

DATED 14 OCTOBER 2014

RYEDALE DISTRICT COUNCIL (1)

AND

JOHN WILLIAM HODGSON AND

ELSIE ANNE HODGSON (2)

AGREEMENT

pursuant to section 106

of the Town and Country Planning Act 1990 (as amended)

relating to the development of land to the South of 69 Westgate, Pickering, North
Yorkshire YO18 8AZ

K A Winship

Council Solicitors

Malton

THIS DEED is made the 14 day of OCTOBER 2014

BETWEEN: -

(1) RYEDALE DISTRICT COUNCIL of Ryedale House, Malton, North Yorkshire, North Yorkshire, YO17 7HH (the "Council");

AND

(2) Mr John William Hodgson and Mrs Elsie Ann Hodgson both of 69 Westgate, Pickering, North Yorkshire YO18 8AZ (the "Owner")

WHEREAS:

- (A) The Council is the local planning authority for the purposes of the Act for the area within which the Land is situated and by whom the obligations contained in this Deed are enforceable.
- (B) The Owner is registered as proprietor of the Land with title absolute under the Conveyance dated 16 April 1987
- (C) The Owner submitted the Planning Application to the Council for permission to carry out the Development on the Land.
- (D) The Council resolved on 21 October 2013 to grant the Planning Permission for the Development subject to the making of this Deed without which Planning Permission would not be granted.
- (E) The Owner by entering into this Deed does so to create planning obligations in favour of the Council pursuant to section 106 of the Act and to be bound by and observe and perform the covenants agreements conditions and stipulations hereinafter contained on the terms of this Deed.

NOW THIS DEED WITNESSES as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 In this Deed the following words and expressions shall where the context so requires or admits have the following meanings: -

| | |
|--|--|
| "Act" | means the Town and Country Planning Act 1990 (as amended); |
| "Affordable Housing Commuted Sum" | the sum of £11,250.00 (Eleven thousand, Two thousand and Fifty pounds) to be used by the Council in accordance with the provisions of paragraph 2 of the Fourth Schedule. |
| "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 Act save that the term " <i>material operation</i> " shall not include operations in connection with any work of or associated with demolition site clearance remediation works environmental investigation site and soil surveys erection of contractors work compound erection of site office or erection of fencing to site boundary and reference to " Commence Development " shall be construed accordingly; |
| "Development" | means the development to be carried out on the Land pursuant to the Planning Permission; |
| "Index" | means the Building Costs Information All in Tender Price Index published by the Royal Institution of Chartered Surveyors (or contained in any official publication substituted therefore) or such other index as may from time to time be |

published in substitution thereof;

"Index Linked"

means increased on an annual basis or pro rata per diem from the date of this Deed until such time that payment of any sum in this Deed is made such index linking to be equivalent to any inflationary increase in such sums taking as the basis for the measure of inflation the Index last published before the date of this Deed or any publication substituted for it;

"Interest"

means interest at the rate of 4% above the base lending rate of the Bank of England in force at the due date which shall mean the date when interest first becomes payable;

"Land"

means the land to the South of 69 Westgate, Pickering, North Yorkshire YO18 8AZ which is for the purposes of identification shown edged in red on the Plan

"Plan"

means the plan attached at the First Schedule;

"Planning Application"

means the application submitted by the Owner to the Council for development and allocated reference number 13/00844/FUL.

"Planning Permission"

means a planning permission issued by the Council pursuant to the Planning Application substantively in the form attached at the Second Schedule

"Practical Completion"

Means the completion of all the construction of the dwelling that has to be done, notwithstanding that there may be latent defects, for the purpose

of allowing a prospective purchaser to take possession of the dwelling and use it as intended.

"Working Day" Means any day except Saturdays Sunday or a bank holiday and reference to "Working Days" shall be construed accordingly.

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 shall 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 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 severally 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 person deriving title through or under that party and in the case of the Borough Council the successors to its statutory functions.
- 2.7 The headings are for reference only and shall not affect construction.

3 LEGAL BASIS

- 3.1 This Deed is made pursuant to Section 106 of the Act and all other powers so enabling.
- 3.2 The covenants, restrictions and requirements imposed upon the Owner 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 any person deriving title under him.

4 CONDITIONALITY

- 4.1 The planning obligations contained in this Deed shall not become effective until the following conditions are satisfied: -
- 4.1.1 the Planning Permission has been granted; and
- 4.1.2 unless otherwise stated the Commencement of Development save for the provisions of clauses 7.1, 8, 11 and 15 which shall come into effect immediately upon completion of this Deed.

5 THE OWNER'S COVENANTS

The Owner hereby covenants with the Council so as to bind the Land to perform the obligations and observe the restrictions specified in the Third Schedule.

6 THE COUNCIL'S COVENANTS

The Council covenants with the Owner to perform the obligations and observe the restrictions specified in the Fourth Schedule.

7 MISCELLANEOUS

- 7.1 The Owner shall pay to the Council on completion of this Deed the sum of £250.00 plus VAT (Three Hundred and Fifty pounds plus VAT) being a contribution to the reasonable legal costs of the Council incurred in the negotiation, preparation and execution of this Deed
- 7.2 This Deed does not nor is intended to confer a benefit on a third party within the meaning of the Contracts (Rights of Third Parties) Act 1999.
- 7.3 This Deed shall be registered as a local land charge by the Council.
- 7.4 Following the performance and satisfaction of all the planning obligations contained in this Deed the Council shall following receipt of a written request forthwith effect the cancellation of all related entries in the Register of Local Land Charges in respect of this Deed.
- 7.5 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.
- 7.6 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 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Land but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 7.8 The covenants contained in this Deed shall not be enforceable against a statutory undertaker holding an interest in the Land for the purposes of his or its undertaking

- 7.9 Nothing in this Deed shall prohibit or limit the right to develop any part of the Land 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 Nothing contained or implied in this Deed shall prejudice or affect the rights discretions powers duties and obligations of the Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority.
- 7.11 Any notice agreement consent acknowledgment or approval required to be given under this Deed shall not be unreasonably withheld or delayed and shall be in writing and shall be delivered personally or sent by pre-paid first class recorded delivery post or facsimile transmission.
- 7.12 The address for service of any such notice consent acknowledgment or approval as aforesaid shall: -
- 7.12.1 in the case of service upon the Council be at its address aforesaid or such other address for service as shall have been previously notified by the Council; and
- 7.12.2 in the case of service upon the Owner, be the registered offices or such other address for service as shall have been previously notified by the Owner to the Council.
- 7.13 A notice agreement consent acknowledgment or approval under this Deed shall be deemed to have been served as follows: -
- 7.13.1 if personally delivered at the time of delivery;
- 7.13.2 if posted at the expiration of 48 hours after the envelope containing the same was delivered into the custody of the postal authority within the United Kingdom;

7.13.3 if sent by facsimile transmission at the time of successful transmission on the day of transmission if sent before 3.30pm otherwise the following working day; and in proving such service it shall be sufficient to prove that personal delivery was made or that the envelope containing such notice consent or approval was properly addressed and delivered into the custody of the postal authority in a pre-paid or recorded delivery envelope (as appropriate) or that the facsimile was successfully transmitted on a tested line as the case may be.

8 DISPUTE RESOLUTION

- 8.1 In the event of any dispute or difference arising between any of the parties to this Deed in respect of any matter contained in this Deed such dispute or difference shall be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in England with such matters as may be in dispute and such person shall act as an expert whose decision shall be final and binding on the parties in the absence of manifest error and any costs shall be payable by the parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the parties in equal shares.
- 8.2 In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to Clause 13.1 or as to the appropriateness of the professional body then such question may be referred by either part to the president for the time being of the Law Society for him to appoint a solicitor to determine the dispute such solicitor acting as an expert and his decision shall be final and binding on all parties in the absence of manifest error and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties in equal shares.
- 8.3 Any expert howsoever appointed shall be subject to the express requirement that a decision was reached and communicated to the relevant parties within

the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty-eight working days after the conclusion of any hearing that takes place or twenty-eight working days after he has received any file or written representation.

- 8.4 The expert shall be required to give notice to each of the said parties requiring them to submit to him within ten working days of notification of his appointment written submissions and supporting material and the other party will be entitled to make a counter written submission within a further ten working days.
- 8.5 The provisions of this clause shall not affect the ability of the Council to apply for and be granted any of the following: declaratory relief, injunction, specific performance, payment of any sum, damages, any other means of enforcing this Deed and consequential and interim orders and relief.

9 WAIVER

No waiver (whether expressed or implied) by the Council (or the Owner) 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 (or the Owner) from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

10 CHANGE IN OWNERSHIP

The Owner agrees with the Council to give the Council immediate written notice of any change in ownership of any of its interests in the Land 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 Land or unit of occupation purchased by reference to a plan.

11 INDEXATION

Any sum referred to in the Third Schedule shall be Index Linked.

12 INTEREST

If any payment due under this Deed is paid late, Interest shall be payable from the date payment is due to the date of payment.

13 VAT

The amount of all considerations, contributions and payments referred to in this Deed shall be increased by any value added tax properly payable on the consideration, contribution or payment.

14 JURISDICTION

This Deed is governed by and interpreted in accordance with the law of England and Wales and the parties submit to the non-executive jurisdiction of the courts of England and Wales.

15 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.

FIRST SCHEDULE
The Plan

13/00844/FUL

E.A. Hodgson

J.W. Hodgson



GIS by ESRI (UK)



Scale : 1:1250

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|--------------|--------------|------|
| Organisation | Not Set | N/D. |
| Department | Not Set | |
| Comments | | |
| Date | 23 July 2014 | |
| SLA Number | Not Set | |

SECOND SCHEDULE
Draft Decision Notice

RYEDALE DISTRICT COUNCIL

**TOWN & COUNTRY PLANNING ACT 1990
FULL APPLICATION FOR PERMISSION TO CARRY OUT DEVELOPMENT**

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

Application No: 13/00844/FUL
Proposal: Erection of a two bedroom dwelling with parking and amenity areas
at: Land West Of 80 Firthland Road Pickering North Yorkshire
for: Mr & Mrs Hodgeson

Decision Date:

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:

National Planning Policy Framework
Local Plan Strategy - Policy SP2 Delivery and Distribution of New Housing
Local Plan Strategy - Policy SP3 Affordable Housing
Local Plan Strategy - Policy SP4 Type and Mix of New Housing
Local Plan Strategy - Policy SP13 Landscapes
Local Plan Strategy - Policy SP16 Design
Local Plan Strategy - Policy SP18 Renewable and Low Carbon Energy
Local Plan Strategy - Policy SP19 Presumption in Favour of Sustainable Development
Local Plan Strategy - Policy SP20 Generic Development Management Issues

CONDITIONS AND ASSOCIATED REASONS

01 The development hereby permitted shall be begun on or before .

Reason:- To ensure compliance with Section 51 of the Planning and Compulsory Purchase Act 2004

Mr & Mrs Hodgeson
C/O Prospect Design (Mr Richard Webster)
64 Newbiggin
Malton
North Yorkshire
YO17 7JF

APPN NO: 13/00844/FUL

- 02 Before the development hereby permitted is commenced, or such longer period as may be agreed in writing with the Local Planning Authority, details and samples of the materials to be used on the exterior of the building the subject of this permission shall be submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure a satisfactory external appearance and to satisfy the requirements of Policy H7A (ii) of the Ryedale Local Plan

- 03 Before the commencement of the development hereby permitted, or such longer period as may be agreed in writing with the Local Planning Authority, full details of the materials and design of all means of enclosure shall be submitted to and approved in writing by the Local Planning Authority. Thereafter these shall be erected prior to the occupation of any dwelling to which they relate.

Reason:- To ensure that the development does not prejudice the enjoyment by the neighbouring occupiers of their properties or the appearance of the locality, as required by the National Planning Policy Framework.

- 04 Notwithstanding the provisions of Schedule 2, Part 1 of the Town & Country Planning (General Permitted development) Order 1995 (or any Order revoking, re-enacting or amending that Order), development of the following classes shall not be undertaken other than as may be approved in writing by the Local Planning Authority following a specific application in that respect:

Class A: Enlargement, improvement or alteration of a dwellinghouse

Class B: Roof alteration to enlarge a dwellinghouse

Class C: Any other alteration to the roof of a dwellinghouse

Class D: Erection or construction of a domestic external porch

Class E: Provision within the curtilage of a dwellinghouse of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of a dwellinghouse or the maintenance, improvement or other alteration of such a building or enclosure.

Reason:- To ensure that the appearance of the area is not prejudiced by the introduction of unacceptable materials and/or structure(s) and to satisfy Policy H7A criteria (i) and (ii) of the Ryedale Local Plan

- 05 Prior to the commencement of the development, details of all windows, doors and garage doors, including means of opening, depth of reveal and external finish shall be submitted to and approved in writing by the Local Planning Authority

Reason: To ensure an appropriate appearance and to comply with the requirements of Policy H7A (ii) of the Ryedale Local Plan

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- 06 Prior to the commencement of the development hereby permitted, the developer shall construct on site for the written approval of the Local Planning Authority, a one metre square free standing panel of the external walling to be used in the construction of building. The panel so constructed shall be retained only until the development has been completed
- Reason: To ensure a satisfactory external appearance and to satisfy the requirements of Policy H7A (ii) of the Ryedale Local Plan
- 07 The site shall be developed with separate systems of drainage for foul and surface water on and off site.
- Reason:- In the interests of satisfactory and sustainable development.
- 08 No development shall take place until details of the proposed means of disposal of foul and surface water drainage, including details of any balancing works and off-site works, have been submitted to and approved by the Local Planning Authority.
- Reason:- To ensure that the development can be properly drained.
- 09 Unless otherwise approved in writing by the Local Planning Authority, there shall be no piped discharge of surface water from the development prior to the completion of the approved surface water drainage works, and no buildings shall be occupied or brought into use prior to completion of the approved foul drainage works.
- Reason:- To ensure that no foul or surface water discharges take place until proper provision has been made for their disposal.
- 10 There shall be no access or egress between the highway and the application site by any vehicles other than via the existing access with the public highway at Firthland Road. The access shall be maintained in a safe manner which shall include the repair of any damage to the existing adopted highway occurring during construction.
- Reason:- In accordance with Policy SP20 of the Local Plan Strategy and in the interests of both vehicle and pedestrian safety and the visual amenity of the area.
- 11 No dwelling shall be occupied until the related parking facilities have been constructed in accordance with the approved drawing PD122-02. Once created, these parking areas shall be maintained clear of any obstruction and retained for their intended purpose at all times.
- Reason:- In accordance with Policy SP20 of the Local Plan Strategy and to provide for adequate and satisfactory provision of off-street accommodation for vehicles in the interests of safety and the general amenity of the development.

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- 12 There shall be no access or egress by any vehicles between the highway and the application site until details of the precautions to be taken to prevent the deposit of mud, grit and dirt on public highways by vehicles travelling to and from the site have been submitted to and approved in writing by the Local Planning Authority in consultation with the Highway Authority. These facilities shall include the provision of wheel washing facilities where considered necessary by the Local Planning Authority in consultation with the Highway Authority. These precautions shall be made available before any excavation or depositing of material in connection with the construction commences on the site, and be kept available and in full working order and used until such time as the Local Planning Authority in consultation with the Highway Authority agrees in writing to their withdrawal.

Reason:- In accordance with Policy SP20 of the Local Plan Strategy and to ensure that no mud or other debris is deposited on the carriageway in the interests of highway safety.

- 13 Unless approved otherwise in writing by the Local Planning Authority, there shall be no establishment on a site compound, site clearance, demolition, excavation or depositing of material in connection with the construction of the site, until proposals have been submitted to and approved in writing by the Local Planning Authority for the provision of:

(i) on-site parking capable of accommodating all staff and sub-contractors vehicles clear of the public highway

(ii) on-site materials storage area capable of accommodating all materials required for the operation of the site.

The approved areas shall be kept available for their intended use at all times that construction works are in operation. No vehicles associated with on-site construction works shall be parked on the public highway or outside the application site.

Reason:- In accordance with Policy SP20 of the Local Plan Strategy and to provide for appropriate on-site vehicle parking and the storage facilities, in the interests of highway safety and the general amenity of the area.

- 14 The development hereby permitted shall be carried out in accordance with the following approved plan(s):

PD122-02
PD122-01

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

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APPN NO: 13/00844/FUL

Footnote :

In dealing with and determining this application, the Local Planning Authority have sought to take a positive approach to foster the delivery of sustainable development in accordance with the requirements of the National Planning Policy Framework. As such, the Local Authority has taken steps to work proactively with the applicant to seek solutions to problems that may have arisen in dealing with this application with a view to improving local economic, social and environmental conditions.

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

Mr & Mrs Hodgeson
C/O Prospect Design (Mr Richard Webster)
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Malton
North Yorkshire
YO17 7JF

THIRD SCHEDULE

Owner's Covenants

The Owner hereby covenants with the Council as follows: -

Affordable Housing Commuted Sum

To pay the Affordable Housing Commuted Sum to the Council upon Practical Completion.

FOURTH SCHEDULE
(Council's Covenants)

The Council covenants with the Owner: -

- 1 to use all sums received from the Owner under the terms of this Deed for the purposes specified in this Deed for which they are to be paid or for such other purposes for the benefit of the Development as the Owner and the Council shall agree.

- 2 that the Affordable Housing Commuted Sum will be used on a broad range of schemes and initiatives, linked to housing needs which may include but not be limited to the following
 - 2.1 support for housing associations for both the development and acquisition of affordable housing including facilitating any necessary works of improvement or repair

 - 2.2 support for specific initiatives to regenerate the existing housing stock eg. Empty Property Grants and Houses in Multiple Occupation Grants which give the Council tenancy nomination rights for qualifying individuals; grants to address fuel poverty and grant assistance to carry out essential repairs for vulnerable households and those on limited incomes

 - 2.3 support for specific schemes which are developed to meet an identified need eg. the lack of suitable temporary accommodation for homeless families or a scheme to meet the accommodation needs of young single people

 - 2.4 support for the Rural Housing Enabler function at the Council

- 4 that it will pay to the Owner such amount of any payment made by the Owner to the Council under this Deed which has not been expended in accordance with the provisions of this Deed (and money shall be deemed to be expended if the Council has properly entered into a contract for the expenditure of the money for the purpose for which it is paid which is reasonably likely to result in the fulfilment of that purpose) within five years of the date of receipt by the Council of such payment together with interest at the National Westminster Bank Plc base rate from time to time for the period from the date of payment to the date of refund.

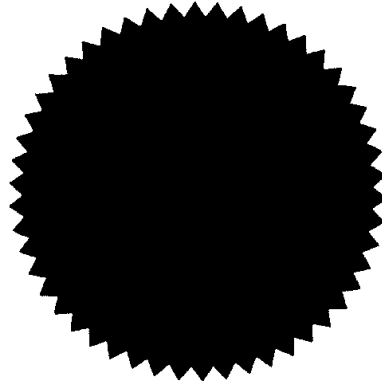
- 5 that it shall provide to the Owner with such evidence, as the Owner shall reasonably require in order to confirm the expenditure of the sums paid by the Owner under this Deed.

IN WITNESS whereof this Deed has been duly executed by the parties the day and year first before written:

| |
|--|
| Minute 934/82 Reg No. 6784 Initials <i>ams</i> |
|--|

**EXECUTED AS A DEED BY
RYEDALE DISTRICT COUNCIL**

whose COMMON SEAL was
hereunto affixed
in the presence of



**EXECUTED as a DEED by
JOHN WILLIAM HODGSON**
in the presence of: -

J. W. Hodgson



*APPROVED RECORDS
12 MIDDAY HILL
PICKERING*

**EXECUTED as a DEED by
ELSIE ANNE HODGSON**
in the presence of: -

E. A. Hodgson



AS ABOVE