



Liverpool
City Council

DATED 30th NOVEMBER 2016

Ref: LS/16F/2122ME

LIVERPOOL CITY COUNCIL

And

Blackstocks Limited

S.111 Agreement

RE: Planning Application Ref: [16F/2122]

LAND AT 222-224 Vauxhall Road, Liverpool, L5 8TZ

J McLoughlin

City Solicitor

Liverpool City Council

THIS DEED is made the 30TH day of NOVEMBER 2016

BETWEEN:

Parties

- (1) Liverpool City Council of Municipal Buildings, Dale Street, Liverpool, L2 2DH ("The Council"); and
- (2) [Blackstocks Limited] (company number:5467812) whose registered office is at 1-3 Blackstock Street, Liverpool, L3 6EP ("The Applicant")

BACKGROUND

- (A) For the purposes of the 1990 Act, the Council is the local planning authority for the area within which the Land is located.
- (B) The Council are the freehold owner of the Land registered with the Land Registry under title number MS540267 and the Applicant intends to carry out the Development of the Land as set out in the Application.
- (C) The Applicant are the freehold owner of the Land registered with the Land Registry under title number MS344869 and the Applicant intends to carry out the Development of the Land as set out in the Application.
- (D) The Applicant has submitted the Planning Application to the Council seeking planning permission for the Development.
- (E) The Council considers, and the Applicant accepts by the terms of this Deed, that the Development should not take place without the Applicant entering into the covenants contained in this Deed and obligations within the Planning Obligation annexed hereto.

OPERATIVE PROVISIONS

1. INTERPRETATION

- 1.1 In this Deed, the following words and expressions have the following meanings:

"1990 Act"	the Town and Country Planning Act 1990.
"Commence Development"	the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out and

“Commence Development” and “Commence” shall be construed accordingly.

“Development”

the development of the Land with the erection of a 4 (four) storey block comprising 12 flats with associated parking and landscaping as set out in the Application.

“Land”

the land at [222-224 Vauxhall Road, Liverpool, L5 8TZ] registered at HM Land Registry under Title Number [MS344869] AND part of the land registered under Title number [MS540267] against which this Deed may be enforced shown for identification edged in red on the attached Plan

“Plan”

the plan attached to this Deed at Appendix 1.

“Planning Permission”

the planning permission that may be granted in pursuance of the Planning Application;

“Planning Application”

an application for full planning permission for the carrying out of the Development made by the Applicant carrying the reference [16F/2122].

“Planning Obligation”

the obligation to be given by the Applicant pursuant to section 106 of the 1990 Act generally in the form as annexed at Appendix 2.

1.2 In this Deed:

1.2.1 the clause headings do not affect its interpretation.

1.2.2 unless otherwise indicated, references to clauses and Schedules are to clauses of and Schedules to this Deed and references in a Schedule to a Part or paragraph are to a Part or paragraph of that Schedule.

1.2.3 references to any statute or statutory provision include references to:

1.2.3.1 all Acts of Parliament and all other legislation having legal effect in the United Kingdom as directly or indirectly amended, consolidated, extended, replaced or re-enacted by any subsequent legislation; and

- 1.2.3.2 any orders, regulations, instruments or other subordinate legislation made under that statute or statutory provision;
- 1.2.4 references to the Land include any part of it;
- 1.2.5 “including” means “including, without limitation”;
- 1.2.6 any covenant by the Applicant not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing;
- 1.2.7 where two or more people form a party to this Deed, the obligations they undertake may be enforced against them all jointly or against each of them individually; and
- 1.2.8 if any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of the Deed is to be unaffected.
- 1.3 The parties to this Deed do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.
2. **EFFECT OF THIS DEED**
- 2.1 This Deed is made pursuant to section 111 of the Local Government Act 1972 and all other powers enabling which may be relevant for the purpose of giving validity hereto or facilitating the enforcement of the covenants herein contained with intent to bind the Applicant and the Council to observe and perform the obligations or their respective parts as hereinafter contained.
- 2.2 Nothing in this Deed restricts or is intended to restrict the proper exercise at any time by the Council of any of its statutory powers, functions or discretions in relation to the Land or otherwise.
3. **LEGAL EFFECT**
- The provisions of this Deed shall have immediate effect.
4. **COVENANTS OF THE APPLICANT**
- 4.1 The Applicant covenants with the Council that, on the acquiring of a freehold interest in the Land by the Council to the Applicant, the Applicant shall enter into the Planning Obligation in the form annexed at Appendix 2 (subject to such revisions or modifications thereto as are subsequently agreed with the Council).

- 4.2 The Applicant covenants not to Commence Development until it shall have entered into the Planning Obligation and submitted the same to the Council.

5. NOTICES

- 5.1 Any notice, demand or any other communication served under this Deed will be effective only if delivered by hand or sent by first class post, pre-paid or recorded delivery.
- 5.2 Any notice, demand or any other communication served is to be sent to the address of the relevant party set out at the beginning of this Deed or to such other address as one party may notify in writing to the others at any time as its address for service.
- 5.3 Any notice, demand or any other communication to be served on the Council is to be sent for the attention of Planning Manager at Municipal Buildings, Dale Street, Liverpool L2 2DH quoting the Planning Application reference.
- 5.4 Where proceedings have been issued in the Courts of England and Wales, the provisions of the Civil Procedure Rules must be complied with in respect of the service of documents in connections with those proceedings.

6. COSTS OF THIS DEED

Upon completion of this Deed the Applicant is to pay to the Council

- (1) its reasonable and proper legal costs of £1000 in connection with the preparation, negotiation and completion of this S.111 Agreement; and
- (2) the sum of £924.00 (NINE HUNDRED AND TWENTY FOUR POUNDS) for the Council's Planning Department's costs in preparation, execution and monitoring thereof.

7. DETERMINATION OF DISPUTES

- 7.1 In the event of any dispute or difference arising between the parties to this Deed in respect of any matter contained in this Deed, at the agreement of all parties, such dispute or difference shall be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in England with such matters as may be in dispute and such person shall act as an expert whose decision shall be final and binding on the parties in the absence of manifest error and any costs shall be payable by the parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the parties in equal shares.

- 7.2 In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to Clause 7.1 or as to the appropriateness of the professional body then such question may be referred by either part to the president for the time being of the Law Society for him to appoint a solicitor to determine the dispute such solicitor acting as an expert and his decision shall be final and binding on all parties in the absence of manifest error and his costs shall be payable by the parties in equal shares.
- 7.3 Any expert howsoever appointed shall be subject to the express requirement that a decision was reached and communicated to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty-eight working days after the conclusion of any hearing that takes place or twenty-eight working days after he has received any file or written representation.
- 7.4 The expert shall be required to give notice to each of the said parties requiring them to submit to him within ten working days of notification of his appointment written submissions and supporting material and the other party will be entitled to make a counter written submission within a further ten working days.
- 7.5 The provisions of this clause shall not affect the ability of the Council to apply for and be granted any of the following: declaratory relief, injunction, specific performance, payment of any sum, damages, any other means of enforcing this Deed and consequential and interim orders and relief.
- 7.6 This clause 7 does not apply to disputes in relation to matters of law or the construction or interpretation of this Deed which will be subject to the jurisdiction of the courts.

8. **JURISDICTION**

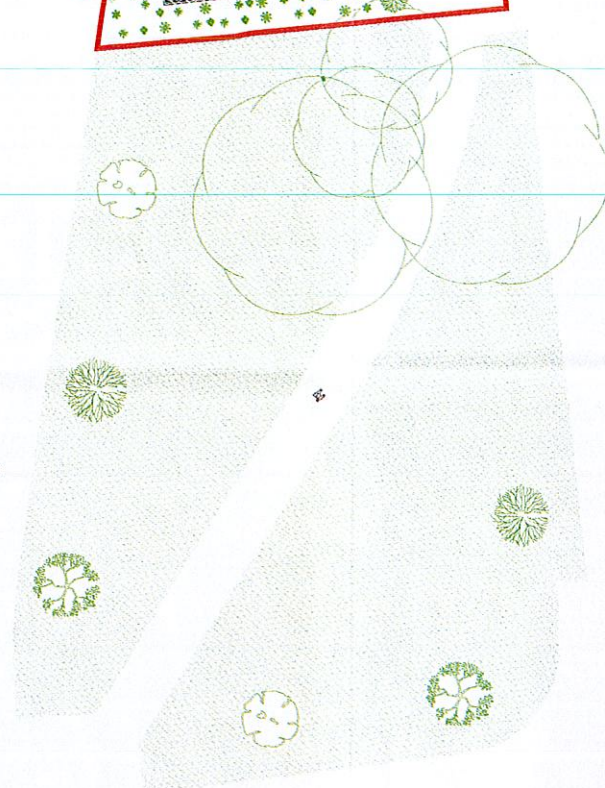
This Deed is to be governed by and interpreted in accordance with the law of England and Wales.

9. **EXECUTION**

IN WITNESS whereof the parties hereto have executed this Deed on the day and year first before written.

SCHEDULE 1

PLAN



166/2222
1011/116

[illegible]

SCHEDULE 2

PLANNING OBLIGATION



DATED

2016

Ref: 16F/2122/ME

LIVERPOOL CITY COUNCIL

And

BLACKSTOCKS LIMITED

And

PENINSULA FINANCE PLC

S.106 Agreement

RE: Planning Application Ref: 16F/2122
222-224 Vauxhall Road, Liverpool (L5 8TZ)

Jeanette McLoughlin
City Solicitor
Liverpool City Council

THIS DEED is made the day of NOVEMBER 2016

BETWEEN

Parties

1. Liverpool City Council of Municipal Buildings, Dale Street, Liverpool, L2 2DH ("The Council")
2. BLACKSTOCKS LIMITED (Registered company number 5467812) whose registered office is at 1-3 Blackstock Street, Liverpool, L3 6EP ("The Owner")
3. PENINSULA FINANCE PLC (Registered company number 4385846) of Studio 5-11, Millbay Road, Plymouth PL3 3LF ("The Mortgagee")

RECITALS

- 1 The Council is the Local Planning Authority for the purposes of this Deed for the area in which the land described in the First Schedule ("the Land") is situated and by whom the obligations contained in this Deed are enforceable.
- 2 The Owner is the owner in fee simple in possession of the Land.
- 3 The Mortgagee is mortgagee of the Land under a legal charge dated 18th December 2015 registered with the Land Registry under Title Number MS344869 under entries C:1 and C:2 and made between the Mortgagee and the Owner.
- 4 The Owner has by application referenced 16F/2122 ("the Planning Application") applied to the Council for permission to develop the Land in the manner and for the uses set out in the Planning Application and in the plans specifications and particulars deposited with the Council and forming part of the Planning Application more particularly set out in the Second Schedule ("the Development").
- 5 The Council has decided to grant permission for the Development in accordance with the Planning Application subject to the making of this Agreement without which the planning permission for the Development would not have been granted.

NOW THIS DEED is made in pursuance of section 106 of the Town and Country Planning Act 1990 and is a planning obligation for the purposes of that section and WITNESSES as follows:

1. The Owner covenants with the Council to observe the restrictions specified in the Third Schedule
2. The Owner covenants to perform the obligations or activities specified in the Fourth Schedule
3. The Mortgagee hereby consents to the execution of this Deed and acknowledges that subject as herein provided the Land shall be bound by the restrictions and obligations contained in the Third and Fourth Schedules hereto
4. The Council covenants with the Owner to observe and perform the obligation set out in the Fifth Schedule
5. It is agreed and declared as follows:
 - 5.1. The expression "the Council", "the Owner" and "the Mortgagee" shall include their successors in title and assigns.
 - 5.2. No person shall be liable for breach of a covenant contained in this Agreement after he shall have parted with all interest in the Land or the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest.
 - 5.3. The covenants contained in this Agreement shall take effect upon the date of this Agreement.
 - 5.4. Words denoting an obligation on the Owner to do any act, matter or thing include an obligation to procure that it be done and words placing the Owner under a restriction include an obligation not to cause or permit or suffer any infringement of the restriction.
 - 5.5. If the permission granted pursuant to the Planning Application shall expire before the development is begun as defined above or shall at any time be revoked this Agreement shall forthwith determine and cease to have effect.
 - 5.6. Nothing in this Agreement shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than one relating to the Development as specified in the Planning Application) granted (whether or not on appeal) after the date of this Agreement.
 - 5.7. The Council will upon the written request of the Owner at any time after the obligations of the Owner under the Agreement have been fulfilled issue written confirmation thereof and thereafter cancel all related entries in the Register of Local Land Charges.
 - 5.8. This Agreement is a local land charge and shall be registered as such.

IN WITNESS whereof these presents have been duly executed as a Deed by the Parties hereto
the day and year first before written

FIRST SCHEDULE

"The Land"

222-224 Vauxhall Road, Liverpool (L5 8TZ) registered at the Land Registry with title number
MS344869 AND title number MS540267 and shown edged in thick black on the attached plan

SECOND SCHEDULE

"The Development"

To erect 4 storey block comprising 12 flats with associated parking and landscaping.

THIRD SCHEDULE

Restriction

The Owner shall not begin the Development within the meaning of section 56 of the Town and Country Planning Act 1990 until it has performed the obligations or activities specified in the Fourth Schedule.

FOURTH SCHEDULE

Owner Obligations

- 1 The Owner shall pay to the Council the Commuted Sum in lieu of on-site provision of open space by the Development at the Land.

"Commuted Sum" means the amount of £12,000.00 (Twelve Thousand Pounds) and shall be paid upon commencement of development if paid within one year after the date of this agreement or the amount as calculated in accordance with the following formula:

£12,000.00 multiplied by the Index for the month immediately preceding the date of payment and divided by the Index for the month immediately preceding the date of this agreement

"Index" means the all items index figure of the Index of Retail Prices published by the Office for National Statistics or any successor, Ministry or Department

FIFTH SCHEDULE

Council Obligation

1. The Council shall utilise the Commuted Sum for the provision or enhancement of public open space or public realm works in the vicinity of the Land.

THE COMMON SEAL of the)
LIVERPOOL CITY COUNCIL)
was hereunto affixed:-)

Assistant City Solicitor

Signed as a deed by)
BLACKSTOCKS LIMITED)
acting by two directors or)
one director and its secretary)

Director (Signature)
(Name)

Director/Secretary (Signature)
(Name)

Executed as a deed by)
BLACKSTOCKS LIMITED)
acting by an attorney in the)
presence of a witness

Attorney (Signature)
(Name)

Witness: (Signature)
(Name)
(Address)
.....
.....
(Occupation)

DATED

2016

Ref: 16F/2122

LIVERPOOL CITY COUNCIL

And

BLACKSTOCKS LIMITED

And


PENINSULA FINANCE PLC

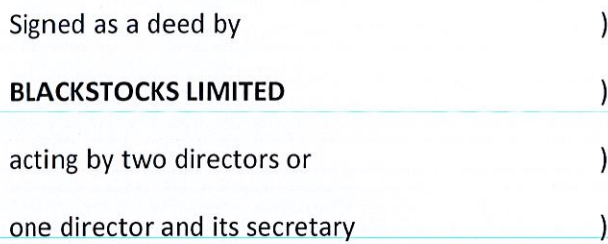
S.106 Agreement

RE: Planning Application Ref: 16F/2122
222-224 Vauxhall Road, Liverpool L5 8TZ

Jeanette McLoughlin
City Solicitor
Liverpool City Council

THE COMMON SEAL of the
LIVERPOOL CITY COUNCIL
was hereunto affixed:-


Principal
Assistant City Solicitor



(Signature)

ZbL

(Name) EDWARD BLACK

(Signature)

[Signature]

(Name) Edward Beck

Attorney

(Signature)

(Name)

Witness: (Signature)

(Name)

(Address)

.....

.....

(Occupation)