

DATED 31 October 2011

JOHN STEPHEN CLOUGH AND DIANA RUTH CLOUGH

to

RYEDALE DISTRICT COUNCIL

UNILATERAL UNDERTAKING

relating to

Hill House, Brant Hill, Pickering, North Yorkshire, YO18 7AU



DICKINSON DEES

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7 November 2011

CONTENTS

1. Planning Obligations..... 2

2. Interpretation And Definitions..... 3

3. Conditionality..... 5

4. Access Road And Communal Areas..... 5

5. Management Company 6

6. Service Charge..... 6

7. Miscellaneous..... 7

THIS UNILATERAL UNDERTAKING is given the 31 day of October 2011

BY

- (1) JOHN STEPHEN CLOUGH and DIANA RUTH CLOUGH of 37 Ravensdowne Berwick on Tweed, TD15 1DQ ("the Owners");

TO

- (2) RYEDALE DISTRICT COUNCIL of Ryedale House Malton North Yorkshire YO17 7HH ("the Council").

WHEREAS:-

1. The Owners are the freehold owners of the Site and are registered at the Land Registry with freehold title absolute under title numbers NYK 97305 NYK 214565 and NYK 214567
2. The Council is the local planning authority for the purposes of Part III of the 1990 Act for the area in which the Site is situate and is the authority by whom the obligations contained within this Deed are enforceable
3. The First Owner has made the Application to the Council and following refusal of the Application has commenced the Appeal which Appeal has yet to be determined
4. The Owners now give the obligations and undertakings herein contained in order to provide for the maintenance of the Access Road and of the Communal Areas

NOW THIS DEED WITNESSETH as follows:-

1. PLANNING OBLIGATIONS

- 1.1 This Deed is executed by the Owners as a deed and is made pursuant to Section 106 of the 1990 Act and all other powers enabling in that behalf and the undertakings herein contained on the part of the Owners shall constitute planning obligations for the purposes of the said Section and are given with the intent that the same shall (subject to clause 7.1) be enforceable by the Council without limit of time not only against the Owners but also against their successors in title to the Site or any part or parts thereof and any person corporate or otherwise claiming through or under the Owners an interest or estate in the Site and or any part of parts thereof as if that person had also been a party to this Deed in respect of the interest or estate for the time being held by it PROVIDED THAT the obligations hereunder shall not be enforceable against the owners or occupiers of any Residential Unit or any mortgagee of a Residential Unit nor shall the obligations hereunder be enforceable against any other mortgagee in respect of the Site unless they shall take possession of the Site

1.2 The obligations entered into by the Owners herein are given jointly and severally

2. **INTERPRETATION AND DEFINITIONS**

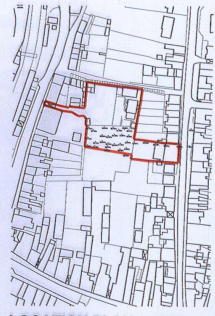
2.1 In this Deed the following word and expressions shall unless the context otherwise requires have the following meanings:-

“1990 Act”	the Town and Country Planning Act 1990;
“Access Road”	the internal access road within the Site and shown edged orange on Plan 2;
“Appeal”	the appeal to the Secretary of State under Section 78 of the 1990 Act submitted on 17 June 2011 on behalf of the First Owner in respect of the refusal of planning permission by the Council on 21 January 2011 and proceeding under reference number Y2736/A/11/2155160;
“Application”	the application for planning permission submitted to the Council on 12 November 2008 on behalf of the First Owner and given reference number 08/01042/FUL for the erection of 3 four bedroom dwellings 1 three bedroom dwelling and a terrace of two bedroom dwellings with integral garages together with associated garaging/parking including under-croft parking for proposed and existing dwellings and amenity areas and formation of vehicular access off Burgate;
“Communal Areas”	the communal areas within the Site including areas of hard and soft landscaping and shown edged green on Plan 2;
“Development”	the development described in the Application and to which Appeal relates;
“Disposal”	disposal of a freehold interest or the grant or (as the context requires) assignment of a leasehold interest and ‘Dispose’ shall be construed accordingly;
“First Owner”	John Stephen Clough
“Implementation Date”	the implementation of the Development by the carrying out of a material operation as defined in section 56(4) of the 1990 Act PROVIDED THAT for the avoidance of doubt works of demolition site clearance ground investigation or site survey works laying of

	services and service media construction of boundary fences and hoardings or construction of temporary accesses shall not be taken to be a material operation for the purposes of the said Section 56(4) so as to amount to implementation of the Planning Permission;
"Inspector"	the person appointed to determine the Appeal;
"Management Company"	a limited company established in accordance with clause 5 for the purpose of owning maintaining and managing the Access Road and the Communal Areas and performing the Maintenance Obligations;
"Maintenance Obligations"	<ul style="list-style-type: none"> a) repair and maintenance (including sweeping and cleaning of the surface (as appropriate) and resurfacing (as required)) of the Access Road and all associated street furniture; and b) repair and maintenance of all street lighting associated with the Access Road including cleaning and replacing street lighting bulbs as necessary; and b) the repair and maintenance including sweeping and cleaning (as appropriate) planting and replanting of all Communal Areas to an appropriate standard; and c) gritting of the Access Road and any hard landscaped areas within the Communal Areas during the winter months and during any other prolonged periods of freezing temperatures;
"Owners"	the First Owner and the Second Owner
"Plan 1"	the plan annexed hereto marked 'Plan 1';
"Plan 2"	the plan annexed hereto marked 'Plan 2';
"Planning Permission"	planning permission granted pursuant to the Appeal;
"Residential Units"	the units of residential accommodation to be provided pursuant to the Development (including any amenity space parking space garage or right to use the same);



PLAN 1 - SITE BOUNDARY PLAN



LOCATION PLAN 1:1250
KEY
SITE BOUNDARY

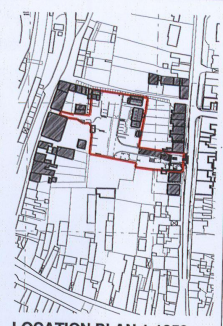
PLANNING

THE WARRER PRACTICE ARCHITECTS
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 London: 020 7461 1000 Email: info@warrerp.co.uk

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Date	OCTOBER 11
Revision	0

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LOCATION PLAN 1:1250
KEY

- ACCESS ROAD
- SITE ADAPTABLE BELMOUTH
- COMMUNAL AREAS
- SITE BOUNDARY

PLANNING

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PLAN 2 - ACCESS ROAD & COMMUNAL AREAS PLAN

SCHEDULE OF UNITS

4 BED UNIT - PLOT 1	PARKING SPACE - 1 & 2	3 BED UNIT - PLOT 6	PARKING SPACE - 6 & 7	2 BED UNIT - PLOT 3	PARKING SPACE - 3	HILL HOUSE	PARKING SPACE - 12 & 13
PLOT 2	14 & 15			PLOT 4	4	COTTAGE	11
PLOT 7	9 & 10			PLOT 5	5	DOVECOTE COTTAGE	8

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Project: HILL HOUSE PICKERING
 Drawing: LEGAL PLAN 2 - ACCESS ROAD & COMMUNAL AREAS
 Scale: 1:200 @ A1
 Date: OCTOBER 11
 Drawing Number: 1000-015
 Revision: E

“Second Owner”	Diana Ruth Clough;
“Service Charges”	the charges attributable to the Management Company and performance of its obligations including professional fees and administration costs and all costs of fulfilling the Maintenance Obligations (together with VAT for the avoidance of doubt);
“Site”	the land known as Hill House Brant Hill Pickering North Yorkshire for the purposes of identification only edged red on the Plan

- 2.2 References to ‘the Council’ include its statutory successors and references to ‘the Owners’ include their successors in title and assigns
- 2.3 Words importing the singular import the plural and vice versa
- 2.4 Words importing the masculine gender include the feminine gender and vice versa
- 2.5 Words importing persons include firms companies other corporate bodies or legal entities
- 2.6 Words importing an obligation on a party to do any act matter or thing include an obligation to procure that it is done
- 2.7 References to any statute include any statutory modification or re-enactment thereof and any order regulations directions or other subordinate legislation thereunder for the time being in force
- 2.8 The headings in this Deed are for reference purposes only and shall not affect interpretation

3. **CONDITIONALITY**

- 3.1 This Deed is conditional upon the Inspector indicating in her decision that the obligations herein are considered to satisfy Regulation 122 of the Community Infrastructure Levy Regulations 2010 and are material to her decision
- 3.2 Subject to clause 3.1 and save for the provisions of clause 7 (which shall come into effect upon the grant of Planning Permission) the provisions of this Deed shall come into effect on the Implementation Date

4. **ACCESS ROAD AND COMMUNAL AREAS**

- 4.1 Subject to clause 4.2 the Access Road and Communal Areas shall be managed and maintained in accordance with the Maintenance Obligations and in order to facilitate

performance of such obligations the Owners shall establish the Management Company in accordance with clause 5

- 4.2 The provisions of this Deed shall cease and be of no further effect in relation to any part of the Access Road or the Communal Areas which shall become maintainable at the public expense either through adoption or through some other arrangements entered into with a local authority or other statutory body having appropriate powers to maintain the Access Road and/or the Communal Areas

5. MANAGEMENT COMPANY

- 5.1 The Owners shall establish the Management Company and shall transfer the Access Road and the Communal Areas to the Management Company in each case prior to first Disposal of any Residential Unit
- 5.2 The Management Company shall be a limited company with a Memorandum and Articles of Association containing provisions which:
- 5.2.1 encompass the Maintenance Obligations
- 5.2.2 limit those eligible for membership of the Company to the subscriber to the Memorandum of Association and the owners of the Residential Units and
- 5.2.3 provide for the collection of a due proportion of the Service Charges from the owners of the Residential Units
- 5.3 Upon establishment of the Management Company the Owners shall pay to the Management Company the sum of £10,000 (Index Linked by reference to the Retail Prices Index (All Prices) from the date this Deed shall come into effect until the date of payment of the said sum to the Management Company) to be held by the Management Company and to be applied as a contribution towards the Management Company and the items encompassed by the definition of Service Charges at clause 2.1 herein
- 5.4 Prior to first Disposal of any Residential Unit the Owners will provide to the Council a copy of the Memorandum and Articles of Association of the Management Company together with documentary evidence of the payment made to the Management Company pursuant to clause 5.3

6. SERVICE CHARGE

- 6.1 The Owners will procure that upon first Disposal of each Residential Unit:

-
- 6.1.1 the purchaser of the Residential Unit in question is required to become a member of the Management Company and covenants with the Management Company to pay such proportion of the Service Charges as shall be attributed to the Residential Unit in question
- 6.1.2 a covenant is imposed upon the purchaser of the Residential Unit not to Dispose of the whole or part of such Residential Unit to any person without first ensuring that such person has:
- (a) first executed a deed of covenant directly with the Management Company (or (as the case may be) the Management Company's successors in title to the Access Road and the Communal Areas) providing for the purchaser to pay such proportion of the Service Charges as shall be attributed to the Residential Unit in question or (as the case may be) the part thereof and
 - (b) become a member of the Management Company
- 6.1.3 a restriction in Land Registry standard form is entered on the proprietorship register of the title to the Residential Unit in question providing that no Disposal of the registered estate in respect of the Residential Unit or by the proprietor of any registered charge is to be registered without a certificate from the purchaser's solicitor confirming that the covenants referred to in clause 6.1.2 above have been complied with

7. **MISCELLANEOUS**

- 7.1 Save in respect of any antecedent breach no person shall be bound by the obligations under this Deed after he has parted with all his interest in the Site
- 7.2 In the event of the Planning Permission being quashed as a result of legal proceedings or if the Planning Permission shall expire before the Development is begun or shall at any time be revoked or modified then this Deed shall cease and determine and be of no further effect
- 7.3 This Deed is a Local Land Charge and shall be registered as such
- 7.4 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with any planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed

7.5 No person who is not a party to this Deed has any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of this Deed

IN WITNESS whereof these presents have been executed by the Owners as a Deed and delivered on the day and year first above written

SIGNED as a DEED by JOHN STEPHEN CLOUGH in the presence of:-


) 
)
)

Name: JOHN CUMMINGS.
JK Cummings.

Address: 43 STATION RD
PENSHAW MANOR
HOUGHTON KESWICK
CUMBRIA LA 1 1RN

Occupation: COURIER

SIGNED as a DEED by DIANA RUTH CLOUGH in the presence of:-

) 
)
)

Name: JK Cummings.

Address:

Occupation: