

Section 106 Agreement

Draft 2(e) : 28 October 2011

DATED 4 November 2011

RYEDALE DISTRICT COUNCIL

- and -

BDW TRADING LIMITED

AGREEMENT AND PLANNING OBLIGATION

under Section 106 of the Town and Country Planning Act 1990 (as amended)
relating to land at New Road, Kirbymoorside, North Yorkshire

WALKER MORRIS
King's Court
12 King Street
LEEDS
LS1 2HL
Tel: 0113 2832500
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Ref: CAS/BYL 5-1865

THIS AGREEMENT is made the 4 day of November 2015

BETWEEN: -

- (1) RYEDALE DISTRICT COUNCIL of Ryedale House, Malton, North Yorkshire YO17 7HH ("Council") of the first part; and
- (2) BDW TRADING LIMITED (Company No 03018173) whose registered office is situate at Barratt House, Cartwright Way, Forest Business Park, Bardon Hill, Coalville, Leicestershire LE67 1UF ("Owner") of the third part

1 DEFINITIONS

1.1 In this Agreement the expressions listed below shall have the meanings respectively assigned in relation thereto unless the context otherwise requires it: -

"1990 Act" means the Town and Country Planning Act 1990 as amended;

"Affordable Dwellings" means 35% of the Dwellings to be provided as Affordable Housing on the Land consisting of together the Social Rented Dwellings and the Intermediate Dwellings and reference to "Affordable Dwelling" shall be construed accordingly;

"Affordable Housing" means housing provided to eligible households whose needs are not met by the market in accordance with the definition in Annex B of PPS3 (or any future guidance or initiative that replaces or supplements it);

"Affordable Housing Commuted Sum" means the sum of £8,000 00 (eight thousand pounds only) to be paid by the Owner to the Council in lieu of the provision of 0.1 of an Affordable Dwelling the need for which directly arises from the Development that would have been required to be provided within the Development as a contribution to be applied by the Council towards a broad range of schemes and initiatives, linked to providing additional Affordable Housing, which may include but not be limited to the

following: -

1. Support for Housing Associations for both the development and acquisition of Affordable Housing, including facilitating any necessary works of improvement or repair;
2. Support for specific initiatives to regenerate the existing housing stock e.g. Empty Property Grants and Houses in Multiple Occupation Grants which give the Council tenancy nomination rights for qualifying individuals;
3. Support for specific schemes which are developed to provide permanent homes to meet an identified need e.g. the lack of suitable accommodation for homeless families or a scheme to meet the accommodation needs of young single people;
4. Support for the Rural Housing Enabler / Affordable Development Officer functions at the Council;

"Affordable Housing Contribution"

means if applicable in relation to: -

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1. ~~an~~ Social Rented Dwelling a sum equal to the difference between the price that would enable the Housing Association to charge an ~~an~~ ^{social} Affordable Rent and the Market Value of that Social Rented Dwelling on the date that it is sold on the open market in accordance with the provisions of paragraph 1.5 of the First Schedule (less the costs of any "finishing touches" / sales extras); and
2. an Affordable / Intermediate Dwelling a sum equal to the difference between the price that

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would enable the Housing Association to charge an Affordable / Intermediate Rent and the Market Value of that Intermediate Dwelling on the date that it is sold on the open market in accordance with the provisions of paragraph 1.5 of the First Schedule (less the costs of any "finishing touches" / sales extras)

in both cases such sum to be agreed between the Owner and the Council and to be used by the Council in lieu of the provision or part provision of Affordable Dwellings on the Land for the provision of or improvements to existing Affordable Housing elsewhere within Kirbymoorside;

"Social Rented Dwellings"

means 11 Affordable Dwellings to be provided on: -

Plots 3, 4, 5, 6, 10, 28, 31, 32, 33, 46 and 47

the type and size of which will be agreed in writing with the Council prior to the Commencement of Development to be constructed in accordance with the Planning Permission and the Reserved Matters Approval and paragraph 1.3 of the First Schedule to this Agreement and to be made available at an Social Rent to persons in accordance with the Housing Associations and / or Nominated Housing Associations policy and reference to " **Social Rented Dwelling**" shall be construed accordingly;

"Social Rent"

means a rent which is comparable to the average rents charged in the Council's administrative area by Housing Associations for properties of an equivalent type age and floor area prior to the introduction of the Affordable Rented Framework to the Social Rented Dwellings and which sum shall be agreed for lettings between the Owner the Housing Services Manager and the Housing Association or Nominated Housing

Association (whichever has taken the transfer of the Social Rented Dwellings) in accordance with Government Social Rents at the time and thereafter any increases or decreases shall be in accordance with the Housing Association's or Nominated Housing Association's rent setting policy and the Homes and Communities Agency's guidance at the time and approved in writing by the Council (**allowing for conversion to Affordable Rent or Intermediate Rent on re-letting**);

"Agreement"

means this Agreement;

"Commencement of Development"

means the date upon which the Development shall commence by the carrying out on the Land pursuant to the Planning Permission of a material operation as specified in Section 56 of the 1990 Act **Save That** the term "*material operation*" shall not include operations in connection with any work of or associated with archaeological investigation demolition site clearance remediation works environmental investigation site and soil surveys ground grouting erection of contractors work compound erection of site office erection of fencing to site boundary and reference to "**Commence Development**" shall be construed accordingly;

"Development"

means the development proposed by the Reserved Matters Application and any development pursuant to the Reserved Matters Application of all or part of the Land;

"Dwellings"

mean those units to be constructed on the Land and "**Dwelling**" shall be construed accordingly;

"Eligible Occupier"

means a person or household identified in accordance with the provisions of the Second Schedule to this Agreement;

- "Government Social Rents"** means the target rents published by the Homes and Communities Agency as amended from time to time and agreed by the Council in writing;
- "Homes and Communities Agency"** means the Homes and Communities Agency or any bodies undertaking the existing functions of the Homes and Communities Agency within the meaning of Part I of the Housing and Regeneration Act 2008 (or as redefined by any amendment, replacement or re-enactment of such Act);
- "Housing Association"** means a housing association or registered provider operating in the area of the Land as defined by the Housing and Regeneration Act 2008 (or as redefined by any amendment, replacement or re-enactment of such Act) and registered by the Tenant Services Authority under the provisions of the Housing and Regeneration Act 2008 or any company or other body approved by the Homes and Communities Agency for receipt of social housing grant as may be proposed by the Owner and approved by the Council and reference to **"Housing Associations"** shall be construed accordingly;
- "Housing Services Manager"** means the Housing Services Manager of the Council or such other Officer as may from time to time be nominated by him / her or carry out the functions at the date hereof carried out by him / her;
- "Independent Chartered Surveyor"** means a member of the Royal Institution of Chartered Surveyors appointed by agreement between the Owner at its own costs and the Council or in the absence of such agreement upon the application of either party to the President of the Royal Institution of Chartered Surveyors and the phrase **"Independent Chartered Surveyors"** shall be construed accordingly;

"Affordable / Intermediate Dwellings"

means the 5 Affordable Dwellings to be provided on:

Plots 11, 12, 27, 29 and 34

the type and size of which will be agreed in writing with the Council prior to the Commencement of Development to be constructed in accordance with the Planning Permission and the Reserved Matters Approval and paragraph 1.3 of the First Schedule to this Agreement and to be made available as shared ownership housing or shared equity housing or such other form of affordable / intermediate affordable housing (other than Social Rented Dwellings) that meets the criteria of Annex B to PPS3 (or any future guidance or initiative that replaces or supplements it) agreed in writing with the Council and which, for the avoidance of doubt, should include any initiative subject to receipt of Homes and Communities Agency funding or such other funding that is in accordance with government policy relating to Housing Association rent levels at the time and first approved in writing by the Council suitable for those unable to meet their housing needs on the open market such properties to be made available at an Affordable / Intermediate Rent to persons in accordance with the Housing Associations and / or Nominated Housing Associations policy and reference to "Affordable / Intermediate Dwelling" shall be construed accordingly;

"Affordable / Intermediate Rent"

means: -

- 1 an intermediate rent set at 80% of the open market rent for Kirbymoorside ("**Intermediate Rent**");
- 1 in the event that a Housing Association is unable

to dispose of the Affordable / Intermediate Dwellings at an Intermediate Rent, and if first approved in writing by the Council, a rent up to 80% of the open market rent for Pickering ("**Affordable Rent**")

or such other price that is in accordance with government policy relating to Housing Association rent levels at the time and first approved in writing by the Council;

"Land"

means land at New Road, Kirbymoorside, North Yorkshire as shown for identification purposes only edged red on the Plan;

"Nominated Housing Association"

means a housing association nominated by the Owner in substitution for the Housing Association pursuant to this Agreement;

"Occupation"

means occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in the construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations;

"Off-Site POS Contribution"

means the sum of £62,000 00 (sixty two thousand pounds only) to be paid by the Owner to the Council as a contribution to be applied by the Council towards the provision of and / or improvements to youth and / or adult sports and leisure facilities within the vicinity of the Land within Kirbymoorside;

"Open Market Dwellings"

means those units to be constructed on the Land excluding the Affordable Dwellings for sale on the open market and "**Open Market Dwelling**" shall be construed accordingly;

"Market Value"

means a figure to be agreed between the Owner and the Council calculated having regard to the estimated

amount for which a relevant Dwelling should exchange on the date of valuation between a willing buyer and a willing seller in an arm's length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion;

- "Plan"** the plan annexed to this Agreement;
- "Planning Permission"** means the outline planning permission granted by the Council on 15 April 2010 under reference number 09/00575/MOUT for residential development on the Land;
- "Reserved Matters Application"** means the written application made on behalf of the Owner to the Council under reference 10/01121/MREM and validated by the Council on 11 October 2010 for reserved matters approval in relation to the Planning Permission for residential development for erection of 8 no four bedroom dwellings, 16 no. three bedroom dwellings, 20 no two bedroom dwellings and 2 no. one bedroom dwellings with associated garaging and parking;
- "Reserved Matters Approval"** means the reserved matters approval issued pursuant to the Reserved Matters Application in the form attached as the Fourth Schedule to this Agreement.

1 2 Where the context so requires: -

- 1.2.1 The singular includes the plural and vice versa and words importing the masculine gender only include the feminine gender and extend to include a corporation sole or aggregate.
- 1.2.2 References to any party shall include the successors in title of that party.
- 1 2 3 Where a party includes more than one person any obligations of that party shall be joint and several.

1.2.4 Any covenant by the Owner not to do any act or thing shall be deemed to include a covenant not to cause permit or suffer the doing of that act or thing.

1.2.5 References to clauses paragraphs and schedules are references to clauses paragraphs and schedules to this Agreement and are for reference only and shall not affect the construction of this Agreement.

2 RECITALS

2.1 The Council is the Local Planning Authority for the purposes of the 1990 Act for the area within which the Land is situated.

2.2 The Owner is the registered proprietor of the Land with freehold title absolute registered at H.M. Land Registry under Title Number NYK378430.

2.3 The Owner has made the Reserved Matters Application to the Council for the Reserved Matters Approval.

2.4 The Council is satisfied that the Development is such as may be approved by the Council under the 1990 Act subject to conditions and subject to the obligations and restrictions contained in this Agreement.

2.4 The Owner by entering into this Agreement does so to bind the Land and to create planning obligations in favour of the Council pursuant to Section 106 of the 1990 Act and to be bound by and observe and perform the covenants agreements conditions and stipulations hereinafter contained on the terms of this Agreement.

3 OPERATIVE PROVISIONS

3.1 This Agreement is a planning obligation made in pursuance of Section 106 of the 1990 Act as substituted by Section 12 of the Planning and Compensation Act 1991 and to the extent that the covenants in this Agreement are not made under Section 106 of the 1990 Act they are made under Section 111 or section 139 of the Local Government Act 1972 and all other powers so enabling.

3.2 The planning obligations comprised in this Agreement on the part of the Owner shall not become effective until the following conditions are satisfied: -

3.2.1 the Reserved Matters Approval has been granted; and

3.2.2 except where otherwise stated in this Agreement the Commencement of Development

3.3 The Owner hereby covenants with the Council that the Land shall be permanently from the date specified in clause 3.2 above subject to the restrictions and provisions regulating the Development and use thereof specified in the First Schedule to this Agreement

3.4 The Council covenants with the Owner to comply with its obligations in the Third Schedule hereto

4 IT IS AGREED AND DECLARED AS FOLLOWS: -

4.1 No party shall be bound by the terms of this Agreement or be liable for the breach of any covenants restrictions or obligations contained in this Agreement (but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest): -

4.1.1 occurring after he or it has parted with his or its interest in the Land or the part in respect of which such breach occurs;

4.1.2 in respect of any part or parts of the Land in respect of any period during which it or they shall no longer have an interest in such part or parts of the Land;

4.1.3 if he or it shall be an occupier or owner or tenant of a Dwelling

4.1.4 if he or it shall be an occupier or tenant or a purchaser of a site or sites for statutory infrastructure purposes in relation to the Development.

4.2 If the Planning Permission shall expire before the Commencement of Development or shall at any time be revoked or modified (without the consent of the Owner) this Agreement shall forthwith determine and cease to have effect.

4.3 It is hereby declared that this Agreement is a planning obligation and that the land subject to the obligation is the Land and that the Agreement is enforceable by the Council

4.4 The Owner agrees to pay to the Council on the execution hereof the reasonable legal costs of the Council incurred in connection with this Agreement in the sum of £[]

- 4.5 This Agreement is a local land charge and shall be registered as such
- 4.6 Any dispute arising between the parties as to their respective rights duties or obligations or as to the failure of the Council to give or confirm its consent where required under this Agreement or as to failure to agree Market Value or as to any other matter or thing arising out of or connected with the subject matter of this Agreement or any failure to agree upon any matter may be referred in accordance with clause 4.7 below to the determination of an Independent Chartered Surveyor
- 4.7 Any reference to an Independent Chartered Surveyor in accordance with clause 4.6 above shall be to a reputable Independent Chartered Surveyor unconnected to any of the parties hereto and experienced in commercial development matters who shall be agreed between the parties to the dispute or appointed on the application of any party to the dispute made at any time by the President of the Royal Institution of Chartered Surveyors or his duly appointed deputy and the decision of such Independent Chartered Surveyor shall be final and binding upon the parties to the dispute and the parties hereby agree to act in accordance with the decision (save for manifest error) and if the parties to the dispute shall agree in writing such reference shall be deemed to be a reference to an expert (and not an arbitrator) but shall otherwise be deemed to be a reference to an arbitrator pursuant to the Arbitration Act 1996 and if any Independent Chartered Surveyor shall act as an expert pursuant to the terms of this clause 4.7 then each of the parties to the dispute shall be entitled to submit to him representations and cross representations with such supporting evidence as they shall consider necessary and he shall have regard thereto in making his decision which he shall deliver in writing as expediently as possible and the reference to him shall include authority to determine in what manner all the costs of the referral (whether incurred by the parties to the dispute or the Independent Chartered Surveyor himself) shall be paid
- 4.8 Wherever this Agreement requires the approval agreement determination or consent of the Council or the Owner such approval agreement determination or consent is not to be unreasonably withheld or delayed
- 4.9 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than one relating to the Development) granted (whether or not on appeal) after the date of this Agreement
- 4.10 The expressions "the Council" and "the Owner" shall include their respective successors in title and assigns.

4.11 The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement as provided for by Section 1 of that Act provided that this clause shall not affect any right of action of any person to whom this Agreement has been lawfully assigned or becomes vested in law

FIRST SCHEDULE

(Owner's Covenants)

The Owner hereby covenants with the Council as follows: -

1 AFFORDABLE DWELLINGS

On-Site Provision

- 1.1 Not to Commence Development until it has submitted to the Council and the Council have approved a scheme ("**Affordable Dwelling Scheme**") relating to the type and size of the Affordable Dwellings.
- 1.2 Within 30 Working Days (or within such other time period of not more than an additional 15 Working Days that the Council may reasonably require and which may be agreed in writing between the Council and the Owner within the initial 30 Working Day period) of the Council receiving from the Owner the Affordable Dwelling Scheme the Council will notify the Owner in writing of its approval to the Affordable Dwelling Scheme proposed by the Owner or will acting reasonably provide in writing his proposed amendments to the Affordable Dwelling Scheme pursuant to which the Owner acting reasonably shall submit a revised Affordable Dwelling Scheme incorporating those amendments as are reasonable and accepted **PROVIDED THAT** if the Council does not notify the Owner of its approval or proposed amendments to the Affordable Dwelling Scheme within the 30 Working Days referred to above (or such other period of time that may be agreed) it shall be deemed that the Council has approved the Affordable Dwelling Scheme submitted by the Owner **AND FURTHER PROVIDED THAT** if agreement cannot be reached between the Council and the Owner within 45 Working Days of the date of its submission to the Council (or such other period of time that may be agreed) then the provisions of clause 4.6 relating to expert determination can be invoked by any party in relation to only those matters that are in dispute.
- 1.3 Upon receipt of the Council's approval or deemed approval to the Affordable Dwelling Scheme pursuant to paragraph 1.2 of this Schedule (or upon receipt of expert determination in relation to the Affordable Dwelling Scheme if applicable) to procure that the Affordable Dwellings be constructed on the Land in accordance with the approved Affordable Dwelling Scheme or any variations that may be agreed in writing between the Council and the Owner from time to time and the Planning Permission and the Reserved Matters Approval and approved plans and a physical specification to be

negotiated with the Housing Association for offer of disposal to a Housing Association or a Nominated Housing Association at a price which enables the Housing Association and / or a Nominated Housing Association as the case may be to charge: -

1 3 1 a Social Rent in respect of the Social Rented Dwellings; and

1 3 2 an Affordable / Intermediate Rent in respect of the Affordable / Intermediate Dwellings or sell on shared ownership / shared equity terms

on terms and conditions approved in writing by the Council **PROVIDED ALWAYS** that the Owner will not be required to provide as Affordable Housing more than 16 Affordable Dwellings on the Land.

1 4 As soon as reasonably practicable following the Commencement of Development to nominate in writing to the Council the Housing Associations to some of which the Owner will market the Affordable Dwellings **PROVIDED THAT** it is agreed that with the Council's prior approval the Owner will be entitled to amend the nomination by adding or removing Housing Associations from time to time during the course of carrying out the Development ("**Nomination**"). Within 10 working days of the Council receiving from the Owner a Nomination the Council may notify to the Owner in writing of any additional Housing Associations to whom the Owner shall offer and use reasonable endeavours to contract to transfer the Affordable Dwellings.

1 5 The Owner shall as soon as reasonably practicable following a Nomination pursuant to paragraph 1.4 of this Schedule enter into negotiations with those Housing Associations which it have selected from its Nomination and the Council has added and use reasonable endeavours to contract to transfer the Affordable Dwellings to be constructed within the Development to such Housing Associations which expresses an interest in acquiring those dwellings as it shall choose at a price which enables the Housing Association to charge: -

1 5 1 a Social Rent in respect of the Social Rented Dwellings; and

1.5.2 an Affordable / Intermediate Rent in respect of the Affordable / Intermediate Dwellings or sell on shared ownership / shared equity terms.

1 6 In the event that the Housing Association(s) declines or is unable to accept the transfer of some or all of the Affordable Dwellings to be constructed within the Development on the terms of this Agreement or if in the Owner's or the Council's opinion (acting reasonably) insufficient progress is being made towards exchange of contracts with the

Housing Association for the transfer of some or all of the Affordable Dwellings within a period of three months from the date of the offer referred to in paragraph 1.5 of this Schedule the Owner or the Council shall give written notice to the other ("Notice") and the Owner may select another Nominated Housing Association(s) from a Nominations referred to in paragraph 1.4 of this Schedule

- 1.7 The Owner shall offer to enter into negotiations with the Nominated Housing Association for the transfer to it of the Affordable Dwellings to be constructed within the Development (or any individual unit or units comprised in the Affordable Dwellings that has/have not been transferred or may not have been contracted to be sold to the Housing Association) on the terms of this Agreement and if the Nominated Housing Association declines or is unable to accept the transfer of some or all of the Affordable Dwellings to be constructed within the Development (or any individual unit or units comprised in the Affordable Dwellings that has/have not been transferred or may not have been contracted to be sold to the Housing Association) within a period of three months from the date of the offer referred to in paragraph 1.6 of this Schedule and the Council acting reasonably is satisfied on the evidence provided by the Owner that the Owner have used reasonable endeavours to transfer the Affordable Dwellings (or any individual unit or units comprised in the Affordable Dwellings that has/have not been transferred or may not have been contracted to be sold to the Housing Association) to the Nominated Housing Association and there is no reasonable prospect of securing the transfer of any part or element of the Affordable Dwellings to be constructed within the Development to a Nominated Housing Association then the Owner shall be permitted to dispose of the Affordable Dwellings to be constructed within the Development that may not have been contracted to be sold to the Housing Association or the Nominated Housing Association (or any individual unit or units comprised in the Affordable Dwellings that has/have not been transferred or may not have been contracted to be sold to the Housing Association or the Nominated Housing Association) individually on the open market free from the restrictions and obligations contained in this Agreement and the Owner shall upon the first 12 month anniversary of the sale of the first Affordable Dwelling on the open market pay to the Council the Affordable Housing Contribution attributable to all of the Affordable Dwellings sold on the open market during that year with each subsequent payment to be calculated on the same basis and made on the 12 month anniversary following the preceding payment until such time that there are no further Affordable Dwellings to be sold on the open market.

- 1.8 Not to permit (unless the Owner are entitled to dispose of the Affordable Dwellings on

the open market in accordance with the provisions of paragraph 1.7 of this Schedule): -

- 1.8.1 Occupation of more than 50% of the Open Market Dwellings until the Owner has entered into a binding contract with a Housing Association(s) for the disposal of the Affordable Dwellings;
 - 1.8.2 Occupation of more than 75% of the Open Market Dwellings until 50% of the Affordable Dwellings have been constructed and transferred to a Housing Association(s);
 - 1.8.3 Occupation of more than 90% of the Open Market Dwellings until the Affordable Dwellings have been constructed and transferred to a Housing Association(s).
- 1.9 It shall be a term of the sale of the Affordable Dwellings that the Housing Association and / or the Nominated Housing Association as the case may be shall not dispose of or cause or permit the disposal of the Affordable Dwellings other than for the purpose of providing tenancies or leases at: -
- 1.9.1 a Social Rent in respect of the Social Rented Dwellings; and
 - 1.9.2 an Affordable / Intermediate Rent in respect of the Affordable / Intermediate Dwellings or by sale by way of shared ownership or shared equity
- to Eligible Occupiers
- 1.10 Prior to the transfer of any of the Affordable Dwellings pursuant to this Schedule the Owner shall ensure they are fully serviced and accessible by vehicles and pedestrians.
 - 1.11 To supply within 14 working days from the date of the transfer of the Affordable Dwellings to the Housing Association and / or the Nominated Housing Association as the case may a copy of that transfer to the Council
 - 1.12 Any transfer of the Affordable Dwellings to a Housing Association or a Nominated Housing Association shall contain reasonable provisions ensuring that the Affordable Dwellings remain available at an affordable price for future eligible households, or, if these restrictions are lifted, for the subsidy to be recycled for alternative affordable housing provision but nothing in this schedule shall apply upon: -

- 1.12.1 the exercise by any person of a statutory right to buy, right to acquire or right to staircase out and acquire a 100% interest in the Affordable Dwelling under the terms of a Shared Ownership Lease based substantially on the Homes and Communities Agency model lease from time to time; or
- 1.12.2 the exercise of its power of sale by a mortgagee of the Housing Association and / or the Nominated Housing Association as the case may be or of any of the Affordable Dwellings or the sale by a receiver appointed by such mortgagee pursuant to statutory powers or the provisions of any mortgage or charge as required by a Court Order; or
- 1.12.3 any subsequent disposition of the properties following a disposal falling within paragraphs 1.12.1 or 1.12.2 above

Off-Site Provision

- 1.13 Not to allow the Occupation of more than 21 Dwellings until the Affordable Housing Commuted Sum has been paid to the Council

2 OFF-SITE POS CONTRIBUTION

- 2.1 Not to allow the Commencement of Development until the Off-Site POS Contribution has been paid to the Council

SECOND SCHEDULE

(Occupancy Criteria)

The Owner shall ensure the Affordable Dwellings are occupied by persons: -

1. who have for a period of at least 2 years been ordinarily resident within the town of Kirbymoorside, or
2. who have been permanently employed in the town of Kirbymoorside for 2 years or more, or
3. if no such person qualifies under paragraphs 1 or 2 above for occupation a person ordinarily resident for a period of at least 2 years in any of the Parishes which adjoin the Parish of Kirbymoorside
4. if no such person qualifies under paragraph 3 above for occupation then a person ordinarily resident for a period of at least 2 years in any area in the District of Ryedale
5. if no such person qualifies under paragraph 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 Dwelling 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

THIRD SCHEDULE
(Council's Covenants)

The Council covenants with the Owner as follows: -

- 1 To issue the Planning Permission on the date hereof
- 2 To issue a receipt for each instalment of the Affordable Housing Commuted Sum and the Off-Site POS Contribution and if applicable the Affordable Housing Contribution
- 3 Upon receipt to place the sums referred to in paragraph 2 of this Schedule in an interest bearing account or in separate accounts as the Council shall in its discretion decide
- 4 To apply the Affordable Housing Commuted Sum towards the purposes specified in the definition of Affordable Housing Commuted Sum the need for which directly arises from the Development and not to apply the Affordable Housing Commuted Sum for any other purposes and the Council shall (on the reasonable request of the payee or the payee's nominee) provide evidence that the monies have been so applied.
- 5 To apply the Off-Site POS Contribution towards the purposes specified in the definition of Off-Site POS Contribution the need for which directly arises from the Development and not to apply the Off-Site POS Contribution for any other purposes and the Council shall (on the reasonable request of the payee or the payee's nominee) provide evidence that the monies have been so applied
- 6 If applicable, to apply the Affordable Housing Contribution towards the purposes specified in the definition of Affordable Housing Contribution the need for which directly arises from the Development and not to apply the Affordable Housing Contribution for any other purposes and the Council shall (on the reasonable request of the payee or the payee's nominee) provide evidence that the monies have been so applied.
- 7 In the event the Affordable Housing Commuted Sum and / or the Off-Site POS Contribution and if applicable the Affordable Housing Contribution or any part or parts thereof are not expended within five years of the date on which such monies were received by the Council then the sum or sums not expended plus interest accrued will be repaid to the person who paid the sum or sums or its nominee.

8 The Council will on the reasonable written request of the Owner at any reasonable time or times after any of the planning obligations under this Agreement have been fulfilled issue written confirmation thereof or at any reasonable time after this Agreement ceases to have effect issue written confirmation thereof and thereafter cancel all relevant entries in the Register of Local Land Charges.

FOURTH PARAGRAPH
(Reserved Matters Approval)

RYEDALE DISTRICT COUNCIL

TOWN & COUNTRY PLANNING ACT 1990

MATTERS RESERVED BY A CONDITION OF OUTLINE APPROVAL

RYEDALE DISTRICT COUNCIL, THE LOCAL PLANNING AUTHORITY, HAS CONSIDERED THIS APPLICATION AND HAS DECIDED THAT IT SHOULD BE APPROVED SUBJECT TO THE STATED CONDITIONS:

Application No: 10/01121/MREM

Proposal: Erection of 8no. four bedroom dwellings, 16no. three bedroom dwellings, 20no. two bedroom dwellings and 2no. one bedroom dwellings with associated garaging and parking (outline approval 09/00575/MOUT dated 15 04 2010 refers)

at: Russells (Kirkbymoorside) Ltd New Road Kirkbymoorside York YO62 6DJ

for: David Wilson Homes Yorkshire (East) Division (Mr P Butler)

Decision Date: 21 April 2011

REASON FOR APPROVAL

The proposed development is in accord with the following development plan policies and there are no other material considerations that outweigh those listed development plan policies:

Regional Spatial Strategy

Policy ENV5 - Energy
Policy ENV8 - Biodiversity
Policy H1 - Provision & Distribution of Housing
Policy H2 - Managing and Stepping Up the Supply and Delivery of Housing
Policy H4 - The Provision of Affordable Housing
Policy H5 - Housing Mix
Policy YH6 - Local Service Centres and Rural and Coastal Areas
Policy YH7 - Location of Development

Ryedale Local Plan

Policy ENV7 - Landscaping
Policy EMP8 - Existing industrial and business areas
Policy H7 - Residential development within settlements
Policy H14 - Public open space in residential developments
Policy T3 - Access to the local highway network
Policy T4 - Accesses onto 'A' roads
Policy T7 - Parking
Policy U2 - Availability of water supplies
Policy U3 - Surface water run-off
Policy U4 - Sewage disposal

David Wilson Homes Yorkshire (East) Division (Mr P Butler)
Monks Cross Drive
York
YO32 9WN

CONDITIONS AND ASSOCIATED REASONS

- 01 The development hereby permitted shall be carried out in accordance with the following approved plans as set out in David Wilson Homes Drawing Issue Sheet.

Reference 10 1005 Kirkbymoorside
Dated: 21 04 2011

Reason: For the avoidance of doubt and in the interests of proper planning

Note: Notwithstanding the details shown on the approved plans list. Your attention is drawn to the need to comply with the requirements of the outstanding conditions imposed on outline planning permission ref: 09/00575/MOUT.

NO CONSENT OR APPROVAL HEREBY GIVEN REMOVES ANY REQUIREMENT TO SERVE NOTICES OR SEEK APPROVAL FROM THE DISTRICT COUNCIL WHERE SUCH ACTION IS REQUIRED BY THE BUILDING ACT 1984 OR OF ANY OTHER STATUTORY PROVISION. NO PART OF THE PROPOSED DEVELOPMENT SHOULD BE STARTED WITHOUT COMPLYING WITH SUCH REQUIREMENT


HEAD OF PLANNING

David Wilson Homes Yorkshire (East) Division (Mr P Butler)
Monks Cross Drive
York
YO32 9WN

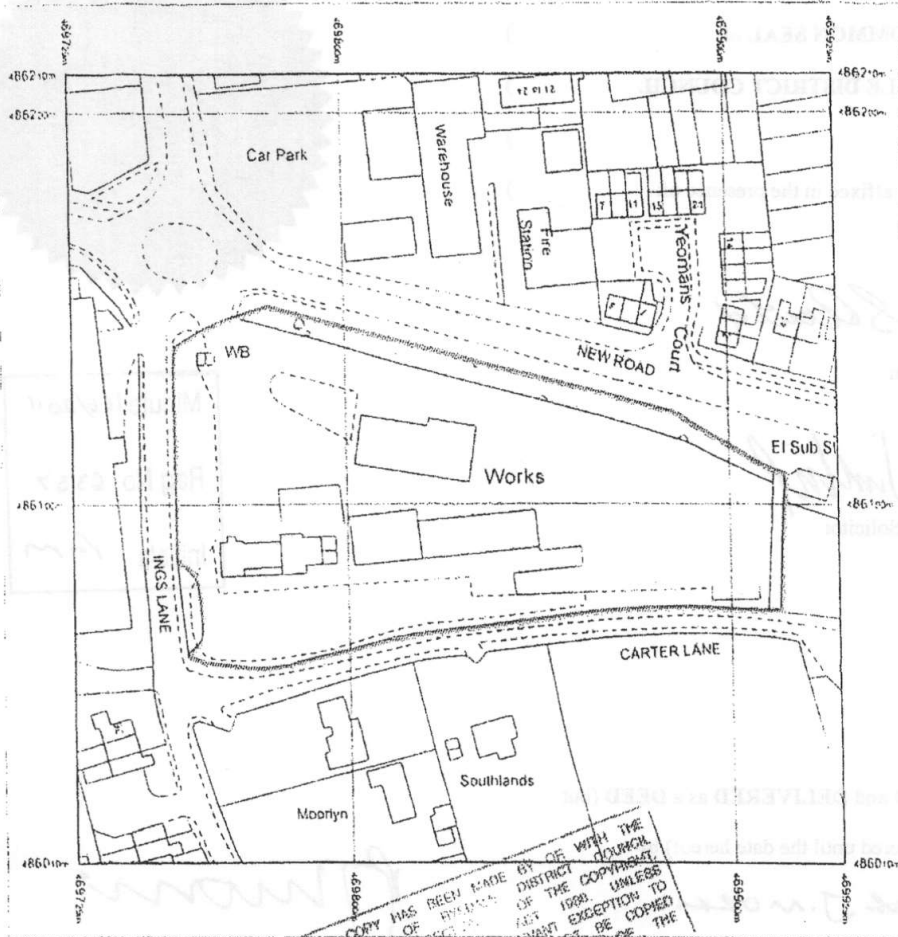
OS Ordnance Survey®



S. Scard
Chairman

K. Adair
Council Solicitor

OS Sitemap™



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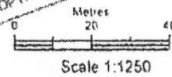
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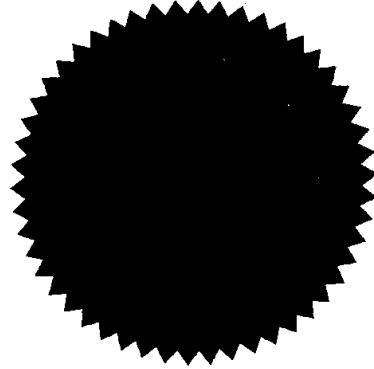
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Ormon

IN WITNESS WHEREOF the parties hereto have duly executed this document as their Deed in the presence of the persons mentioned below the day and year first above written

THE COMMON SEAL of)
RYEDALE DISTRICT COUNCIL)
was)
hereunto affixed in the presence of:-)



[Handwritten signature]

Chairman

[Handwritten signature]

Council Solicitor

Minute 166/2011
Reg No. 6387
Initials AM

SIGNED and DELIVERED as a DEED (but not delivered until the date hereof) by

Peter J. Moran
and
Cavin Birch

[Handwritten signature]

as the Attorney in the name of **BDW TRADING LIMITED** in exercise of the power conferred upon them by a Power of Attorney dated 23 July 2010 in the presence of: -

[Handwritten signature]
Kelly Masterson
49 Poplar Street
York
YO26 4SF