



PT80270.

Memorandum

From: Carole Watson, Legal Services

To: Gary Housden – Development Control
Jo Dodgson/Kerry Clements - Land Charges
Kim Robertshaw – Housing Department

RE: Section 106 Agreement -
Ryedale District Council (1) Birdsall Estates Company Limited (2)

Date: 11 November 2005

SALENTS LANE WHARRAM (E-STREET)
a176A

The above Section 106 Agreement was completed on the 10 November 2005 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

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Land at Salents Lane
Wharram.

THIS DEED is made the 10th day of November 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 **BIRDSALL ESTATES COMPANY LTD** of The Estate Office, Birdsall, Malton, North Yorkshire ("the Owner")

DEFINITIONS

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

"Affordable Rented

Dwelling"

means the three bed dwelling constructed in accordance with the provisions of the Fourth Schedule to this Agreement on that part of the Property shown hatched red on the Plan ("the Restricted Property")

"Affordable Rent"

means a rent which is comparable to the rents charged in the Ryedale District Council administrative area by Registered Social Landlords for properties of an equivalent type, age and floor area and location and which sum shall be agreed for lettings between the Housing Services Manager and the Registered Social Landlord and thereafter any increases or decreases in accordance with the Registered Social Landlords rent setting policy and the Housing Corporation guidance at the time.

"Nominated Tenant"

means a person or household identified in accordance with the provisions of the Fifth Schedule to this Agreement

"Open Market Dwellings"

means dwellings erected on the Property excluding the Affordable Rented Dwelling

“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 or carry out the functions at the date hereof carried out by him
“Assured Tenancy”	means a tenancy within the terms of the Housing Act 1988 as amended.
“Compliance Fee”	means the fee paid by the Owner in accordance with Clauses 1.1.7 and 1.1.8 of the Fourth Schedule.

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 Owner has applied to the Council for permission (“the Planning Application”) to develop the Property in the manner and for the uses set out in Second Schedule hereto (“the Proposed Development”)
- (4) 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
- (5) 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

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

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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 covenants with the Council as follows:

2.1 to perform the obligations contained in the Fourth Schedule

2.2 to perform the obligations contained in the Third Schedule

2.3 that the Restricted Property shall be permanently subject to the restrictions and provisions regulating the Proposed Development and use thereof specified in the Fourth and Fifth Schedules hereto

3 **THE** Council covenants with the Owner as follows:

3.1 Not to apply the said Commuted Sum for any purpose other than that set out in the Third Schedule

3.2 To provide the Owner with details of how the Commuted Sum has been utilised in the provision of or enhancement of open space within the vicinity of the Property

3.3 To repay to the Owner (and in this context the provisions of clause 4.1 shall not apply) all or any part of the said Commuted Sum that within a period of 5 years from the date of the payment of the said Commuted Sum has not been expended for purposes set out in the Third Schedule

3.4 Upon the completion of this Agreement to procure the issue of the Planning Permission relating to the Proposed Development in the form of the draft annexed in the Sixth Schedule hereto

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

4.1 The expressions "the Council" and "the Owner" 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

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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 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

4.7 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

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

4.9 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

4.10 If the Planning Permission granted pursuant to the Planning Application shall expire before the Proposed Development is commenced or shall at any time be revoked this Agreement shall forthwith be annulled and cease to have any effect and the Council shall immediately remove any entry relating to this Agreement from the Register of Local Land Charges

4.11 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Property in accordance with a Planning Permission (other than one relating to the Proposed Development) granted (whether or not on Appeal) after the date of this Agreement

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

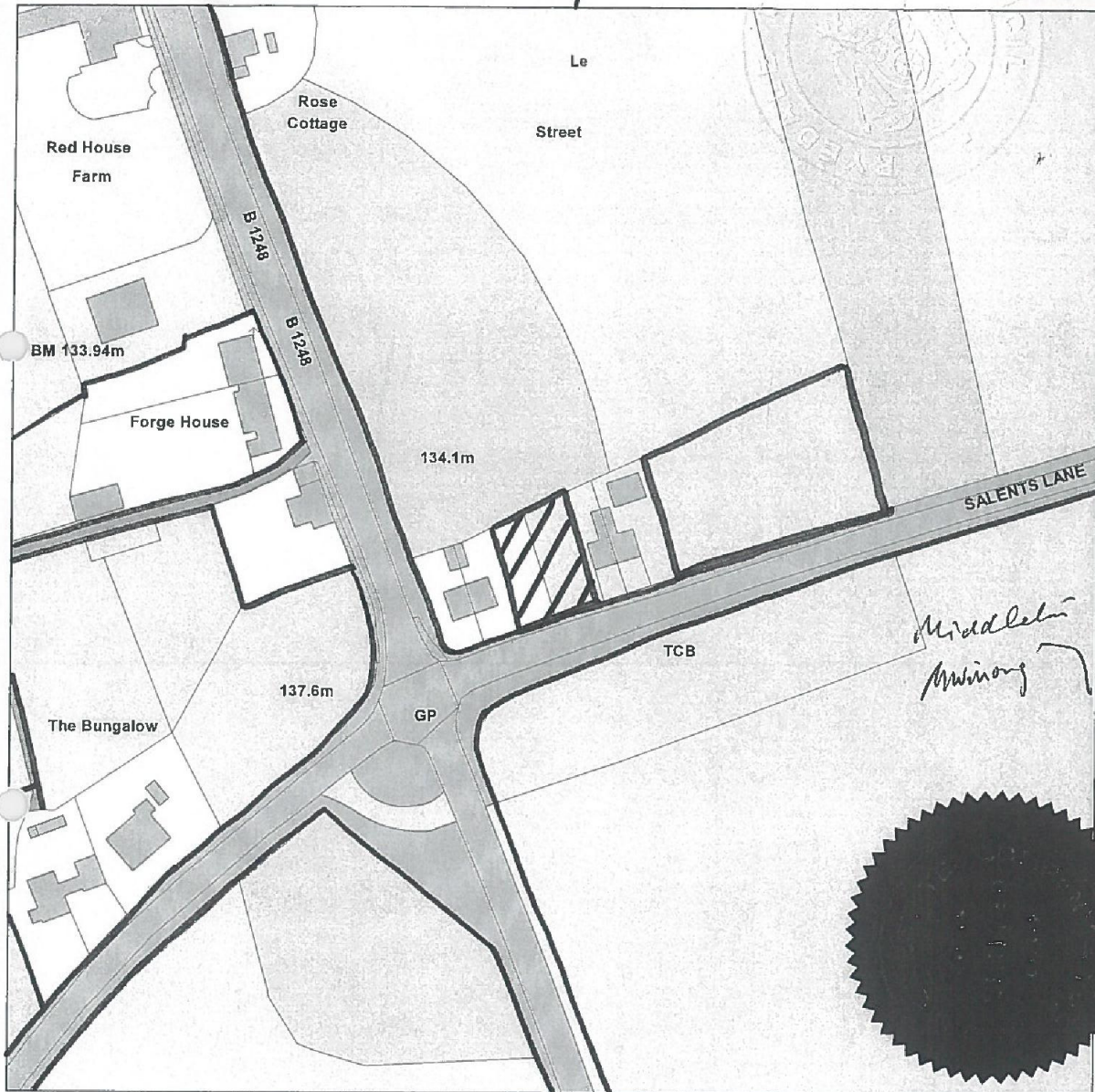
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Salents Lane

Wharram Le Street

DM

wharram



*Middleton
Mining*

Scale : 1:1250

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Organisation	Ryedale District Council
Department	Planning Services
Comments	
Date	28 January 2005
SLA Number	100019406

- 1.1.2 that the Owner shall not dispose of or cause or permit the disposal of the Affordable Rented Dwelling other than for the purpose of providing an Assured Tenancy at an Affordable Rent to a Nominated Tenant.
- 1.1.3 that the Affordable Rented Dwelling is fully serviced and accessible by vehicles and pedestrians prior to occupation by the Nominated Tenant.
- 1.1.4 that he will comply with the Nomination Process set out in the Fifth Schedule to this Agreement for the first and any subsequent letting of the Affordable Rented Dwelling.
- 1.1.5 to give the Council not less than twenty working days notice in writing of the availability of the Affordable Rented Dwelling for occupation for the first letting and then any subsequent letting of the Affordable Rented Dwelling and at the same time supply to the Council for the attention of the Housing Services Manager a copy of the proposed tenancy agreement which the Nominated Tenant will be required to enter into for approval by the Housing Services Manager.
- 1.1.6 to give to the Council a copy of any notice served on the Nominated Tenant by the Owner seeking possession under the terms of the Housing Act 1988, within seven working days of the date of service of the notice on the Nominated Tenant.
- 1.1.7 to supply within 14 working days from the date of the letting of the Affordable Rented Dwelling to the Nominated Tenant a certified copy of the tenancy agreement to the Council, together with the sum of £50.00 plus VAT as the Compliance Fee.
- 1.1.8 to pay to the Council on the date of each anniversary of the date of the first tenancy agreement the sum of £50.00 plus VAT as the Compliance Fee for the following year.

THE FIRST SCHEDULE
[the Property]

ALL THAT piece of land TOGETHER WITH buildings erected thereon situate at and known as land at Salents Lane, Wharram Le Street, Malton, North Yorkshire, shown edged in red on the attached plan.

THE SECOND SCHEDULE
[Particulars of the Proposed Development]

Erection of one 2-bed dwelling, two 3-bed dwellings, one 4-bed dwelling and one 5-bed dwelling with garages and formation of new access.

THE THIRD SCHEDULE
[Negative Obligations]

COMMUTED SUM

Not to commence construction of more than 50% of the dwellings on the Property until the sum of Nine Thousand pounds (£9,000) has been paid to the Council for enhancing and providing open space in the vicinity of the Property.

THE FOURTH SCHEDULE
[Positive Obligations]

AFFORDABLE HOUSING

- 1 The Owner covenants to provide the Affordable Rented Dwelling in accordance with the provisions of this schedule.
The Owner covenants:-
 - 1.1 to build the Affordable Rented Dwelling in accordance with such specifications and standards as may from time to time be published by the Housing Corporation and,
 - 1.1.1 to ensure that the Affordable Rented Dwelling to be built on the Property is completed and available for occupation prior to the completion of the third Open Market Dwelling

DRAFT

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: 04/00769/FUL

Proposal: Erection of one 2-bed dwelling, two 3-bed dwellings, one 4-bed dwelling and one 5-bedroom dwelling with garages and formation of new access

at: Land At Salents Lane Salents Lane Wharram Le Street Malton North Yorkshire

for: The Birdsall Estate Company Ltd

Decision Date:

CONDITIONS AND ASSOCIATED REASONS

The proposed development is in accord with the following development plan policies and there are no other material considerations that outweigh those listed development plan policies:

North Yorkshire County Structure Plan - Policy H4 - Development in settlements
Ryedale Local Plan - Policy H7 - Residential development within settlements
Ryedale Local Plan - Policy H19 - Affordable housing on large non-allocated sites
Ryedale Local Plan - Policy H14 - Public open space in residential developments
Ryedale Local Plan - Policy H15 - Boundary walls and fences
Ryedale Local Plan - Policy T3 - Access to the local highway network
Ryedale Local Plan - Policy U2 - Availability of water supplies
Ryedale Local Plan - Policy U3 - Surface water run-off
Ryedale Local Plan - Policy U4 - Sewage disposal
Ryedale Local Plan - Policy ENV3 - Development in the Areas of High Landscape Value
Ryedale Local Plan - Policy ENV7 - Landscaping
Ryedale Local Plan - Policy ENV5 - Visually Important Undeveloped Areas
Ryedale Local Plan - Policy C13 - Archaeological investigation of sites
Ryedale Local Plan - Policy ENV1 - New development outside Development Limits

01 The development hereby permitted shall be begun on or before

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

The Birdsall Estate Company Ltd
C/o Bramhall Blenkharn
The Maltings
MALTON
YO17 7DP

- 02 Before the development hereby permitted is commenced, or such longer period as may be agreed in writing with the Local Planning Authority, 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 and to satisfy the requirements of Policy H7A (ii) of the Ryedale Local Plan.

- 03 Before the development hereby permitted is commenced, the developer shall construct on site for the written approval of the Local Planning Authority a one metre square free standing panel of stonework and one metre square free standing panel of brickwork of the type of stone/brick to be used in the construction of the buildings. The panels so constructed shall be retained only until the development has been completed.

Reason:- To ensure a satisfactory external appearance and to satisfy the requirements of Policy H7A (ii) of the Ryedale Local Plan.

- 04 The guttering to the development hereby permitted shall be fixed by means of gutter spikes and no fascia boarding shall be used unless agreed in writing by the Local Planning Authority.

Reason:- To ensure a satisfactory external appearance and to satisfy the requirements of Policy H7A (ii) of the Ryedale Local Plan.

- 05 No development shall take place within the application site until the developer has secured the implementation of a programme of archaeological works in accordance with a written scheme of investigation submitted by the applicant and approved in writing by the Local Planning Authority.

Reason:- The site is of archaeological interest and investigation/protection and observation of the site is required by the provisions of Policy C13 of the Ryedale Local Plan and to satisfy Policy E5 of the North Yorkshire County Structure Plan (Alteration No.3) 1995.

- 06 Unless otherwise agreed in writing with the Local Planning Authority, the development hereby permitted shall not begin until drainage works have been carried out in accordance with details to be submitted to and approved in writing by the Local Planning Authority.

Reason:- In the interests of the satisfactory drainage of the site and to comply with Policy U4 of the Ryedale Local Plan.

- 07 Prior to the commencement on site, a percolation test shall be carried out, details of which shall be submitted to and approved in writing by the Local Planning Authority.

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C/o Bramhall Blenkharn
The Maltings
MALTON
YO17 7DP

Reason:- In the interests of the satisfactory drainage of the site and to comply with Policy U4 of the Ryedale Local Plan.

- 08 Notwithstanding the provisions of the Town & Country Planning (General Permitted Development) Order 1995, (or any Order revoking, re-enacting or amending that Order), no windows, other than those shown on the plans hereby approved, shall be formed in the walls or roof of the dwelling(s) hereby permitted without the prior written consent of the Local Planning Authority following a specific application in that respect.

Reason:- To safeguard the privacy and amenity of adjoining residents and to satisfy Policy H7A criteria (iv) of the Ryedale Local Plan.

- 09 Any conditions at the request of the Highways Authority.
- 10 Prior to the commencement of any works on site, detailed drawings shall be submitted for the written approval of the Local Planning Authority to include a plan and schedule of all trees and shrubs on the site. Such plan shall show the spread of each tree and identify those trees and shrubs to be retained and those to be felled. Trees and shrubs to be retained 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 of not less than 4.5 metres from any trunk;
- (ii) no development (including erection of the 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 3 metres of the crown spread of any tree;
- (v) no services shall be routed under the crown spread of any tree.

Reason:- It is considered that the existing trees and shrubs are an important visual amenity which should be retained and to comply with the requirements of the Ryedale Local Plan.

- 11 The development hereby permitted shall be carried out in accordance with the plans as submitted and as amended on 09 December 2004.

Reason:- For the avoidance of doubt and to ensure the satisfactory development of the site and to satisfy the requirements of Policy H7 of the Ryedale Local Plan.

- 12 Unless otherwise agreed in writing, all new windows, doors and garage doors shall be constructed from timber, set in reveals of 75mm and finished and maintained in a paint finish to be agreed in writing by the Local Planning Authority.

The Birdsall Estate Company Ltd
C/o Bramhall Blenkharn
The Maltings
MALTON
YO17 7DP

Reason:- To ensure an appropriate appearance and to comply with the requirements of Policy H7A (ii) of the Ryedale Local Plan.

- 13 Prior to commencement on site, precise details at a scale of 1:10 of the dormer windows to Unit 4 shall be submitted to and approved in writing by the Local Planning Authority.

Reason:- To ensure an appropriate appearance and to comply with the requirements of Policy H7A (ii) of the Ryedale Local Plan.

- 14 Prior to the commencement on site, finished floor levels and temporary benchmark levels in accordance with details to be submitted shall be agreed on site and approved in writing by the Local Planning Authority.

Reason:- To ensure satisfactory development and in order to satisfy the requirements of Policy H7A of the Ryedale Local Plan.

- 15 Except where their removal is required to provide an access, the existing hedge(s) along the northern and southern boundaries of the site 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 to 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 and to comply with the requirements of the Ryedale Local Plan.

INFORMATIVE:

- 01 The applicant is advised that this decision notice should be read in conjunction with the Agreement made under Section 106 of the Town and Country Planning Act 1990.

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

The Birdsall Estate Company Ltd
C/o Bramhall Blenkham
The Maltings
MALTON
YO17 7DP

THE FIFTH SCHEDULE
NOMINATION PROCESS.

- 1 Within seven days of receipt of a notice from the Owner served pursuant to Clause 1.1.5 of Schedule 4 to this Agreement the Council will approach and advise prospective tenants and not less than 14 days prior to the Affordable Rented Dwelling becoming available for occupation the Council will advise the Owner in writing of the details of up to three prospective Nominated Tenants.
- 2 The Owner may select a Nominated Tenant and should carry out any reference checks which he feels necessary to appoint a Nominated Tenant.
- 3 Within seven working days of appointing a Nominated Tenant the Owner must advise the Housing Services Manager in writing of the name of the Nominated Tenant.
- 4 The Owner will require no more than one months rent as a deposit and one months rent in advance from the Nominated Tenant.
- 5 Any costs incurred by the Owner in carrying out reference checks or otherwise on prospective Nominated Tenants must be borne by the Owner.
- 6 In the event of the Owner finding all of the prospective Nominated Tenants unsuitable, reasonable grounds for making such a decision should be forwarded in writing to the Housing Services Manager. The final decision as to the suitability of prospective Nominated Tenants shall rest with the Council and the Owner shall abide by that decision.
- 7 Twice in any calendar year the Council will carry out a compliance check on the Affordable Rented Dwelling to ensure that it is being occupied in accordance with the terms of this Agreement.

THE SIXTH SCHEDULE
[Draft Planning Permission]

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



Chairman



Council Solicitor

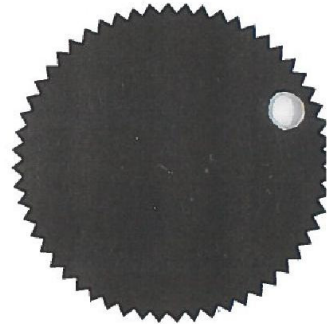


Minute P-82/2004
Reg No. 6008
L.H.'s CW

THE COMMON SEAL of)
BIRDSALL ESTATES COMPANY)
LIMITED)
was hereunto affixed in the)
presence of:)

Director 

Secretary 



DATED 10th November

2005

THE RYEDALE DISTRICT COUNCIL

and

BIRDSALL ESTATES COMPANY LIMITED

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 land at Salents Lane, Wharram Le Street, Malton in
the County of North Yorkshire

K A Winship
Council Solicitor
MALTON