

Memorandum

From: Carole Watson, Legal Services

To: Gary Housden – Development Control
Jo Dodgson/Kerry Clements - Land Charges

RE: Section 106 Agreement – Land at OS Field 4973 Claxton to Harton Lodge Road Claxton
Ryedale District Council (1) Carl Robert Fawcett (2)
The National Westminster Bank Plc (3)

Date: 02 December 2005

The above Section 106 Agreement was completed on the 2 December 2005 and I attach a copy 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 DECEMBER 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 **CARL ROBERT FAWCETT** of Kissthorn Farm, Sand Hutton, York YO41 1LF ("the Owner")
- 3 **THE NATIONAL WESTMINSTER BANK** of 28 Market Place, Driffield, East Yorkshire, YO25 6AL ("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 Owner is the owner or tenant of agricultural land at Claxton and Sand Hutton exceeding 100 acres in extent (including the Property) and thereon carries on an agricultural enterprise ("the Agricultural Enterprise")
- (4) The Mortgagee is mortgagee of the Property under a Legal Charge/Mortgage dated the 1 day of April 1998 and made between the Owner of the one part and the Mortgagee of the other part
- (5) 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")
- (6) The Council has considered the grant of Planning Permission Reference 05/00411/MFUL and has resolved to grant Planning Permission only on the basis that the use of the property as a Touring Caravan and Camp Site is as an income generating business which supplements the income generated by the Agricultural Enterprise
- (7) 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

(8) 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

(9) 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 No person or company shall be liable for any breach of this agreement unless he or it holds an interest in the part of the Property in respect of which such breach occurs or held such an interest at the date of the breach

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 Land at Os Field 4973, Claxton to Harton Lodge Road, Claxton, York, North Yorkshire shown edged in RED on the Plan attached to this Agreement

THE SECOND SCHEDULE
[Particulars of the Proposed Development]

Change of use of Agricultural Land to Touring Caravan and Camp Site with erection of amenity building

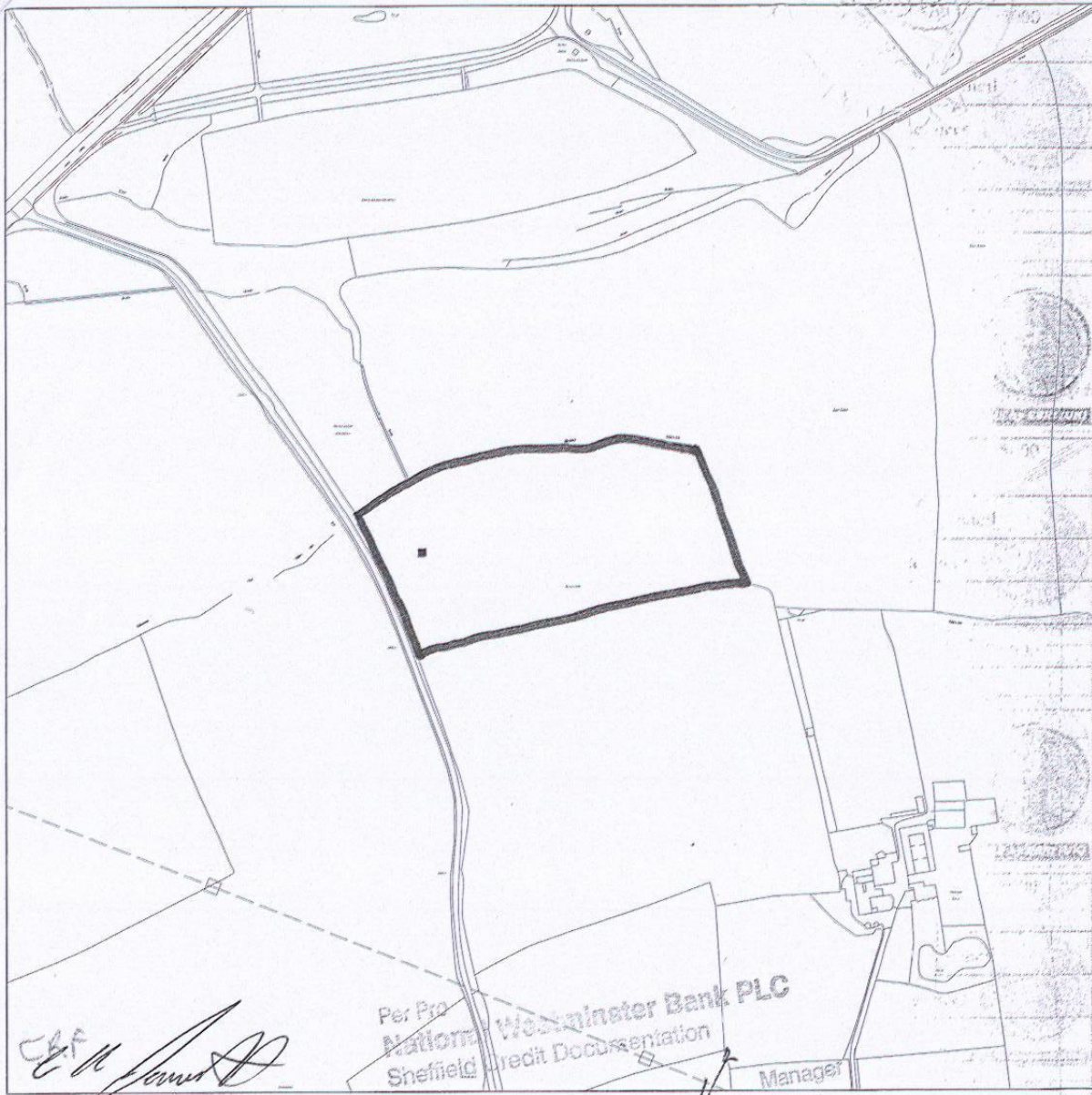
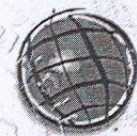
THE THIRD SCHEDULE
[Negative Obligations]

- 1 The Owner covenants with the Council that
 - (a) the Touring Caravan and Camp Site operation constituting the Proposed Development shall not be carried on except as a business ancillary to the Agricultural Enterprise and carried on by the same person or persons
 - (b) he will not at any time separate the Touring Caravan and Camp Site operation on the Property from the Agricultural Enterprise.
 - (c) he will not at any time use the Property for any purpose other than for the purpose of the Proposed Development for generating income which supplements the income generated by Agricultural Enterprise
- 2 The Owner acknowledges and agrees for the avoidance of doubt the operation of the Touring Caravan and Camp site on the Property shall cease if the operation of this use is not undertaken to generate income which supplements the income generated by Agricultural Enterprise

Chairman x

JSW x

411/MFUL Council Sol x *W. Winstanley* x



CAF
[Signature]

Scale : 1:5000

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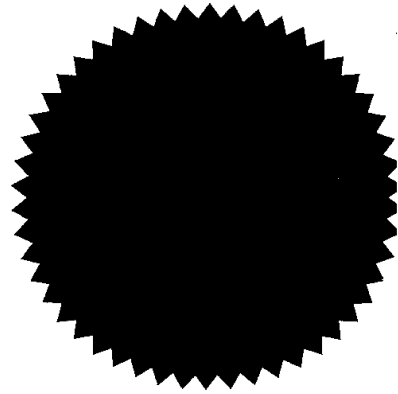
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Organisation	Ryedale District Council
Department	Planning Services
Comments	
Date	30 September 2005
SLA Number	100019406

10/05 P.20/05
Reg No. 6010
Initials CW

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)
CARL ROBERT FAWCETT in the)
presence of:)

WITNESSE: Signature ES Mann
Name SHARON MANN
Address 1 CHAPEL COTTAGE
BARTON LE WILLOWS
YORK YO60 7PD

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

SIGNED as a Deed by NATIONAL
WESTMINSTER BANK PLC acting
By its attorney in the presence of

Signed as a deed by
Josephine Jones Anderson
as the Attorney in their capacity
as Solicitors in England and Credit
Brokers in Ireland on
behalf of National Westminster
Bank PLC

In the presence of
Bank Official
CARL EDUARDO
Solicitor
10 South Street
London EC4A 3DF

DATED 2ND DECEMBER 2005

THE RYEDALE DISTRICT COUNCIL

and

CARL ROBERT FAWCETT

and

NATIONAL WESTMINSTER BANK 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 at OS Field 4973, Claxton to Harton Lodge Road, Claxton,
York in the County of North Yorkshire

K A Winship
Council Solicitor
M A L T O N