



Memorandum

From: Carole Watson, Legal Services

To: David Butt – Planning
Jo Dodgson/Kerry Clements - Land Charges
Kim Robertshaw – Housing

RE: Section 106 Agreement – Hill Top Farm Harome
Ryedale District Council (1) G I Marwood (2)
Barclays Bank Plc (3)

Date: 16 August 2005

RYEDALE D.C.

16 AUG 2005

DEVELOPMENT CONTROL

The above Section 106 Agreement has now been completed and I attach a copy of the Agreement for your records.

Please could the Planning Department issue the decision notice as soon as possible.

Regards.

Carole
.....

THIS DEED is made the 2ND day of AUGUST 2005

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 GEORGE IRVINE MARWOOD of Hill Top Farm, Main Street, Harome, York YO62 5JF ("the Owner")
- 3 BARCLAYS BANK PLC Registered office ~~54 Lombard Street, London~~ ^{1 CHURCHILL PLACE LONDON E14 2HG} EC3P 3AT ("the Mortgagee") WHOSE ADDRESS FOR SERVICE IS

BARCLAYS BANK PLC
UK BANKING SERVICE CENTRE
P.O. BOX 295
BIRMINGHAM B1 3PF

DEFINITIONS

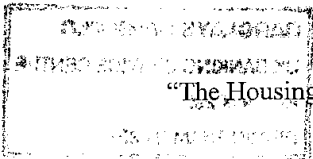
In this Agreement the following expressions shall have the following meanings:-

- "Council Solicitor" means the Council Solicitor for the time being for Ryedale District Council or such other Officer as may from time to time be primarily responsible for the provision of legal advice to the Council.
- "Development Control Manager" means the Development Control Manager for Ryedale District Council or such other Officer as may from time to time be nominated by him.
- "Eligible Occupiers" means a person or household identified in accordance with the provisions of the Fourth Schedule to this Agreement
- "Discount Sale Unit" Means the dwelling to be constructed pursuant to ~~Part 2 of~~ the Third Schedule to this agreement
- "Eligible Occupiers Estate Interest" means the estate interest of an Eligible Occupier in any Discount for Sale Dwelling arising out of the grant by the Housing Association of a derivative interest (whether by way of lease or underlease or otherwise as may be approved in writing by the Council (such approval not to be unreasonably withheld or delayed

“Housing Association’s Estate Interest” means the estate interest of the Housing Association in any Discount for Sale Dwelling arising out of the disposition by the Developer of such Discount for Sale Dwelling’

“Open Market Dwellings” means dwellings erected on the Property excluding the Discount Sale Dwellings

“Open Market Value” means the value determined in accordance with the provisions of Part 3 of the Third Schedule.

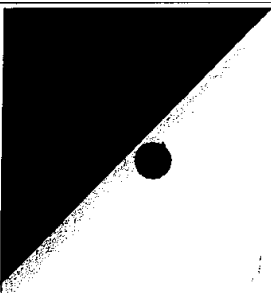


“The Housing Association” Means the Yorkshire Housing Association or an alternative Registered Social Landlord registered in accordance with Part 1 Chapter 1 of the Housing Act 1996 (or as redefined by any amendment, replacement or re-enactment of such Act) and registered by the Housing Corporation under the Provisions of Chapter 1 Part 1 of the Housing Act 1996 and approved in writing by the Housing Services Manager.

“Housing Services Manager” means the Housing Services Manager of Ryedale District Council or such other Officer as may from time to time be nominated by him.

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 shown for the purposes of identification edged in Red. on Plan 1 (subject as hereinafter mentioned but otherwise) free from encumbrances
- X (3) The Mortgagee is mortgagee of the Property under ^aLegal Mortgage~~s~~ dated the 16 day of November 1995 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:
 - 2.1 the Property shall be permanently subject to the restrictions and provisions regulating the Proposed Development and use thereof specified in the Third Schedule hereto and
 - 2.2 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 TOGETHER WITH buildings erected thereon situate at and known as Hill Top Farm, Main Street, Harome, York shown edged in red on Plan 1

THE SECOND SCHEDULE

[Particulars of the Proposed Development]

Conversion of outbuilding to four dwellings and one affordable housing unit together with alterations to existing access

THE THIRD SCHEDULE

1 **Affordable Housing**

2 **Disposal of the Discount Sale Unit**

The Owner covenants with the Council as follows:

- 2.1 To construct and complete at its own cost the Discount Sale Unit in accordance with standards and specifications as may from time to time be published by the Housing Corporation by the occupation of the last dwelling constructed on the Property pursuant to the Planning Permission.
- 2.2 For a period commencing six months before the estimated date for completion of the Discount Sale Unit and ending on the date two months after the completion of the Discount Sale Unit ("the Marketing Period") the Owner shall at its own cost use reasonable endeavours to market the Discount Sale Unit such marketing to include advertising promoting and administering sales of the Discount Sale Unit on behalf of the Housing Association.

- 2.3 As a result of the marketing referred to at clause 2.2 above the Owner will collate the details of persons who may subsequently be approved by the Housing Association and the Housing Services Manager as Eligible Occupiers and will forward such details to the Housing Association within 5 working days of receiving such details.
- 2.4 If the persons identified in accordance with clause 2.3 above are approved by the Housing Association the Owner shall offer to sell the Discount Sale Unit to the Housing Association.
- 2.5 The offer referred to at clause 2.4 above shall include but shall not be limited to the following terms:
- 2.5.1 The Discount Sale Unit shall be offered for sale to the Housing Association for £75,000 or at 37.5 % of Open Market Value, whichever is the lower; and
- 2.5.2 Contracts to be exchanged within two months of the date of acceptance of the offer by the Housing Association.
- 2.6 The Owner shall leave the offer referred to at clause 2.4 above open for acceptance by the Housing Association for a period of 28 days from the date of the offer.
- 2.7 In the event the offer referred to in clause 2.4 above is rejected by the Housing Association or is not accepted by the Housing Association within the 28 day period provided in clause 2.6 above then the offer shall lapse and shall no longer be capable of acceptance and the terms of clause 2.9 below shall apply
- 2.8 If the Housing Association accepts the offer within the 28 day period provided by clause 2.6 above then the Owner will use reasonable endeavours to exchange contracts for the sale of the unit that was the subject of the offer with the Housing Association within a period of two months from the date of acceptance of the offer by the Housing Association PROVIDED ALWAYS that exchange of contracts with the Housing Association shall take place simultaneously with the exchange of contracts between the Housing Association and the Eligible Occupier (who shall acquire a derivative estate interest from the Housing Association)

- 2.9.1 If the Marketing Period has not expired then the provisions of clauses 2.3 to 2.8 inclusive shall be repeated to the effect that the process shall be recommenced involving a new Eligible Occupier; or
- 2.9.2 If the Marketing Period has expired then the obligations set out in clauses 2.2 to 2.8 inclusive shall cease to have effect and the provisions of clause 2.10 below shall apply in respect of affordable housing provision.
- 2.9 If after the Marketing Period has expired any outstanding offers shall continue to be progressed in accordance with clauses 2.5 to 2.8 inclusive and in the event any offers have been rejected or contracts have not been exchanged within the two months period specified in clause 2.8 for any of the Discount Sale Unit then the following shall apply:
- 2.10.1 The Owner will notify the Council in writing that the offers have been rejected or contracts have not been exchanged ("the Notification"); and
- 2.10.2 Owner shall be entitled to dispose of any of the Discount Sale Unit to which this clause applies on the open market from the date of the Notification; and
- 2.10.3 The Owner shall pay to the Council within 28 days of the date of sale on the open market of the Discount Sale Unit that has not been disposed of to the Housing Association a sum in lieu of the Discount Sale Unit that has not been disposed of and the sum shall be calculated in accordance with the provisions of the Fifth Schedule.
- 2.10.4 On payment of the sum referred to in clause 2.10.3 above the Owner shall be released from the affordable housing obligations in this clause 2 in their entirety in so far as they relate to the relevant unit in respect of which a commuted sum has been paid pursuant to clause 2.10.3 above PROVIDED ALWAYS that the provisions of clause 2.11 shall continue to apply to any of the Discount Sale Unit that have been disposed of to the Housing Association.

2.11 The following provisions shall only apply and regulate the future disposals of the Discount Sale Unit disposed of to the Housing Association by the Owner. The Owner shall ensure that the document transferring the Discount Sale Dwelling to the Housing Association incorporates provisions to ensure so far as the law allows that:-

2.11.1 Except where an Eligible Occupier has staircased to 100% (and acquired the Housing Association's interest) the Housing Association's Estate Interest in the Discount Sale Unit shall not be subsequently transferred or disposed of other than to a Registered Social Landlord particulars of which will have been previously submitted to and approved in writing by the Housing Services Manager (such approval not to be unreasonably withheld or delayed) nor assigned transferred or disposed of other than to a person or persons approved by the Council and who cannot reasonably afford to purchase a Dwelling of a similar kind generally available on the open market in the district of Ryedale;

2.11.2 The Eligible Occupiers' Estate Interest of the Discount Sale Unit disposed of in accordance with clauses 2.3 to 2.8 (inclusive) above shall not be assigned transferred or disposed of other than at a price not exceeding 40% of the Open Market Value; or in the case only of a Mortgagee in Possession up to 100% of the Open Market Value PROVIDED that the Mortgagee in Possession shall pay to the Council immediately following the disposal of the Discount Sale Dwelling any money realized over and above 40% of the Open Market Value and remaining after repayment of their loan.

2.11.3 When the Discount Sale Unit becomes available for resale the person seeking to re-sell ("the Vendor") will write to the Housing Association informing it and inviting the Housing Association to market the property to the Vendor.

2.11.4 On receiving notification referred to at 2.11.3 above the Housing Association shall write to the Housing Services Manager and agree with him the criteria which potential occupiers of the Discount Sale Unit must satisfy (the Agreed Criteria). The

Housing Association will then write people who satisfy the Agreed Criteria giving sales details

2.11.5 During the first 12 weeks that any interest in the Discount Sale Unit is offered for sale from time to time it shall not be offered other than to a person or persons residing within the district of Ryedale.

2.11.6 If required by the Council the Vendor shall satisfy the Council that the unit has been actively marketed for a period of at least 16 weeks to persons residing within the district of Ryedale who cannot afford to purchase a Dwelling of a similar kind generally available on the open market in the district.

2.11.7 In the event that any interest is offered for sale in accordance with the provisions of paragraph 2.11.5 and 2.11.6 above and on either:

2.11.7.1 the expiration of the period of 12 weeks there is no buyer who has made an offer to purchase the interest in the relevant unit at a price not exceeding the price agreed pursuant to clause 2.11.2 above such interest upon the terms that are reasonably acceptable to the Vendor; or

2.11.7.2 if there is such a person who is prepared to proceed on that basis who has not entered into a contract to purchase and which has not been completed at that price upon terms that are reasonably acceptable to the Vendor within 12 weeks of the relevant unit having been placed on the open market for sale pursuant to the provisions of 2.11.3 to 2.11.6 above then the Vendor may dispose of his interest in the relevant unit in accordance with 2.11.5 above to a person irrespective of his geographical area of residence who cannot afford to purchase Dwelling of a similar kind generally available on the open market in the district of Ryedale.

2.11.8 If despite the Vendor using reasonable endeavours cannot dispose of the relevant unit within 24 weeks of

it being offered for sale and complying with the provisions of Clauses 2.11.1 to 2.11.7 inclusive above then the Vendor shall be at liberty to dispose of the relevant unit on the open market upon such terms as it thinks fit

- 2.11.9 In the event of a disposal of 100% of the Open Market Value of the relevant unit pursuant to paragraph 2.11.8 above the Vendor shall pay a commuted sum to the Council for the attention of the Housing Services Manager calculated in accordance with the provisions of Part 1 of the Fifth Schedule
- 2.11.10 In the event of a disposal of the relevant unit on the open market in accordance with clause 2.11.8 and 2.11.9 the Discount Sale Unit shall forthwith cease to be subject to the terms of this planning obligation
- 2.11.11 In the event that Clause 2.11.10 becomes effective the Council (or its successor) will upon written request supply to any interested party confirmation of the effect and events of the above and will remove the entry in the Local Land Charges Register and any other entry in any other register open to public inspection
- 2.11.12 For the Purpose of 2.11.9 above the Open Market Value shall take no account of any improvements made to the Discount Sale Unit (excluding decorative improvements) and the Vendor shall be entitled to retain 100% of the increase in open market value attributable for such improvements.

THE FOURTH SCHEDULE

[Occupancy Criteria]

The Owner shall ensure the Discount Sale Unit is occupied by persons

1. who have for a period of at least 2 years been ordinarily resident within the village of Harome, or
2. who have been permanently employed in the town of Harome for 2 years or more, or

3. if no such person qualifies under clauses 1 or 2 above for occupation a person ordinarily resident in one or more of the following parishes for a period of at least 2 years; - Wombledon, Nunnington, Oswaldkirk, Sproxton, Nawton, Beadlam, Helmsley, Welburn, Salton.
4. then any area in the District of Ryedale
5. if no such person qualifies under clause 4 above then persons who have a strong local connection with Ryedale District by one of the following means:-
 - 5.1 family association in the area of Ryedale District,
 - 5.2 any period of ordinary residence in the area of Ryedale District not immediately before the date on which any Affordable Housing Unit becomes vacant, or
 - 5.3 through their work provide important services to Ryedale District and who need to live closer to the local community or who have employment within the area of Ryedale District

THE FIFTH SCHEDULE

[Affordable Housing Commuted Sum]

The commuted sum payable in lieu of Affordable Housing Unit shall be calculated as follows:-

The Open Market Value of the Affordable Housing Units

minus

The purchase price of the Affordable Housing Unit as stated in this Agreement which would have been paid by the Housing Association had the Affordable Housing Unit been provided in accordance with the provisions of Third Schedule.

Chairman
[Signature]
Council Solicitor
[Signature]

BARCLAYS BANK PLC
UK BANKING SERVICE CENTRE
P.O. BOX 289
BIRMINGHAM B1 3PF

G J Marwood

Hill Top Farm, Harome

4c

SCALE 1:2500
Department

DRAWN BY

DATE 1st September 2003
Drawing No. 03/00852/FUL

Planning Services

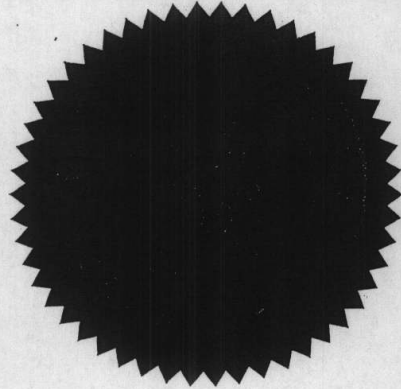


Ryedale House, Malton
North Yorkshire, YO17 7HH

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1st September 2003

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



Minute P.60/2008
Reg No. 5090
Initials CW

Chairman

Council Solicitor

[Handwritten signature]

[Handwritten signature]

SIGNED AS A DEED by)
GEORGE IRVINE MARWOOD)
in the presence of)

GS Marwood

Witness

PE. Tui Schreier

Address

Helmsley

Occupation

EXECUTED AS A DEED by)
BARCLAYS BANK PLC)
acting by a director and its secretary)

[Handwritten signature]
[Faint printed text]

Director

CHRISTINE ANN PUGH

Secretary

QC	INITIALS	DATE
	DH/S	26/7/08

DATED 2ND AUGUST 2005

THE RYEDALE DISTRICT COUNCIL

and

GEORGE IRVINE MARWOOD

and

Barclays PLC

AGREEMENT

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 Hill Top Farm, Main Street, Harome, York in
the County of North Yorkshire

K A Winship
Council Solicitor
MALTON

BY THIS POWER OF ATTORNEY dated 7 December 2004 BARCLAYS BANK PLC of 54 Lombard Street, London, EC3P 3AH (the "Bank") hereby appoints for a period of one year from the date of this deed

Alan William Shepherd
Senior Manager Specialist Support
Barclays Bank PLC
Specialist Support
Camden House East
Summer Row
Birmingham
B1 3QA

as its true and lawful attorney (the "Attorney") for and on behalf of the Bank (but without prejudice to or in any way limiting the actual or ostensible authority of the said Attorney), to do and execute the following acts and deeds


1. To sign all forms of written documents except acceptances and endorsements of bills of exchange.
2. To accept and endorse bills of exchange jointly with some other person duly authorised by the Bank for that purpose.
3. To sign, execute and deliver all deeds including, without limitation, guarantees, bonds, deeds of easement and indemnities, deeds regulating the priority of mortgages, releases, discharges, transfers of mortgages, reconveyances and re-assignments of real or personal property, mortgaged, charged or assigned by way of security to the Bank.
4. To make any declaration, affidavit or proof of any debt due or claimed to be due to the Bank in any proceedings taken or hereafter to be taken by or against any person, firm or company under any act for the time being in force in relation to the bankruptcy, insolvency or liquidation of debtors, firms or companies of whatever nature.

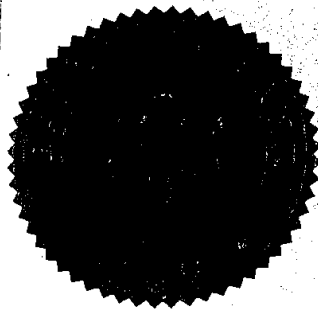
This Power of Attorney replaces any previous Power of Attorney issued to the Attorney save for any specific power issued.

This Power of Attorney shall be construed under and governed by the laws of England and Wales, to the jurisdiction of whose courts do hereby submit.

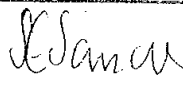
In witness whereof, this Power of Attorney has been executed as a deed on the date first written above.

Executed as a deed
by Barclays Bank PLC
by the affixing of its Common
Seal in the presence of:

I certify that this is a true
and complete copy of the
original

FOR BARCLAYS BANK PLC
Name PARAMJIT BILKHA
Job Title Bank Official
Date 9/12/04



ASSISTANT SECRETARY
Authorised Sealing Officer
Seal Number


GCS/PA/04/385

Ref: 2347