

Memorandum

From: Carole Watson, Legal Services

To: Gary Housden – Development Control Manager
Shirley Wilson – Enforcement Officer
Jo Dodgson/Kerry Clements - Land Charges

RE: Section 106 Agreement – Low Farm House Kirbygrindalythe Malton
Ryedale District Council (1) Hogg Builders (York) Ltd (2)
Lloyds TSB Bank Plc (3)

Date: 27 February 2006

The above Section 106 Agreement was completed on the 27 February 2006 and I attach a copy for your records. Please could the decision notice be issued as soon as possible.

The Third Schedule of the Agreement relates to a commuted sum of £8,755 for the provision of open space which is payable to the Council prior to the occupation of any dwelling on the property.

Regards.

Carole

THIS DEED is made the 27th day of **FEBRUARY** 2006
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 **HOGG BUILDERS (YORK) LTD** of 104 The Mount, York YO24 1GR ("the Owner")
- 3 **LLOYDS TSB BANK PLC** of Dept 99 – 99, Leeds Securities Centre, PO BOX 5, Fourth Floor, 612 Park Row, Leeds LS1 5 LB ("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 14 day of June 2005 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 **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

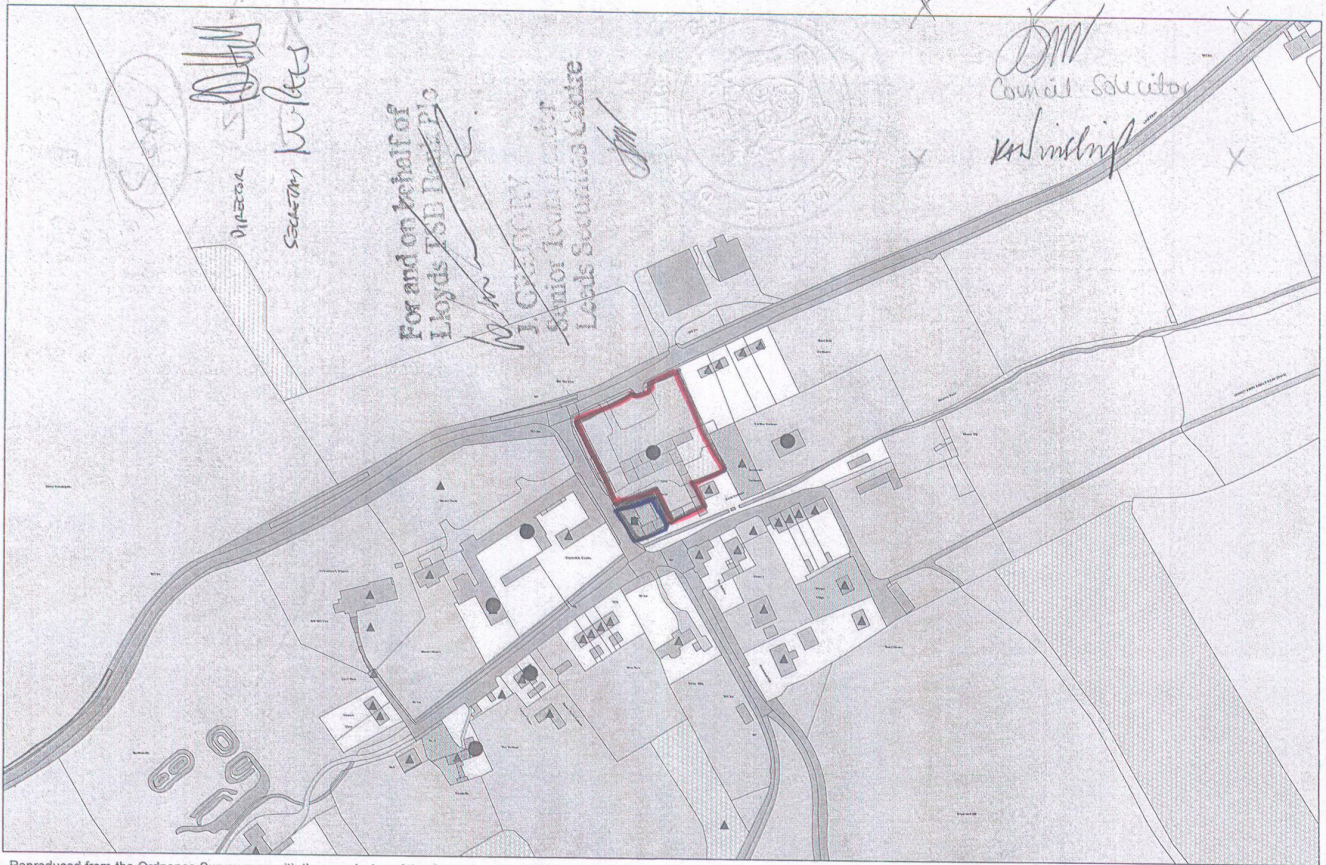
3.3 For the purpose of such parts of this Agreement as may be subject to the Rule Against Perpetuities that part of the Agreement shall remain in force for the period of eighty years from the date hereof

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



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Date:	15 August 2005
SLA:	100019406
Scale	1:2500

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 Low Farm House, Main Street, Kirkbygrindalythe, Malton, North Yorkshire YO17 8DB and shown edged in Red on the Plan

THE SECOND SCHEDULE

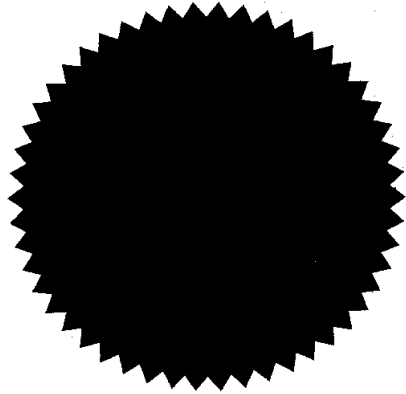
[Particulars of the Proposed Development]

Change of use of barn to two dwellings together with erection of seven dwellings and garages and associated access.

THE THIRD SCHEDULE
[Negative Obligations]

The Owner covenants not to allow or permit the occupation of any dwelling on the property until he has paid to the Council the sum of £8,755.00 (Eight Thousand, Seven Hundred and Fifty-Five Pounds) for enhancing and providing open space in the vicinity of the property

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



Minute 934/82
Reg No. 6017
Initials CW

[Signature]
Chairman

[Signature]
Council Solicitor

THE COMMON SEAL of)
HOGG BUILDERS (YORK) LIMITED)
was hereunto affixed in the)
presence of:)

Director

[Signature]

Secretary

[Signature]

EXECUTED AS A DEED BY)
LLOYDS TSB BANK PLC)
Acting by:)

Signed as a deed by
JOHN GREGORY
as Attorney for and on behalf of
LLOYDS TSB BANK plc in the presence of

[Signature]

67 Park Row
LEEDS

S106 Hogg Builders 08.11.05

STEPHEN ALLEN
LLOYDS TSB BANK plc
CORPORATE CUSTOMER SERVICE
PO BOX 5
67 PARK ROW
LEEDS. LS1 5LB

DATED 27TH FEBRUARY 2005

THE RYEDALE DISTRICT COUNCIL

and

HOGG BUILDERS (YORK) LTD

and

LLOYDS TSB BANK 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 Low Farm House, Main Street, Kirkbygrindalythe, Malton in
the County of North Yorkshire

K A Winship
Council Solicitor
MALTON