



# Memorandum

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From: Carole Watson, Legal Services

To: Gary Housden – Development Control Manager  
Shirley Wilson – Enforcement Officer  
Jo Dodgson/Kerry Clements - Land Charges  
Kim Robertshaw – Housing Services  
Julian Rudd – Forward Planning

RE: **Section 106 Agreement -**  
**Ryedale District Council (1) Fulford Builders (York) Limited (2)**  
**The Co-operative Bank Plc (3)**

Date: 14 March 2006

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The above Section 106 Agreement was completed on the 13 March 2006 and I attach a copy for your records.

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

There are 4 Affordable Housing Units to be provided by the developer details of which can be found in the third schedule.

Regards.

*Carole*

Gay Howden

**THIS DEED** is made the 13<sup>th</sup> day of March 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 **FULFORD BUILDERS (YORK) LIMITED** Registered Officer 16 Clifton Moor Business Village, James Nicolson Link, York YO30 LXG ("the Owner")
- 3 **THE COOPERATIVE BANK** Registered Office 1 Balloon Street Manchester ("the Mortgagee")

**DEFINITIONS**

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

- |                                   |  |
|-----------------------------------|--|
| "the Affordable Housing Units"    | Means the Affordable Rented Dwellings and the Discount Sale Unit   |
| "the Affordable Rented Dwellings" | Means the three 2 bed dwellings to be constructed pursuant to Part 2 of the Third Schedule of this Agreement.  |
| "Affordable Rent"                 | means a rent which is comparable to the average rent charged in the Ryedale District Council administrative area by Registered Social Landlords for properties of an equivalent type, age and floor area 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. |
| "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 of Ryedale District Council or such other Officer as may from time to time be nominated by him.
“Discount Sale Unit”	Means the dwelling to be constructed pursuant to Part 3 of the Third Schedule to this agreement
“Eligible Occupiers”	means a person or household identified in accordance with the provisions of the Fifth 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) in such Discount for Sale Dwelling
“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 Affordable Housing Units
“Open Market Value”	means the value determined in accordance with the provisions of Part 4 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

“Housing Services  
Manager”

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.  
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
- (3) The Mortgagee is mortgagee of the Property under Legal Mortgages dated the 1 day of June 2005 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 and has therefore resolved to grant planning permission for the proposed Development in accordance with the Planning Permission in the form of the draft annexed in Part 2 of the Second Schedule (“the Planning Permission”)
- (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 conditional upon the Council granting the Planning Permission

(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 Planning Permission 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 3.11 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 No person shall be liable for breach of a covenant contained in this agreement either prior to commencement of the Proposed Development or after it has parted with all its interest in the Property or that part of the Property in respect of which such breach occurs but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest.
- 3.11 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, East Street, Swinton, Malton, North Yorkshire shown edged in red on Plan 1

### THE SECOND SCHEDULE

[Particulars of the Proposed Development]

Part 1

Erection of 6 No Two Bed Dwellings, 6 No Three Bed Dwellings, 2 No Four Bed Dwellings with attached Double Garages, Associated Parking and Amenity Areas and Formation of Vehicular Access (revised details to refusal 05/00888/MFUL Dated 05.09.2005)

Part2

Planning application number 05/01135/MFUL

### THE THIRD SCHEDULE

[The Obligations]

Part 1

#### 1 **Affordable Housing**

The Owner covenants to provide four Affordable Housing Units in accordance with the provisions in Parts 1 and 2 to this schedule.

The Owner covenants:-

- 1.1 to build the Affordable Rented Dwellings 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 no Open Market Dwelling is completed until the he has entered an agreement with the nominated Housing Association and approved by the Council Solicitor for the construction by him for that Housing Association of the

Affordable Rented Dwellings and the transfer of these Units to the Housing Association.

- 1.1.2 to ensure that one of the Affordable Rented Dwellings to be built on the Property is completed and available for occupation prior to the occupation of forty percent (40%) of the Open Market Dwellings
- 1.1.3 to ensure that two of the Affordable Rented Dwellings to be built on the Property are completed and available for occupation prior to the occupation of sixty six per cent (66%) of the Open Market Dwellings
- 1.1.4 to ensure that the remaining Affordable Rented Dwelling to be built on the Property is completed and available for occupation prior to the occupation of ninety five per cent (95%) of the Open Market Dwellings.
- 1.1.5 to transfer the Affordable Rented Dwellings on or before the occupation of fifty percent of the Open Market Dwellings to the Housing Association for a price of not more than £144,000 (one hundred and forty-four thousand pounds) which enables the Housing Association to charge an Affordable Rent
- 1.1.6 to ensure that it is a term of the sale of the Affordable Rented Dwellings that the Housing Association shall not dispose of or cause or permit the disposal of the Affordable Rented Dwellings other than for the purpose of providing tenancies at an Affordable Rent to Eligible Occupiers as determined by The Fifth Schedule to this Agreement
- 1.1.7 that before the Affordable Rented Dwellings are transferred pursuant to clause 1.1.5 of this schedule they are fully serviced and accessible by vehicles and pedestrians.
- 1.1.8 to supply within 14 working days from the date of the Transfer transferring the Affordable Rented Dwellings to the Housing Association a copy of that Transfer to the Council.
- 1.2 In the event that the Owner fails to transfer the Affordable Rented Dwellings to a Housing Association or alternative Registered Social Landlord pursuant to clause 1.1.5 of this schedule and the Council



Solicitor is satisfied that the Owner has exhausted every avenue available to him to secure the transfer the Owner will pay to the Council a commuted sum in lieu of the provision of the Affordable Rented Dwellings calculated in accordance with the Fifth Schedule to this Agreement.

Part 2

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 endeavors 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 32.6 % 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 endeavors 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 If after the two month period referred to at clause 2.8 above contracts have not been exchanged or the offer has lapsed in accordance with clause 2.7 above then the following shall apply:
- 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.
- 2.10 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 34.8% 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 34.8% 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 endeavors 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.

### Part 3

#### 3 **Determination of Open Market Value**

3.1 For the purposes of clauses 3.5.1

3.1.1 the Open Market Value shall be agreed by the Owner and the Housing Association prior to the date of the offer made pursuant to clause 2.4 above and in default of agreement determined by an independent chartered surveyor appointed by agreement between the Owner and the Housing Association

3.1.2 in the absence of agreement the surveyor shall be appointed by the President of the Royal Institute of Chartered Surveyors

3.1.3 the surveyor shall act as an expert and his decision shall be final and binding and in the absence of a determination by the surveyor his fees shall be borne by the Owner

3.2 For the purposes of clauses 2.1 1:

3.2.1 the Open Market Value shall be agreed by the owner of the relevant unit of the Discount Sale Unit and the Housing

Association prior to the disposal of the relevant unit at in default of agreement determined by an independent chartered surveyor appointed by agreement between the owner and the Housing Association

3.2.2 in the absence of agreement the surveyor shall be appointed by the President of the Royal Institute of Chartered Surveyors

3.2.3 the surveyor shall act as an expert and his decision shall be final and binding and in the absence of a determination by the surveyor his fees shall be borne by the parties in equal shares.

3.2.2 in the absence of agreement the surveyor shall be appointed by the President of the Royal Institute of Chartered Surveyors

3.2.3 the surveyor shall act as an expert and his decision shall be final and binding and in the absence of a determination by the surveyor his fees shall be borne by the parties in equal shares.

#### **THE FOURTH SCHEDULE**

[Occupancy Criteria]

The Owner shall ensure the Affordable Rented Dwellings are occupied by persons

1. who have for a period of at least 2 years been ordinarily resident within the town of Swinton, or
2. who have been permanently employed in the village of Swinton 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; Amotherby, Appleton-le-street with Easthorpe, Kirby Misperton and Broughton.
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 Units shall be calculated as follows:-

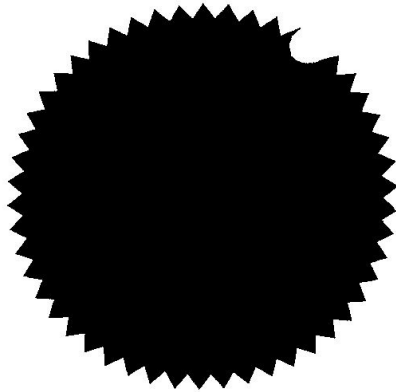
The Open Market Value of each of the relevant Affordable Housing Units

Minus

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



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



Minute No: P65/05(13)  
Reg No: 6019  
Initials: CLW

*[Signature]*  
Chairman  
*[Signature]*  
Council Solicitor

EXECUTED AS A DEED by FULFORD )  
BUILDERS (YORK) LIMITED )  
acting by a director and its secretary )

Director

*[Signature]*

Secretary

*[Signature]*

EXECUTED AS A DEED by )  
THE CO-OPERATIVE BANK )  
acting by a director and its secretary )

Director

*[Signature]*

Secretary

*[Signature]*  
*[Signature]*

*[Faint stamp and text]*  
THE CO-OPERATIVE BANK  
PLAINTIFFS

DATED 13<sup>th</sup> March 2006

**THE RYEDALE DISTRICT COUNCIL**

and

**FULFORD BUILDERS (YORK) LIMITED**

and

**THE CO-OPERATIVE BANK**

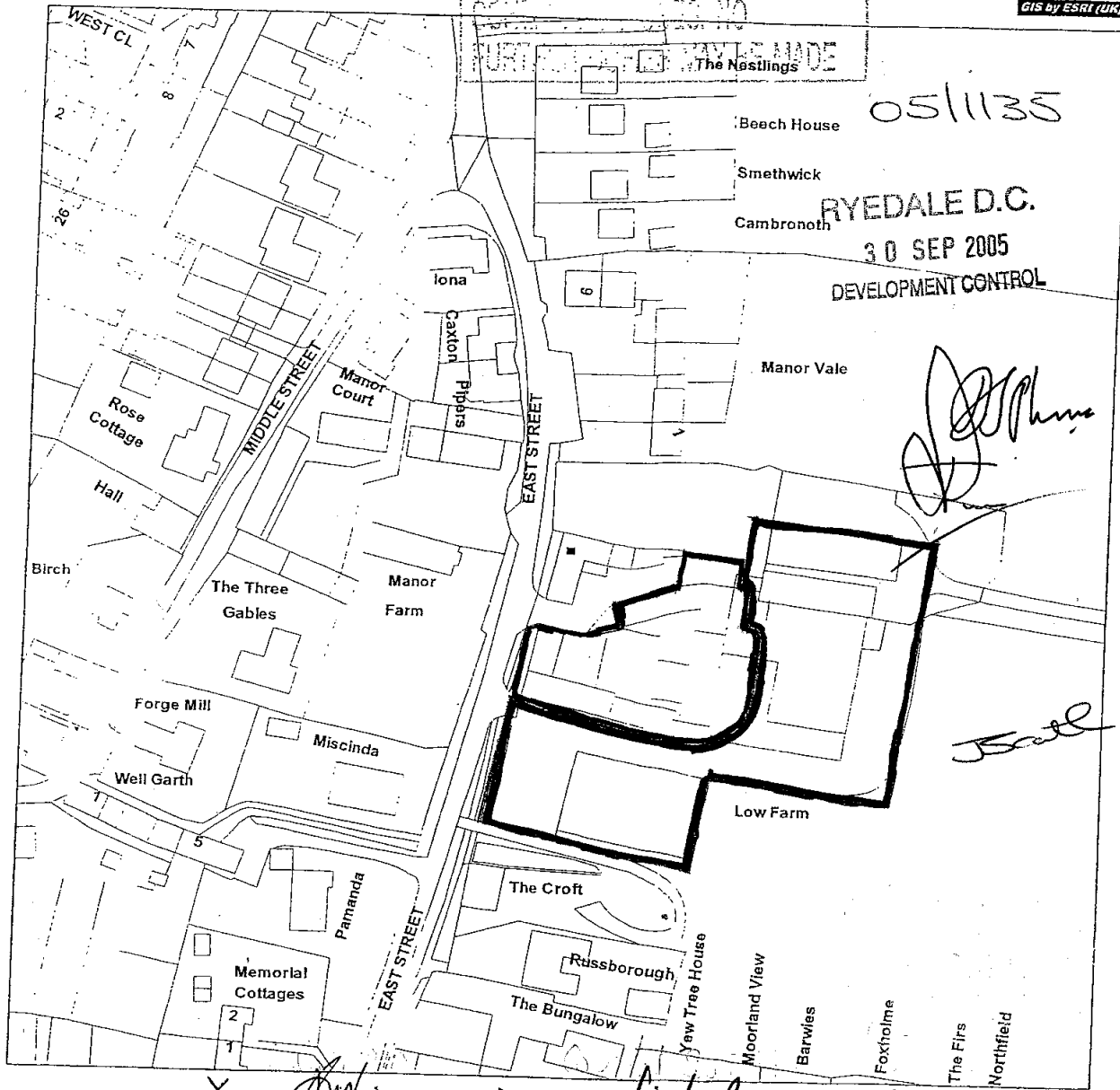
**A G R E E M E N T**

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 Low Farm, East Street, Swinton, Malton in  
the County of North Yorkshire

K A Winship  
Council Solicitor  
M A L T O N

# Low Farm, Swinton

THIS COPY HAS BEEN PRODUCED  
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Organisation	Ryedale District Council
Department	Planning Services
Comments	
Date	11 April 2005
SLA Number	100019406