

08/638

DATED 20 March 2009

RYEDALE DISTRICT COUNCIL (1)

and

THE TRUSTEES OF THE DK BREWIS TRUST (2)

and

HALEGROVE MALTON LIMITED (3)

Planning Obligation by Deed of Agreement

under Section 106 of the Town and Country Planning Act 1990

relating to land and buildings known as

Westfield Way, Norton, Malton, North Yorkshire



DICKINSON DEES

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is made BETWEEN:-

- (1) RYEDALE DISTRICT COUNCIL of Ryedale House Malton North Yorkshire YO17 7HH (the "Council")
- (2) LEA HUNTER WILSON of Dervorguilla New Abbey Dumfries DG2 8BY, FRANCIS ROGER MCTAGGART BREWIS of Ardwell House Ardwell by Stranraer Wigtownshire DG9 9LY and RALPH MICHAEL RODNEY BREWIS of 17 Woodthorpe Road Putney London SW15 6UQ ("the Owner") acting as Trustees of the DK Brewis Trust ("the Trust")
- (3) HALEGROVE MALTON LIMITED (CRN 06408884) whose registered office is at Alderside Thirsk Road Easingwold North Yorkshire YO61 3HJ ("the Developer")

INTRODUCTION

- 1 The Council is the local planning authority for the purposes of the Act for the area in which the Site is situated.
2. The Owner is the freehold owner of the Site.
3. The Developer is the leasehold purchaser of the Site under the Conditional Contract.
4. The Developer has submitted the Application to the Council and the Parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed.
5. The Council is minded to grant the Planning Permission subject to the prior completion of this Deed.

NOW THIS DEED WITNESSES AS FOLLOWS:

OPERATIVE PART

1 DEFINITIONS

For the purposes of this Deed the following expressions shall have the following meanings:

| | |
|----------------|--|
| "Act" | the Town and Country Planning Act 1990 |
| "Application" | the application for full planning permission submitted to the Council for the Development and allocated reference number 08/00638/MFUL |
| "Commencement" | of the date on which any material operation (as defined in |

| | |
|---------------------------------|--|
| Development” | Section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and “Commence Development” shall be construed accordingly |
| “Conditional Contract” | a Licence, Option and Agreement in respect of the sale and purchase of the Site between the Owner and the Developer dated 30 January 2008 |
| “Council’s Section 151 Officer” | the Section 151 Officer 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 |
| “Development” | the carrying out of works pursuant to the Planning Permission |
| Head of Planning | the Head of Planning 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 |
| “Lease” | the lease to be granted by the Owner to the Developer pursuant to the Conditional Contract |
| “Occupation” “Occupied” | and Occupation of the Development for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations. |
| “Plan” | the plan attached to this Deed |
| “Planning Permission” | the full planning permission subject to conditions to be granted by the Council pursuant to the Application |
| “Site” | the land against which this Deed may be enforced as shown edged red on the Plan attached in the First Schedule |

"Strategic Transport Commuted Sum" The sum of £92,460.00 towards the proposed improvements to the A64 Brambling Fields junction pursuant to the Malton and Norton Transportation Strategy as outlined in the Draft Supplementary Planning Document: Developer Contributions towards Strategic Transport Improvements at Malton and Norton (Interim Version) July 2007 and for no other purpose.

2. CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 2.4 Subject to clause 7 10 wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise.
- 2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
- 2.6 References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council the successors to their statutory functions.

3. LEGAL BASIS

- 3.1 This Deed is made pursuant to Section 106 of the Act Section 111 of the Local Government Act 1972 and Section 2 of the Local Government Act 2000.
- 3.2 The covenants, restrictions and requirements imposed upon the Owner and the Developer under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council as local planning authority against the Owner and Developer

4. **CONDITIONALITY**

This Deed is conditional upon:

- (i) the grant of the Planning Permission; and
- (ii) the Commencement of Development

save for the provisions of Clauses 7.1, 7.3, 11 and 12 which shall come into effect immediately upon completion of this Deed

5. **THE OWNER'S AND DEVELOPER'S COVENANTS**

The Owner and Developer covenant with the Council as set out in the Second Schedule.

6. **THE COUNCIL'S COVENANTS**

The Council covenants with the Owner and the Developer as set out in the Third Schedule.

7. **MISCELLANEOUS**

- 7.1 The Developer shall pay to the Council on completion of this Deed the reasonable legal costs of the Council incurred in the negotiation, preparation and execution of this Deed in the sum of £ 300 + VAT.
- 7.2 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 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
- 7.3 This Deed shall be registrable as a local land charge by the Council.
- 7.4 Where the agreement, approval, consent or expression of satisfaction is required by the Owner and/or the Developer from the Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed insofar as the same does not act as a legal fetter of the Council's duties and functions. Any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party
- 7.5 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.
- 7.6 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed

- 7.7 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development
- 7.8 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed before it shall have taken any interest in the Site and/or after it shall have parted with its entire interest in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 7.9 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.
- 7.10 The liability of the Trustees shall not be personal but shall be limited to the assets of the Trust from time to time vested in them and on the retirement or other event by which any Trustee or Trustees shall cease to act in that capacity then the liability of that person under this Deed shall cease.

8. **WAIVER**

No waiver (whether expressed or implied) by the Council of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

9. **CHANGE IN OWNERSHIP**

- 9.1 The Owner and the Developer agree with the Council to provide the Council with written notice as soon as reasonably practicable of any change in ownership of any of its interests in the Site occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation purchased by reference to a plan.
- 9.2 The Council hereby acknowledges that upon the granting of the Lease by the Owner to the Developer, the Owner shall be released from any obligation or liability upon the Owner to the Council under this Deed unless or until such time as the Owner re-takes possession of the Site (or part thereof) by virtue of surrender or forfeiture of the Lease or otherwise

10. **INDEMNITY**

In accordance with Paragraph 7.2 of Part 2 of Schedule 3 of the Conditional Contract, pending the granting of the Lease by the Owner to the Developer, the Developer hereby indemnifies

the Owner in respect of any liability of the Owner under this Deed save for any liability arising out of a subsisting and/or antecedent breach or default of the Owner under this Deed.

11. **VAT**

All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.

12. **JURISDICTION**

This Deed is governed by and interpreted in accordance with the law of England and Wales.

13. **DELIVERY**

The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

IN WITNESS whereof the Parties hereto have executed this Deed on the day and year first before written.

FIRST SCHEDULE

Description of the Site

The Site is land at Westfield Way, Norton, Malton, North Yorkshire as delineated by the attached red line Plan.

SECOND SCHEDULE

The Owner's and Developer's Covenants with the Council

1 Strategic Transport Contribution

The Owner and Developer covenant to pay to the Council the Strategic Transport Commuted Sum prior to Occupation of the first new build unit constructed in accordance with the Planning Permission or by 31 March 2011 whichever event occurs the latest

2 Landscaping

The Owner and the Developer covenant with the Council that they will prior to Commencement of Development submit to the Council for the prior written approval of the Head of Planning on behalf of the Local Planning Authority a ten year management plan for both maintenance of the existing landscaping which is to be retained on the Site and the landscaping to be undertaken in accordance with the Planning Permission and the landscaping conditions (Conditions 13,14 and 15) of the Planning Permission and thereafter to fully implement the approved management plan during the 10 year period of the plan

THIRD SCHEDULE

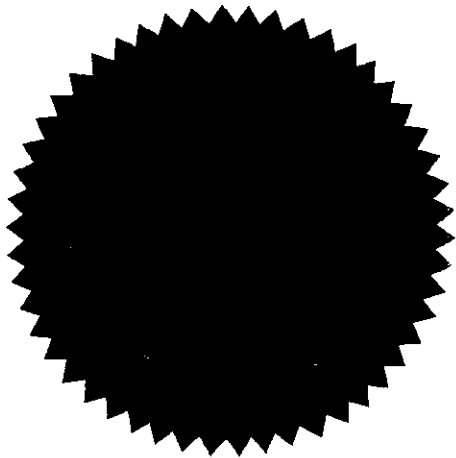
Council's Covenants

Repayment of contributions

1. The Council hereby covenants with the Owner and the Developer to use the Strategic Transport Commuted Sum for the sole purposes specified in this Deed or for such other purposes for the benefit of the Development as the Owner, Developer and the Council shall agree at their absolute discretion.
2. The Council covenants with the Owner and the Developer that it will repay to either or both the Owner or Developer (being the party that paid the Strategic Transport Commuted Sum) such amount of any payment made by the Owner or Developer to the Council under this Deed which has not been expended in accordance with the provisions of this Deed within Ten (10) years of the date of receipt by the Council of such payment The date of receipt to be certified by the Council's Section 151 Officer
3. The Council shall provide to the Owner or Developer such evidence, as they shall reasonably require in order to confirm the expenditure of the sums paid by the Owner or Developer under this Deed.

Discharge of obligations

4. At the written request of the Owner or Developer the Council shall provide written confirmation of the discharge of the obligations contained in this Deed when satisfied that such obligations have been performed



THE COMMON SEAL OF Ryedale District Council)
was affixed in the presence of:)

Chairman

Minute P.181/2008
Reg No. 6193
Initials EW

Council Solicitor:

EXECUTED AS A DEED by Lea Hunter Wilson)

As trustee of the DK Brewis Trust)

In the presence of:)

Name: Neale A. Lawson

Address: Sandersoning

Glencaple

Dumfries DS1 4RE

Occupation: Retired

EXECUTED AS A DEED by Francis Roger McTaggart Brewis)

Francis R MacT Brewis

As trustee of the DK Brewis Trust)

In the presence of:)

Name: Peter Strain Whitworth

Address: Killarney House

Ardwick

Stranraer DG9 9NZ

Occupation: Farmer

EXECUTED AS A DEED by Ralph Michael Rodney Brewis)

As trustee of the DK Brewis Trust)

In the presence of:)

Name: SUSAN MARSHALL

Address: 55 DEWENT CLOSE

CAMBRIDGE

CB1 8D9

Occupation: INVESTMENT ADMINISTRATOR

EXECUTED AS A DEED by Halegrove Malton Limited)

acting by:)

Director:

Director/Secretary: