertaking (as amended) accordingly.

NOW THIS DEED is made pursuant to section 106A of the Act and WITNESSES as follows:

1. Definitions

- 1.1. For the purposes of this Deed the following words and expressions shall have the following meanings:

Section 73 Application means the pending application made pursuant to Section 73 of the Town & Country Planning Act 1990 submitted by the Developer to the Council and validated on 15 November 2022 under reference HPK/2022/0495 for the purposes of varying conditions 4 and 24 of planning permission HPK/2017/0694.

First Deed of Variation means the Deed of Variation made pursuant to Section 106A of the Town & Country Planning Act 1990 dated 17 July 2018 and made between (1) the Council; (2) the County Council; (3) Robert Bennett; (4) James Peter Slack; (5) John Richard Slack; (6) Gladman Developments Limited; and (7) BDW Trading Limited in order to secure the grant of planning permission reference HPK/2017/0694 which linked the obligations in the Original Undertaking with that planning permission.

Original Undertaking means a Unilateral Undertaking made pursuant to Section 106 of the Town & Country Planning Act 1990 dated 9 March 2015 and made by (1) Robert Bennett; (2) James Peter Slack; (3) John Richard Slack and (4) Gladman Developments Limited in order to secure the grant of outline planning permission reference HPK/2014/0119

Original Undertaking (as amended) means the Original Undertaking as varied by the First Deed of Variation and the Second Deed of Variation

Second Deed of Variation means the Deed of Variation made pursuant to Section 106A of the Town & Country Planning Act 1990 dated 9 January 2020 and made between (1) the Council; (2) the County Council; (3) BDW Trading Limited; (4) Robert Bennett, James Peter Slack, John Richard Slack; (5) Gladman Developments Limited; and (6) New Charter Homes Limited in order to amend the

definition of "Chargee" in the Original Undertaking.

- 1.2. References in this Deed to any enactment shall be construed as a reference to that enactment as amended extended or re-enacted or repealed by or under any other enactment and shall include all instruments orders and regulations for the time being made, issued or given under that enactment.
- 1.3. All references, clauses, definitions and paragraphs refer to the Original Undertaking (as amended) (unless expressly stated otherwise) and are used in this Deed.
- 1.4. Words importing one gender shall be construed as importing any gender and words importing the singular shall be construed as importing the plural and vice versa.
- 1.5. Any words denoting natural persons shall include legal persons and vice versa.
- 1.6. Clause headings shall not affect the construction of this Deed.
- 1.7. 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.

2. Statutory Basis

- 2.1. This Deed is made pursuant to Section 106 and Section 106A of the 1990 Act and varies the Original Undertaking (as amended) in order to secure new and amended planning obligations made pursuant to section 106 of the 1990 Act.
- 2.2. The Original Undertaking (as amended) remains enforceable pursuant to section 106(3) of the 1990 Act against the Developer and any person claiming or deriving title to the Site (or any part or parts thereof) through or under the Developer as if that person had been an original covenanting party to the Original Undertaking (as amended).
- 2.3. To the extent that the covenants, restrictions and requirements in this Deed are not made under section 106 or section 106A of the 1990 Act they are made under section 1 of the Localism Act 2011 and section 111 of the Local Government Act 1972 and all other powers so enabling.

3. Condition Precedent

- 3.1. This Deed is conditional upon and does not take effect until the granting of a planning permission pursuant to the Section 73 Application.

4. Covenants & Declarations

- 4.1. The Developer, Jigsaw, the Management Company, the Council and the County Council each agree that the Original Undertaking (as amended) shall be varied as set out in Clause 7 below.
- 4.2. The Developer, Management Company and Jigsaw hereby acknowledge and declare that their interest in the Site is bound by the covenants, restrictions and obligations in this Deed.

5. **Severance**

- 5.1. If any provision in this Deed shall in whole or in part be held to be invalid, illegal or unenforceable under any enactment or rule of law such provisions shall to the extent required be severed from this Deed and shall not affect the validity or enforceability of the remaining provisions of this Deed

6. **Third Party Rights**

- 6.1. No person who is not a party to this Deed may enforce any terms hereof pursuant to the Contracts (Rights of Third Parties) Act 1999 **PROVIDED THAT** this clause shall not affect any right of action of any person to whom this Deed has been lawfully assigned or becomes vested in law including successors in title to the Site

7. **Variations to the Original Undertaking (as amended)**

- 7.1. It is hereby agreed between the parties that the following definitions and obligations in the Original Undertaking (as amended) shall be amended as follows:

- 7.1.1. In the event that a planning permission is granted pursuant to the Section 73 Application, the definition of "Planning Permission" in the Original Undertaking (as amended) shall be deleted in its entirety and replaced as follows:

"Planning Permission"	<i>means the outline planning permission on 3 October 2018 pursuant to s.73 of the 1990 Act under reference HPK/2017/0694 and/or any planning permission granted pursuant to s.73 of the 1990 Act under reference HPK/2022/0495.</i>
------------------------------	--

- 7.1.2. A new clause 13 is inserted into the Original Undertaking (as amended) as follows:

13. Future Permissions

13.1 In the event that an application is made pursuant to Section 73 of the 1990 Act for an amendment to the Planning Permission and a planning permission is granted in respect of that application then:

13.1.1 references to "Planning Permission" in this Deed shall thereafter be deemed to include both the Planning Permission and the new planning permission granted pursuant to Section 73 of the 1990 Act; and

13.1.2 this Deed shall apply to and remain in full force in respect of both the Planning Permission and that new planning permission without the need for a further agreement to be entered into pursuant to Section 106 of the 1990 Act unless required to do so by the Council.

In each case **PROVIDED THAT:**

13.3 nothing in this Clause 13 shall fetter the discretion of the Council in determining any application(s) under Section 73 of the 1990 Act or in requiring new or varied planning obligations whether by way of a new or supplemental deed pursuant to Section 106 and/or Section 106A of the 1990 Act; and

13.4 to the extent that any of the planning obligations have been discharged in respect of the applicable Planning Permission nothing shall require the Owner to comply with that obligation again in respect of a planning permission granted under Section 73 of the 1990 Act.

- 7.2. The parties expressly agree that the Original Undertaking (as amended) shall remain in full force and effect save as expressly varied by this Deed.

8. Costs

- 8.1. The Council acknowledges that the Developer has prior to the date of this Deed paid the reasonable legal costs of the Council incurred in the preparation, negotiation and completion of this Deed
- 8.2. The County Council acknowledges that the Developer has prior to the date of this Deed paid the reasonable legal costs of the County Council incurred in the preparation, negotiation and completion of this Deed

9. Registration

- 9.1. This Deed shall be registrable as a local land charge by the Council.

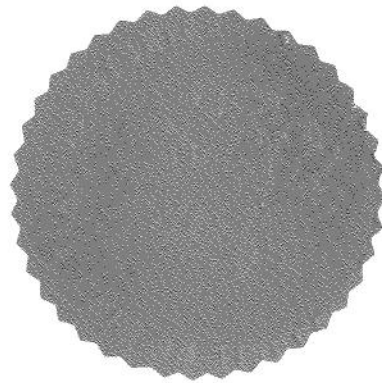
10. Warranty as to Title

- 10.1. The Developer warrants that other than any parties against whom the Original Undertaking (as varied) is not enforceable in accordance with clause 3.4 of the Original Undertaking and the other parties hereto there are no other persons with a legal estate or beneficial interest in the rents and profits or proceeds of sale of the Site or any part thereof.

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

THE COMMON SEAL of HIGH PEAK BOROUGH COUNCIL

was affixed in the presence of:



THE COMMON SEAL OF)

DERBYSHIRE COUNTY COUNCIL)

Was affixed to this Deed)

in the presence of)



Director of Legal Services

Number in Seal
Book 2025/688

Executed as a deed

(but not delivered until the date hereof) on behalf of

BDW TRADING LIMITED

by:

(Name) ROSS GRACE (Signature) ...



in the exercise of the powers conferred on them

by a Power of Attorney dated 28 January 2025

who have thereto set the name of **BDW Trading Limited**

In the presence of:



Witness Signature:

Name of Witness:

SIMON ARTISS

Witness Address:

Adamson House
106 Wilmslow Rd,
Manchester M20 2YY

Witness Occupation PLANNING MANAGER

and

(Name) KEVIN FURLEY (Signature) 

in the exercise of the powers conferred on them
by a Power of Attorney dated 28 January 2025

who have thereto set the name of **BDW Trading Limited**

In the presence of:

Witness Signature: 

Name of Witness: SIMON ARTISS

Witness Address: Adamson House
106 Wilmslow Rd,
Manchester M20 2YY

Witness Occupation PLANNING MANAGER

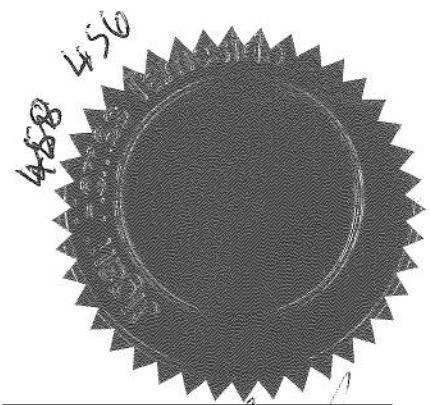
Executed as a deed by affixing The Common Seal of

JIGSAW HOMES TAMESIDE

in the presence of:

Authorised Signatory: 

Authorised Signatory: 



Executed as a deed

(but not delivered until the date hereof) by

MACCLESFIELD ROAD MANAGEMENT COMPANY LIMITED

acting by: KEVIN FURLEY

.....
[Redacted]
.....
Director

.....
[Redacted]
.....
Director/Secretary