



Memorandum

From: Mr K A Winship, Council Solicitor

To: Local Land Charges Officer ✓
cc Development Control Manager

RE: **Planning Application Number: 01/00050/FUL**
Section 106 Agreement Town & Country Planning Act 1990
Development on land to the east of Goslipgate, Pickering

Date: 06 February 2002

A Section 106 Agreement and Planning Obligation dated 31 January 2002 has been made between the Council (1), and Persimmon Homes (Yorkshire) Limited(2).

A copy of the Agreement is attached for your records.

Notice of planning permission has already been issued to the applicants, owners of the above property for the development.

K A Winship
Council Solicitor

Ryedale District Council	
Electoral/Local Land Charges	
- 7 FEB 2002	
Copy to-	
Reply Sent-	

Rec'd & log'd 7.2.2002 SM

DATED 31st January 2001

RYEDALE DISTRICT COUNCIL

and

PERSIMMON HOMES (YORKSHIRE) LIMITED

AGREEMENT AND

PLANNING OBLIGATION

Under Section 106

Town and Country Planning act 1990

Relating to land to the East of Goslipgate, Pickering

WALKER MORRIS
King's Court
12 King Street
LEEDS
LS1 2HL
Tel: 0113 2832500
Fax: 0113 2459412
Ref: RSE/CAS/PHY.2-1476

THIS AGREEMENT is made the 31st day of January 2002

BETWEEN RYEDALE DISTRICT COUNCIL of Ryedale House, Malton YO17 0HH ("the Council") of the first part and PERSIMMON HOMES (YORKSHIRE) LIMITED whose registered office is situated at Persimmon House, Fulford, York YO19 4FE ("the Owner") of the second part

1 DEFINITIONS

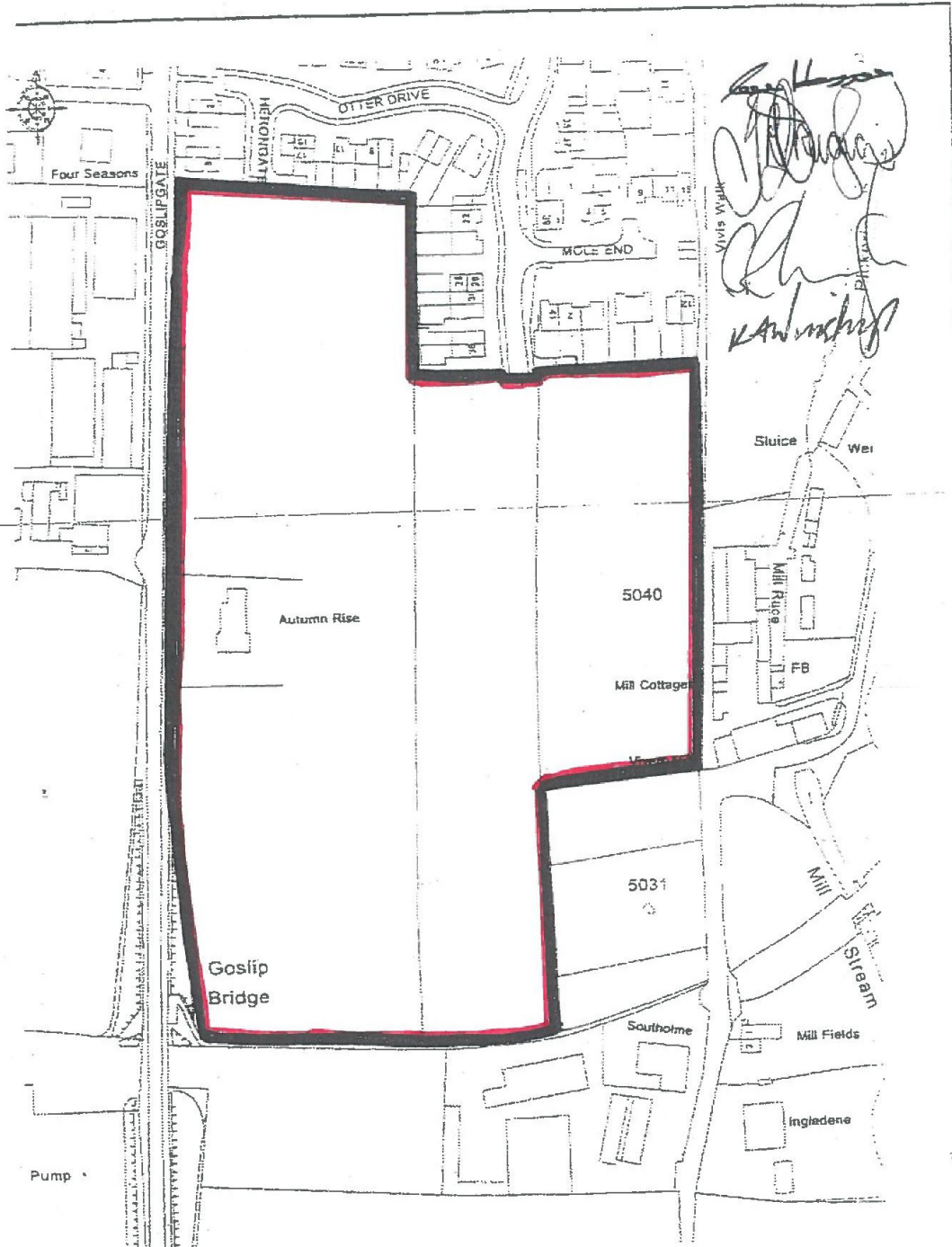
In this AGREEMENT the following words shall have the meaning set out below: -

"the Affordable Housing Units"	the 14 dwellings (being plots numbered 24 to 30 and 75 to 81 within the site as shown on Drawing No. 2830/10/L attached) to be provided for rent on the Site by a Registered Social Landlord and which will be made available to people whose income is insufficient to enable them to afford housing locally on the open market
"the Application"	the application made to the Council for full planning permission (reference number 01/000/50/FUL) for the erection of 87 dwellings and provision of public open space
"the Commencement of Development"	the carrying out of a material operation pursuant to the Planning Permissions in accordance with the provisions of sections 56 and 91 of the 1990 Act
"the On-site Commuted Sum"	the sum of £40,000 such sum to be paid by the Owner to the Council to be used by the Council solely for the purpose of maintaining the Public Open Space
"the Off-site Commuted Sum"	the sum of £20,000 such sum to be paid by the Owner to the Council to be used by the Council solely for the provision of children's play equipment in the locality
"the Development"	the development of the Site in accordance with the Planning Permission and subject only to the draft conditions attached as the First Schedule

“the Plan”	the plan attached to this Agreement
“the Planning Permission”	the permission granted pursuant to the Application
“the Public Open Space”	the area(s) within the Site as shown on Popplewell Associates Drawing No 1139/3/D attached or any other location within the Site as may be agreed in writing by the Council (such agreement not to be unreasonably withheld or delayed) provided for the purpose of public access with any amendment agreed from time to time
“the Site”	the land situate to the East of Goslipgate, Pickering and shown edged red on the Plan
“the 1990 Act”	the Town and Country Planning Act 1990 (as amended)

2 RECITALS

- 2.1 The Council is the local planning authority for the purposes of the 1990 Act for the area in which the Site is situated and is the authority by whom the obligations hereby created are enforceable.
- 2.2 The Owner is the owner in fee simple absolute in possession but otherwise free from encumbrances of the area of the Site shown edged ^{red} ~~blue~~ on the Plan.
- 2.3 The Owner has submitted the Application to the Council for the Planning Permission for the Development.
- 2.4 The Council is desirous of encouraging the Development but would be unwilling to approve or conditionally approve the Application in the absence of this Agreement.
- 2.5 The Owner has agreed to enter into this Agreement so as to create planning obligations in favour of the Council pursuant to Section 106 of the 1990 Act and to be bound by and observe and perform the covenants agreements conditions and stipulations hereinafter contained.



Land to the East of Goslipgate,
Pickering

Location Plan

Scale : 1:1,750

Michael Courcier & Partners
Town Planning and Development Consultants 51 Chorley New Road, Bolton, BL1 4QR Tel: 01204 361551 Fax: 01204 364332 e-mail courcier@netcomuk.co.uk

3 OPERATIVE PROVISIONS

3.1 This Agreement is made pursuant to Section 106 of the 1990 Act and is a planning obligation for the purposes thereof and the covenants contained herein shall bind the Site.

3.2 The planning obligation comprised in this Agreement shall not become effective until the following conditions are satisfied: -

3.2.1 The Planning Permission has been granted; and

3.2.2 The Development has been begun by the carrying out of a material operation as defined in section 56 and 91 of the 1990 Act

Save That any work of or associated with demolition site clearance remediation works environmental investigation site and soil surveys erection of contractors work compound erection of site office erection of fencing to site boundary shall not constitute such a material operation and Commencement of Development shall be construed accordingly

3.3 The Owner hereby covenants with the Council: -

Public Open Space

3.3.1 not to commence construction of more than 40 dwellings on the Site until:-

(a) It has prepared a Scheme of Management for the Public Open Space and sought the approval of the Council to the said scheme

(b) It has made an offer in writing to convey the Public Open Space for a nominal consideration of one pound (£1.00) to the Council

3.3.2 Not to allow or permit the occupation of more than 40 dwellings to be occupied as part of the Development on the Site until it has paid to the Council both the On-site Commuted Sum and the Off-site Commuted Sum. Provided That the On-site Commuted Sum shall not be paid until the Public Open Space has been transferred to the Council.

3.3.3 In the event that the Off-site Commuted Sum shall not have been expended within a period of 5 years from the date of its receipt by the Council then the Off-site Commuted Sum shall be repaid to the Owner (together with accrued interest thereon).

Affordable Housing

3.3.4 To construct the Affordable Housing Units (being Plots numbered 24 to 30 and 75 to 81) within the Site as shown on Drawing No 2830/10/L attached or in such other location or locations as shall be approved by the Council (such approval not to be unreasonably withheld or delayed).

3.3.5 The owner shall provide the Affordable Housing Units on the Site in the following manner:-

(a) The Owner will not allow or permit the occupation of any of the dwellings to be provided as part of the Development on the Site until it has submitted to and the Council has approved in writing details of arrangements for the provision of the Affordable Housing Units by the Owner (such approval not to be unreasonably withheld or delayed) such arrangements to address and contain the matters set out below (such arrangements following approval by the Council to be known as "the Affordable Housing Arrangements" and which will be complied with the Owner as part of this Planning Obligation) Provided That if the Owner has not received the Council's written approval of the arrangements for the provision of the Affordable Housing Units within 21 days of submitting the same to the Councils Chief Executive and Head of Legal Services the arrangements submitted by the Owner will be deemed to have been approved by the Council and the Affordable Housing Arrangements shall be construed accordingly: -

(i) The arrangements the Owner shall make to ensure that such provision is affordable for both initial and subsequent occupiers

(ii) The occupancy criteria the Owner shall adopt for determining the identity of prospective and successive occupiers of such affordable housing and the means by which such occupancy criteria shall be enforced and in particular that the Affordable Housing Units are occupied by persons

(a) who have for a period of at least 2 years been ordinarily resident within the town of Pickering, or

(b) who have been permanently employed in the town of Pickering for 2 years or more, or

(c) if no such person qualifies under sub clauses (a) or (b) above for occupation a person ordinarily resident in one or more of the following parishes for a period of at least 12 months; Aislaby, Wrelton, Middleton, Cropton, Levisham, Lockton, Thornton Dale, Kingthorpe, Newton-on-Rawcliffe, Cawthorne,

(d) then any area in the District of Ryedale

(b) Not to allow or permit the occupation of more than 30 dwellings to be provided as part of the Development on the Site until it shall have commenced the implementation of the Affordable Housing Arrangements or made arrangements for the commencement of the construction of the Affordable Housing Units.

(c) Not to use the Affordable Housing Units for any purpose other than for the provision of rented housing by a registered social landlord to persons in need.

3.4 The Council hereby covenants with the Owners:

3.4.1 To accept the transfer of the Public Open Space within 30 days of receiving a reasonable offer in writing from the Owner to convey the Public Open Space in accordance with Clause 3.3.1 (b) above.

3.4.2 To maintain the Public Open Space for a period of not less than 12 years from the date of transfer to the Council and to provide the Owner with notification of where and how such maintenance has occurred

3.4.3 To provide a receipt to the Owner for the sum referred to in Clause 3.3.2 above

3.4.4 To hold the Off-site Commuted Sum.

3.4.5 Not to apply the On-site Commuted Sum or the Off-site Commuted Sum for any purpose other than those set out in the definitions of those sums.

- 3.5 The Council covenants with the Owner to issue the Planning Permission for the Development within seven days of completion of this Agreement and subject only to those conditions set out in the First Schedule hereto

4 **IT IS HEREBY AGREED AND DECLARED AS FOLLOWS: -**

- 4.1 For the purposes of such parts of this Agreement as may be subject to the law against perpetuities this Agreement shall remain in force for the period of 80 years from the date hereof or (if sooner) as long as any of such of the covenants conditions stipulations herein may not have been performed.
- 4.2 Any dispute or difference arising between the parties hereto with regard to their respective rights and obligations as to any matter or thing arising out of or connected with this Planning Obligation shall be referred to the decision of a single arbitrator to be agreed by the parties or failing agreement between them to be nominated by the President for the time being of the Royal Institution of Chartered Surveyors and any such reference shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 1996 or any statute modification or re-enactment thereof for the time being in force
- 4.3 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than one relating to the Development as specified in the Application) granted (whether or not on appeal) after the date of this Agreement
- 4.4 In this Agreement the expressions "the Council" and "the Owner" shall where the context so admits be deemed to include their respective successors in title.
- 4.5 No party shall be bound by the terms of this Agreement or be liable for the breach of any covenants restrictions or obligations contained in this Agreement occurring after he or it has parted with his or its interest in the Site 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).
- 4.6 Subject to clauses 4.4 and 4.5 above a person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of this Agreement.
- 4.7 The planning obligations hereby created by this Agreement shall be capable of being registered as a Local Land Charge.

FIRST SCHEDULE

(Draft Conditions)

01 01 11:528

DRAFT DECISION NOTICE

RYEDALE DISTRICT COUNCIL

TOWN & COUNTRY PLANNING ACT 1990

FULL APPLICATION FOR PERMISSION TO CARRY OUT DEVELOPMENT

RYEDALE DISTRICT COUNCIL, THE LOCAL PLANNING AUTHORITY, HAS CONSIDERED THIS APPLICATION AND HAS DECIDED IT SHOULD BE APPROVED SUBJECT TO THE CONDITIONS STATED BELOW:

Application No: 01/00050/FUL
Proposal: Erection of 87 dwellings
at: Land Off Goslipgate Pickering North Yorkshire
for: Persimmon Homes Ltd
Decision Date: 3 September 2001

CONDITIONS AND ASSOCIATED REASONS

01 The development hereby permitted shall be begun on or before 2 September 2006.

Reason:- To ensure compliance with Sections 91 to 95 and Section 56 of the Town & Country Planning Act 1990.

02 Before the development hereby permitted is commenced, or such longer period as may be agreed in writing with the Local Planning Authority prior to the commencement of development, details and samples of the materials to be used on the exterior of the building the subject of this permission shall be submitted to and approved in writing by the Local Planning Authority.

(NB Pursuant to this condition the applicant is asked to complete and return the attached proforma before the development commences so that appropriate materials can be agreed and the requirements of the condition discharged)

Reason:- To ensure a satisfactory external appearance.

Persimmon Homes Ltd
c/o Michael Courcier & Partners
51 Chorley New Road
Bolton
BL1 4QR

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- 03 Before the development hereby permitted is commenced, or such longer period as may be agreed in writing with the Local Planning Authority prior to the commencement of development, the developer shall construct on site for the written approval of the Local Planning Authority a one metre square free standing panel of stonework of the type of stone to be used in the construction of the dwellings on Plots 1, 2, 3, 82, 83, 84, 85, 86 and 87. The stonework panel so constructed shall be retained only until the development has been completed.

Reason:- To ensure a satisfactory external appearance.

- 04 Before the development hereby approved commences, or such longer period as may be agreed in writing with the Local Planning Authority prior to the commencement of development, the applicant shall agree in writing with the Local Planning Authority the colour, type and texture of the rendered finish to the external walls of the dwellings on Plots 18, 34, 56 and 70.

Reason:- To ensure a satisfactory external appearance.

- 05 Within 12 months of the commencement of the development hereby permitted or such longer period as may be approved in writing by the Local Planning Authority prior to the commencement of development, the boundary treatment shown on the approved plans shall be carried out to the reasonable satisfaction of the Local Planning Authority.

Reason:- To ensure that the development does not prejudice the enjoyment by the neighbouring occupiers of their properties or the appearance of the locality.

- 06 The proposals for the landscaping of the site shown on Popplewell Associates plan no 1139/3 Revision C shall be completed in the first planting season following the commencement of the development or such longer period as may be agreed in writing with the Local Planning Authority prior to the commencement of development. Any trees/shrubs which, within a period of five years from being planted, die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar sizes and species, unless the Local Planning Authority gives written consent to any variation.

Reason:- To enhance the appearance of the development hereby approved.

- 07 No trenches, pipe runs for services or drains shall be sited within the crown spread of any tree(s) shown on Popplewell Associates plan no 1139/3 Revision C without the prior approval in writing of the Local Planning Authority.

Reason:- It is considered that the existing tree and shrubs are an important visual amenity which should be retained.

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08 The trees and shrubs shown to be retained on Popplewell Associates plan no 1139/3 Revision C and 1139/4 shall be protected during the development of the site by the following measures:-

(i) a chestnut pale or similar fence not less than 1.2 metres high shall be erected at a distance (a) not less than 1 metre from any hedge to be retained and (b) in accordance with the distances recommended in Table 1 of British Standard 5837:1991 'A Guide to the protection of trees on construction sites'.

(ii) no development (including the erection of site huts) shall take place within the crown spread of the trees;

(iii) no materials (including fuel or spoil) shall be stored within the crown spread of the trees;

(iv) no burning of materials shall take place within 10 metres of the crown spread of any tree;

Reason:- The existing trees and shrubs represent an important visual amenity which should be retained.

09 Those sections of existing hedgerow shown cross-hatched on Popplewell Associates plan no 1139/3 Revision C shall be retained and maintained, and details of proposed maintenance measures shall be submitted to and approved in writing by the Local Planning Authority before the commencement of the development. In the event of the existing hedge(s) dying, it/they shall be replaced by a specification that shall first have been approved in writing by the Local Planning Authority. Any new hedgerow plants shall be maintained for a period of five years from being planted and replaced if they die or become diseased by plants of similar size and species unless the Local Planning Authority gives written consent to any variation.

Reason:- It is considered that the existing hedge(s) is/are an important visual amenity which should be retained.

10 The development shall be carried out in accordance with the measures set out in the Method Statement prepared by Popplewell Associates and received by the Local Planning Authority on 2 July 2001.

Reason:- To protect trees, shrubs and hedges which are of amenity value to the area during the course of the development.

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11 Prior to the commencement of the development hereby permitted, or such longer period as may be agreed in writing with the Local Planning Authority prior to the commencement of development, the following drawings and details shall be submitted to, and shall have been approved in writing by the Local Planning Authority in consultation with the Local Highway Authority:-

(i) Detailed plans to a scale of not less than 1:500 showing the proposed highway layout, including dimensions of carriageway, footway verge widths and visibility splays, the proposed buildings and site layout, the proposed floor levels, driveways and the drainage and sewerage system;

(ii) Longitudinal sections to a scale of not less than 1:500 horizontal and not less than 1:50 vertical along the centre-line and channel lines of each proposed road showing the existing ground level and proposed road level, and full details of surface water drainage proposals;

(iii) A typical highway cross-section to a scale of not less than 1:50 showing a specification for the types of construction proposed for carriageways and footways/footpaths and when requested cross-sections along the proposed roads showing the existing and proposed ground levels;

(iv) Details of the method and means of surface water disposal;

(v) Details of all proposed street lighting

(vi) Drawings for the proposed new roads and footways/footpaths giving all relevant dimensions for their setting out including reference dimensions to existing features.

No roadworks shall commence on site prior to the written approval of these details by the Local Planning Authority. The development shall thereafter not be carried out otherwise than in full compliance with the approved drawings and details.

Reason:- To secure an appropriate highway construction to an adoptable standard in the interests of highway safety and the amenity and convenience of highway users.

12 No dwelling to which this permission relates shall be occupied unless or until the carriageway and any footway/footpath from which it gains access is constructed to basecourse macadam level and/or block paved and kerbed and connected to the existing highway network with street lighting installed and operational.

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c/o Michael Courcier & Partners
51 Chorley New Road
Bolton
BL1 4QR

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The carriageway and footway/footpath wearing courses and street lighting shall be completed within three months of the date of commencement of construction of the penultimate dwelling of the development or within two years of the laying of the basecourse whichever is sooner, unless otherwise agreed in writing with the Local Planning Authority.

Reason:- To ensure safe and appropriate access and egress to the properties in the interest of highway safety and the convenience of residents.

- 13 Notwithstanding the provisions of the Town and Country Planning General Permitted Development Order 1995, or any subsequent Order, the garage(s) shall not be converted into a habitable room(s) without the express written approval of the Local Planning Authority.

Reason:- To ensure the retention of adequate and satisfactory provision of off-street accommodation for vehicles generated by occupiers of the dwelling and visitors to it, in the interest of safety and the general amenity of the development.

- 14 Within six weeks of the substantial completion of the last dwelling, all outstanding streetworks shall be completed to the satisfaction of the Local Planning Authority in consultation with the Local Highway Authority.

Reason:- In the interests of safety and convenience of users of the highway.

- 15 Before any of the dwellings hereby approved is first occupied, or such longer period as may be agreed in writing with the Local Planning Authority, the new public footpath on the east side of Goslipgate between Plots 21-27 (inclusive) and 31-38 (inclusive) shall be laid out and constructed in accordance with the detailed specification of the Local Planning Authority in consultation with the County Highway Authority.

Reason:- In the interests of safety and convenience of users of the highway.

- 16 Before any part of the development hereby approved commences the applicant shall carry out works under the terms of the Section 278 Highways Act Agreement to improve the junction of Vivis Lane and Goslipgate.

Reason:- In the interests of safety and convenience of users of the highway.

- 17 All construction traffic associated with the development of the site shall use the Goslipgate access only and no other route shall be used.

Reason:- Goslipgate provides a more commodious route to the site than Kingfisher Drive.

Persimmon Homes Ltd
c/o Michael Courcier & Partners
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Bolton
BL1 4QR

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- 18 The site shall be developed with separate systems of drainage for foul and surface water on and off site.

Reason:- In the interest of satisfactory drainage.

- 19 Unless otherwise approved in writing by the Local Planning Authority, prior to the commencement of development, no development shall take place until details of the proposed means of disposal of foul and surface water drainage, including details of any balancing works and off-site works, have been submitted to and approved by the Local Planning Authority.

Reason:- To ensure that the development can be properly drained.

- 20 Unless otherwise approved in writing by the Local Planning Authority, there shall be no piped discharge of surface water from the development prior to the completion of the approved surface water drainage works and no buildings shall be occupied or brought into use prior to completion of the approved foul drainage works.

Reason:- To ensure that no foul or surface water discharges take place until proper provision has been made for their disposal.

- 21 Before the development hereby approved commences, or such longer period as may be agreed in writing with the Local Planning Authority prior to the commencement of development, the applicant shall submit for the written approval of the Local Planning Authority detailed plans illustrating the measures which will be undertaken to mitigate flooding on the application site. Such measures shall be implemented, unless otherwise agreed in writing, before any of the approved dwellings is first occupied.

Reason:- In order to ensure that future residents are not affected by flooding of Pickering Beck.

INFORMATIVES:

1. A plan is attached showing the route of a public right of way adjacent to the development site. No works should take place which create any obstruction (either permanent or temporary) to the right of way.

If the you require further information, please contact the Public Rights of Way Officer at the Area Highways Office at Pickering (Tel: 01751 472031).

2. Your attention is drawn to the observations of the Police Authority's Architectural Liaison Officer contained in a note of 12 March 2001 (attached).

Persimmon Homes Ltd
c/o Michael Courcier & Partners
51 Chorley New Road
Bolton
BL1 4QR

DRAFT DECISION NOTICE

NO CONSENT OR APPROVAL HEREBY GIVEN REMOVES ANY REQUIREMENT TO SERVE NOTICES OR SEEK APPROVAL FROM THE DISTRICT COUNCIL WHERE SUCH ACTION IS REQUIRED BY THE BUILDING ACT 1984 OR OF ANY OTHER STATUTORY PROVISION. NO PART OF THE PROPOSED DEVELOPMENT SHOULD BE STARTED WITHOUT COMPLYING WITH SUCH REQUIREMENT.


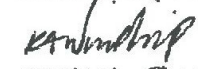
DEVELOPMENT CONTROL MANAGER

Persimmon Homes Ltd
c/o Michael Courcier & Partners
51 Chorley New Road
Bolton
BL1 4QR

IN WITNESS whereof the parties hereto have set their respective Common Seals upon this Agreement as a Deed in the presence of the persons mentioned respectively below the day and year first before written

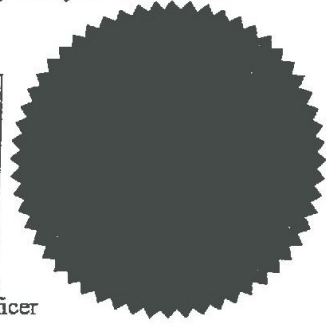
THE COMMON SEAL of RYEDALE DISTRICT COUNCIL: 934/82

Was hereunto affixed in the presence of: -


CHAIRMAN

COUNCIL SOLICITOR

Reg No. 484
Initials *HL*



Chief Legal Officer



SEALED as a Deed on behalf of

PERSIMMON HOMES (YORKSHIRE) LIMITED

In the presence of :-


Director

Secretary

