

# Memorandum

From: Mr K A Winship, Council Solicitor

To: Land Charges - Jo Dodgson  
cc Development Control Manager

Our Ref: FB/DEC02/KH7136

RE: Planning Application Number: 02/00092/REM  
Section 106 Agreement Town & Country Planning Act 1990  
Development at Land adjacent to White House Farm, Foxholes, Driffield

Date: 20 December 2002

A Section 106 Agreement dated 18 December 2002 has been made between the Council (1), Anthony Hartley (2) and HSBC Plc (3).

A copy of the Agreement is attached for your records.

Notice of planning permission can therefore now be issued to the applicants, owners of the above property for the development. ✓

*K.A. Winship*  
K A Winship  
Council Solicitor

Ryedale District Council	
Development Control Officer	
14 JAN 2003	
Copy to:	
Reply to:	

DATED 18 December

2002

**THE RYEDALE DISTRICT COUNCIL**

and

**ANTHONY HARTLEY**

and

**HSBC PLC**

**A G R E E M E N T**

pursuant to Section 106 of the  
Town and Country Planning Act 1990 as amended  
and Section 111 of the Local Government Act 1972  
in respect of Land adjacent to White House Farm in  
the County of East Yorkshire

K A Winship  
Council Solicitor  
MALTON

THIS DEED is made the 18<sup>th</sup> day of ~~December~~ 2002

**BETWEEN**

- 1 **THE RYEDALE DISTRICT COUNCIL**, whose principal office is at Ryedale House Malton in the County of North Yorkshire YO17 7HH ("the Council")
- 2 **ANTHONY HARTLEY** of 1 Thompson Close Newby Scarborough North Yorkshire ("the Owner")
- 3 **HSBC BANK PLC SHEFFIELD SECURITIES CENTRE** of 79 Hoyle Street Sheffield S3 7EW ("the Mortgagee")

**RECITALS**

- (1) The Council is the Local Planning Authority for the purposes of this Agreement for the area within which the property described in the First Schedule ("the Property") is situated
- (2) The Owner is the owner in fee simple in possession of the Property free from encumbrances
- (3) The Mortgagee is mortgagee of the Property under a Legal Mortgage dated the Fourteenth day of December 2001 and made between the Owner of the one part and the Mortgagee of the other part
- (4) The Owner has applied to the Council for permission to develop the Property in the manner and for the uses set out in Second Schedule hereto ("the Proposed Development")
- (5) The Council is satisfied that the performance by the Owner of the covenants herein will remove certain arguments against or objections to the Proposed Development which would without the execution of this Agreement have led to the refusal of consent for the Planning Application
- (6) The Owner has agreed to enter into this Agreement with the Council and be bound by and observe and perform the covenants agreements conditions and stipulations hereinafter contained and on his part to be observed and performed
- (7) The Mortgagee has agreed to join herein in manner hereinafter appearing

**NOW THIS DEED WITNESSES** as follows:-

1 **THIS** Agreement is made pursuant to Section 106 of the Town & Country Planning Act 1990 as amended ("the 1990 Act") Section 111 of the Local Government Act 1972 and all other powers the parties hereunto enabling

and the covenants in this Agreement are planning obligations for the purpose of the 1990 Act which are enforceable by the Council

2 THE Owner and the Mortgagee covenant with the Council that in relation to the Property the works and other matters specified in the Third Schedule shall be carried out in accordance with that Schedule

3 IT is agreed and declared as follows:-

3.1 The expressions "the Council" and "the Owner" and "the Mortgagee" shall include their respective successors in title and assigns

3.2 The Owner hereby agrees to carry out the Proposed Development in strict conformity with the plans and specifications and particulars submitted in connection with the Planning Application and to use the Property and all erections to be made thereon in strict accordance with this Agreement and not otherwise

3.3 For the purpose of such parts of this Agreement as may be subject to the Rule Against Perpetuities that part of the Agreement shall remain in force for the period of eighty years from the date hereof

3.4 The Owner shall on execution of this Agreement pay to the Council a fee to cover the Council's legal costs

3.5 The Owner shall indemnify and keep indemnified the Council against all damages costs charges losses demands expenses or action sustained by the Council arising from any breach of this Agreement by the Owner

3.6 The Mortgagee consents to the Owner entering into this Agreement to the intent that the Property shall hereafter always be subject to the terms of the Agreement PROVIDED THAT the Mortgagee shall only be liable for any breach occurring by reason of any act default or omission in respect of any provisions of this Agreement during such period (if any) as the Mortgagee is a mortgagee in possession of the Property PROVIDED ALWAYS that the successors in title to the Mortgagee shall become fully liable for any breach of this Agreement

3.7 In this Agreement words importing the masculine gender shall include the feminine gender and vice versa and words importing the singular number shall include the plural number and where there are two or more persons included in the expression "the Owner" covenants expressed to be made by or with the Owner shall be deemed joint and several

3.8 A person who is not a party to this Deed shall have no right under the Contracts (Rights of Third Parties) Act 1999 ("the Act") to enforce any of its terms but for the avoidance of doubt it is agreed that the exclusion of the application of the Act shall not prevent all or any future successors in title to any of the parties to this Deed from being able to benefit from or to enforce any of the obligations in this Deed

3.9 For the purpose of avoidance of doubt and subject to clause 3.10 hereof the requirements of this Agreement shall bind the Property and remain in full force and effect until formally varied by agreement of the parties or by the Secretary of State notwithstanding that the Planning Application and any plans submitted with the same shall have lapsed or shall have been amended superseded renewed or resubmitted

3.10 This Agreement is a local land charge and shall be registered as such and shall come into full force and effect when the Proposed Development is commenced and not otherwise

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

**THE FIRST SCHEDULE**

[the Property]

ALL THAT piece of Land adjacent to White House Farm Foxholes Driffield East Yorkshire shown edged red on the Plan annexed hereto

**THE SECOND SCHEDULE**

[Particulars of the Proposed Development]

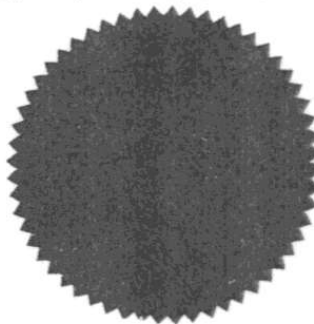
Erection of Nine dwellings with garages and associated accesses as per Application 02/00092/REM

**THE THIRD SCHEDULE**

[Positive Obligations]

To pay to the Council upon completion of the construction of 50% of the dwellings on the Property the sum of Eight Thousand Seven Hundred and Seventy-five Pounds (£8,775.00) for enhancing and providing open space in the near vicinity of the Property

THE COMMON SEAL of THE )  
RYEDALE DISTRICT COUNCIL )  
was hereunto affixed and )  
is authenticated by: )



*[Handwritten Signature]*  
Chairman

*[Handwritten Signature]*  
Council Solicitor

Minute

Reg No. 4938

Initials JB

SIGNED as a Deed by the said )  
ANTHONY HARTLEY in the )  
presence of: )

*[Handwritten Signature]*

*[Handwritten Signature]* (JOINER)

SHADOWLAND  
THROXENBY HALL  
SCARBOROUGH  
YO10 5RE

IN WITNESS WHEREOF this document which is intended to take effect as a deed has been duly executed by a duly authorised Official of the Bank as Attorney of the Bank the day and year first above written.

SIGNED AND DELIVERED

by

ANDREW PAUL CAPSTICK

*[Handwritten Signature]*

Attorney of  
HSBC Bank plc

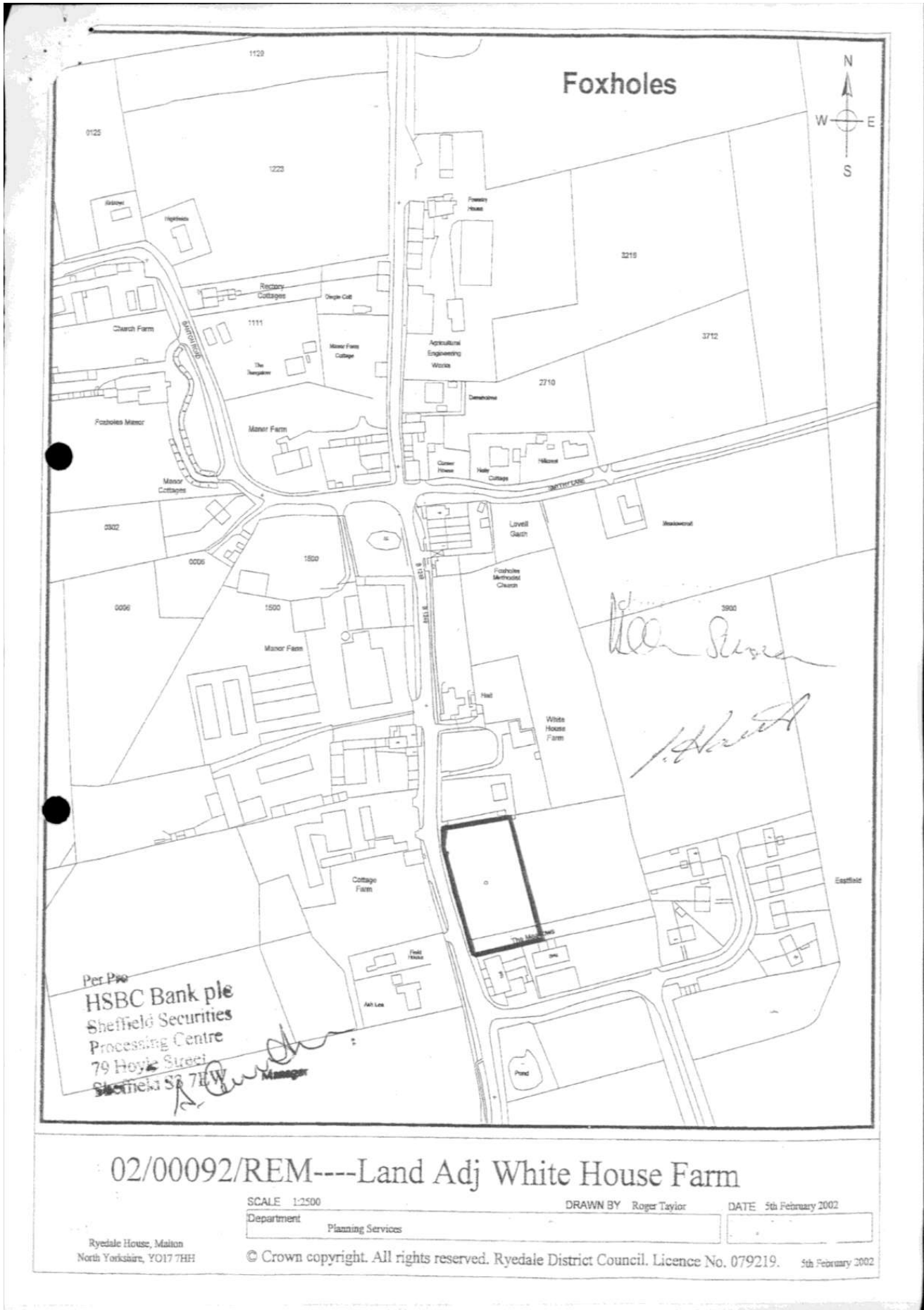
in the presence of:

Witness: MICHAEL STUART APPEBY

Address:

Occupation: BANK OFFICIAL

HSBC BANK PLC  
SHEPHERD & SECURITIES  
PROCESSING CENTRE  
29 BOYLE STREET  
SHEFFIELD S3 7EW



**Foxholes**



Per Pso  
**HSBC Bank plc**  
**Sheffield Securities**  
**Processing Centre**  
**79 Hoyle Street**  
**Sheffield S2 7HW**  
*[Signature]*  
**Manager**

**02/00092/REM----Land Adj White House Farm**

SCALE 1:2500  
 DRAWN BY Roger Taylor  
 DATE 5th February 2002  
 Department Planning Services

Ryedale House, Malton  
 North Yorkshire, YO17 7HH

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