

Memorandum

From: Carole Watson, Legal Services

To: Jo Dodgson, Land Charges

RE: S106 Agreement – Vicarage Farm Vicarage Lane Sherburn

Date: 16 January 2004

The above Section 106 Agreement was completed on the 15 January 2004 and I attach a copy for your records.

Regards.

Carole

THIS DEED is made the 15 day of January 2004
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 **DEANSBURY HOMES LIMITED** of 40 Long Street, Easingwold, York. Y061 3HT ("the Owner") p.l.c JS.
- 3 **THE CO-OPERATIVE BANK** of 53-57 Blandford Square Newcastle upon Tyne NE99 1AR ("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 (subject as hereinafter mentioned but otherwise) free from encumbrances
- (3) The Mortgagee is mortgagee of the Property under a Legal Charge/Mortgage dated the 4 day of June 2003 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(s) with the Council that the Property shall be permanently subject to the restrictions and provisions regulating the Proposed Development and use thereof specified in the Third Schedule hereto

3 **THE** Owner (and the Mortgagee) covenant(s) with the Council that in relations to the Property the works and other matters specified in the Fourth Schedule shall be carried out in accordance with that Schedule

4 **IT** is agreed and declared as follows:-

4.1 The expressions “the Council” and “the Owner” (and “the Mortgagee”) shall include their respective successors in title and assigns

4.2 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

4.3 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

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

4.5 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

4.6 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

4.7 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

4.8 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

4.9 For the purpose of avoidance of doubt and subject to clause 4.10 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

4.10 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 TOGETHER WITH buildings erected thereon situate at and known as Vicarage Farm, Vicarage Lane, Sherburn, Malton, North Yorkshire. YO17 8PL. Shown edged RED on the Plan Annexed to this Agreement.

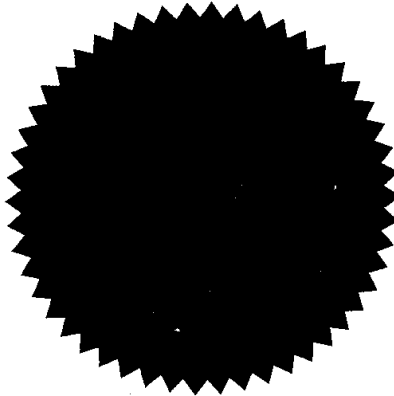
THE SECOND SCHEDULE
[Particulars of the Proposed Development]

Erection of Eleven Dwellings on the property.

THE THIRD SCHEDULE
[Positive Obligations]

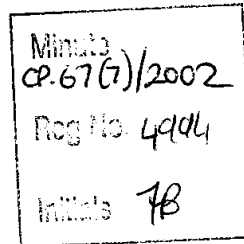
To pay to the Council upon completion of the construction of 50% of the dwellings on the property the sum of Eleven Thousand Pounds (£11,000) for enhancing and or providing open space in the vicinity of the property.

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



Chairman

Council Solicitor



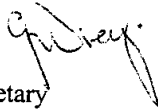
SIGNED as a Deed by the said)
in the)
presence of:)

THE COMMON SEAL of)
)
was hereunto affixed in the)
presence of:)

Director



Secretary



WITNESSED AS A DEED by
THE CO-OPERATIVE BANK plc
acting by its duly appointed attorney
JONET SCARFTH pursuant to a power of
attorney dated 20-8-03 in the presence of



Witness Signature



Witness Name

R. D. INSCALE

Address

THE CO-OPERATIVE BANK plc
REGISTRY CENTRE
409 BRANDFORD HOUSE
NEWCASTLE UPON TYNE
NE4 4AR



SCALE 1:1250

DRAWN BY

DATE 27th October 2003

Department Planning Services

Drawing No.

Ryedale House, Malton
North Yorkshire, YO17 7HH

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DATED

15 January

2004

THE RYEDALE DISTRICT COUNCIL

and

DEANSBURY HOMES LIMITED

and

THE CO-OPERATIVE BANK

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 Vicarage Farm Vicarage Lane
Sherburn Malton in the County of North Yorkshire

K A Winship
Council Solicitor
MALTON