

DATE 23 February

2016

**PARTIES**

- (1) **RYEDALE DISTRICT COUNCIL** of Ryedale House, Malton, North Yorkshire, YO17 7HH ("Council")
- (2) **EDWIN FREDRICK KING** of The Old Barn House, 37 Outgang Road, Pickering, North Yorkshire, YO18 7EL ("Owner")

**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 Owner 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.
- 4 The Council resolved on 12 November 2015 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.  |
| "Affordable Housing Commuted" | the sum of £34,620 (thirty four thousand pounds six hundred and twenty pounds) to be used by the Council in accordance with the provisions of paragraph 2 of the Fourth Schedule.  |
| "Application"                 | the application for outline full planning permission dated 16 October 2015 submitted to the Council for the Development and allocated reference number 15/01123/OUT.   |
| "Commencement of Development" | the date on which any material operation (as defined in 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.
"Development"	the Development of the Site Erection of 2no. dwellings with detached garages following demolition of existing gym as set out in the Application.
"Disposal"	the transfer of a freehold interest in the Dwelling/first Dwelling or any part thereof or the grant of a lease of the Dwelling/first Dwelling or any part thereof for a term equal to or exceeding 7 years
"Dwelling"	any dwelling (including a house flat or maisonette) to be constructed pursuant to the Planning Permission and 'first Dwelling' shall be construed accordingly
"Index"	All Items Index of Retail Prices issued by the Office for National Statistics.
"Interest"	interest at 4 per cent above the base lending rate of the National Westminster Bank Plc from time to time.
"Occupation" and "Occupied"	occupation 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.
"Open Space Commuted Sum"	the sum of £5,035.85 (five thousand and thirty five pounds and eighty five pence) to be used by the Council in accordance with the provisions of paragraph 3 of the Fourth Schedule.
"Plan"	the plan attached to this Deed.
"Planning Permission"	the outline full planning permission subject to conditions to be granted by the Council pursuant to the Application as set out in 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.
"Site"	the land against which this Deed may be enforced as shown edged red on the Plan.

## **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 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 Council and County Council the successors to their respective statutory functions.
- 2.7 The headings and contents list 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 Section 111 of the Local Government Act 1972 and Section 2 of the Local Government Act 2000 and Section 1 of the Localism Act 2011 and all other enabling powers.
- 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.

### **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, 9, 13, 14 and 15 which shall come into effect immediately upon completion of this Deed.

### **5 THE OWNER'S COVENANTS**

- 5.1 The Owner covenants with the Council as set out in the Third Schedule.

### **6 THE COUNCIL'S COVENANTS**

- 6.1 The Council covenants with the Owner as set out in the Fourth Schedule.

### **7 MISCELLANEOUS**

- 7.1 The Owner shall pay to the Council on completion of this Deed the cost of £800.00 plus VAT for the preparation of this Deed.
- 7.2 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999
- 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 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 and any such agreement, consent, approval or expression of satisfaction shall be given on behalf of:

(i) the Council by the Council Solicitor;

And 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 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 This Deed shall not be enforceable against owner-occupiers or tenants of dwellings constructed pursuant to the Planning Permission nor against those deriving title from them.

7.10 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.

7.11 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.

## **8 WAIVER**

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

## **9 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 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.

**10 INDEXATION**

Any sum referred to in the Third Schedule shall be increased by an amount equivalent to the increase in the Index from the date hereof until the date on which such sum is payable.

**11 INTEREST**

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

**12 VAT**

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

**13 DISPUTE PROVISIONS**

13.1 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.

13.2 In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to Clause 15.1 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.

13.3 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.

13.4 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.

13.5 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.

**14 JURISDICTION**

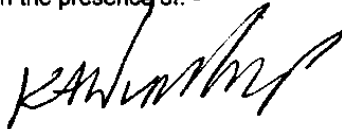
This Deed is governed by and interpreted in accordance with the law of England and Wales and the parties submit to the non-exclusive jurisdiction of the courts of England and Wales.

**15 DELIVERY**

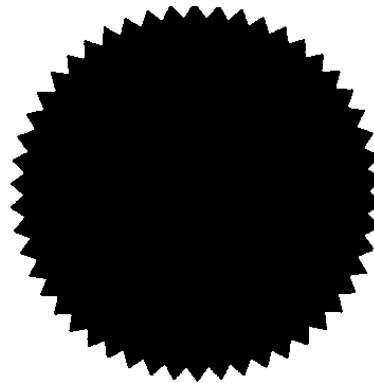
The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

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

EXECUTED AS A DEED BY  
**RYEDALE DISTRICT COUNCIL**  
whose COMMON SEAL was  
hereunto affixed  
in the presence of: -



Minute
934/82
Reg No.
Initials BS



EXECUTED as a DEED by  
**EDWIN FREDRICK KING**

in the presence of: -


Sally Rebecca Harrison  
KITCHING WALKER SOLICITORS  
8 MARKET PLACE  
KIRKBYMOORSIDE  
YORK YO62 6DD

**FIRST SCHEDULE**

**The Plan**



0 5 10 15 20 25 30 35 40 50m

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Map scale 1:1250



**SECOND SCHEDULE**  
**The Draft Decision Notice**

**RYEDALE DISTRICT COUNCIL**

**TOWN & COUNTRY PLANNING ACT 1990**

**OUTLINE APPLICATION FOR PERMISSION TO CARRY OUT DEVELOPMENT**

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

**Application No:** 15/01123/OUT  
**Proposal:** Erection of 2no. dwellings with detached garages following demolition of existing gym (site area 0.0548ha)  
**at:** 114 Outgang Road Pickering North Yorkshire YO18 7EL  
**for:** Mr E F King  
**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:

Local Plan Strategy -Policy SP1 General Location of Development and Settlement Hierarchy  
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 SP11 Community Facilities and Services  
Local Plan Strategy - Policy SP16 Design  
Local Plan Strategy - Policy SP19 Presumption in Favour of Sustainable Development  
Local Plan Strategy - Policy SP20 Generic Development Management Issues  
Local Plan Strategy - Policy SP22 Planning Obligations, Developer Contributions and the Community Infrastructure Levy  
National Planning Policy Framework  
National Planning Policy Guidance

**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 E F King  
C/O Peter Rayment Design Ltd  
Upgang  
Westgate  
Thornton-le-Dale  
Pickering  
YO18 7SG

APPN NO: 15/01123/OUT

02 No development shall take place without the prior written approval of the Local Planning Authority of all details of the following matters:-

- (i) the appearance of every building, including a schedule of external materials to be used
- (ii) the landscaping of the site

Reason:- To safeguard the rights of control by the Local Planning Authority in respect of the reserved matters.

03 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 areas is not prejudiced by the introduction of unacceptable materials and/or structure(s), and to satisfy the requirements of Policy SP20 of the Ryedale Plan - Local Plan Strategy.

04 Prior to the commencement of the development hereby permitted, 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 buildings 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 Policies SP16 and SP20 of the Ryedale Plan - Local Plan Strategy.

05 No dwelling shall be occupied until the related parking facilities have been constructed in accordance with the approved drawing 100 915 1. 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; 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.

Mr E F King  
C/O Peter Rayment Design Ltd  
Uppang  
Westgate  
Thornton-le-Dale  
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- 06 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 and to ensure that no mud or other debris is deposited on the carriageway in the interests of highway safety.

- 07 Unless approved otherwise in writing by the Local Planning Authority there shall be no establishment of a site compound, site clearance, demolition, excavation or depositing of material in connection with the construction on 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 Ryedale Plan - Local Plan Strategy and to provide for appropriate on-site vehicle parking and storage facilities, in the interests of highway safety and the general amenity of the area.

- 08 No development of the site shall take place without the prior written approval by the Local Planning Authority of a plan indicating the landscaping of the site, including any proposed changes to existing ground levels, means of enclosure and boundary treatments, hard surfaced areas and materials, planting plans, specifications and schedules, existing plants to be retained and showing how new landscaping relates to any underground services and existing landscape features.

Reason: To ensure that existing landscape features are not damaged and to enhance the development hereby permitted.

Mr E F King  
C/O Peter Rayment Design Ltd  
Uppgang  
Westgate  
Thornton-le-Dale  
Pickering  
YO18 7SG

APPN NO: 15/01123/OUT

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

Site Location Plan (scale 1:1250) validated by the Local Planning Authority 16 Oct 2015

Illustrative Layout For Two Dwellings (scale 1:1200) validated by the Local Planning Authority 16 Oct 2015

Design and Access Statement

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

**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.*

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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.

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HEAD OF PLANNING & HOUSING

Mr E F King  
C/O Peter Rayment Design Ltd  
Uppang  
Westgate  
Thornton-le-Dale  
Pickering  
YO18 7SG

**THIRD SCHEDULE**  
**The Owner's Covenants with the Council**

**The Owner hereby covenants with the Council as follows: -**

**Affordable Housing Commuted Sum and the Public Open Space Commuted Sum**

To pay the Affordable Housing Commuted Sum and the Public Open Space Commuted Sum to the Council upon Practical Completion of the Development.

**FOURTH SCHEDULE**  
**The Council's Covenants**

**Repayment of Commuted Sums**

The Council hereby 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
  
- 3 that it will use the Open Space Commuted Sum towards the provision of Public Open Space within the vicinity of the Site.
  
- 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 property

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.

**Discharge of obligations**

- 6 At the written request of the Owner the Council shall provide written confirmation of the discharge of the obligations contained in this Deed when satisfied that such obligations have been performed



DATED 23 February

2016

**RYEDALE DISTRICT COUNCIL (1)**

**AND**

**EDWIN FREDERICK KING (2)**

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**AGREEMENT**

**PURSUANT TO SECTION 106**

**OF THE TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED)**

**RELATING TO 114 OUTGANG ROAD, PICKERING,**

**NORTH YORKSHIRE**

**K A Winship  
Council Solicitors  
Malton**