

DATE

12 FEBRUARY

2016

PARTIES

- (1) **RYEDALE DISTRICT COUNCIL** of Ryedale House, Malton, North Yorkshire, YO17 7HH ("Council")
- (2) **ROSEMARY LYN SPAVEN** of Hill View, West Knapton, Malton, North Yorkshire, YO17 8JB ("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 Registered at HM Land Registry with Title Number NYK285168.
- 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 3 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.

"Application" the application for outline full planning permission dated 1 February 2016 submitted to the Council for the Development and allocated reference number 15/01228/FUL.

"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, Change of use and alteration of barn to form a three-bedroom dwelling with use of existing garage and garden area as set out in the Application.
“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.
“Open Space Commuted Sum”	the sum of £2518.00 (two thousand, five hundred and eighteen pounds only) 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 8.1, 10, 14, 15 and 16 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.

8 MISCELLANEOUS

8.1 The Owner shall pay to the Council on completion of this Deed £500.00 Plus VAT relating to the negotiation, preparation and execution of this Deed.

8.2 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999

8.3 This Deed shall be registrable as a local land charge by the Council.

8.4 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.

8.5 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.

- 8.6 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.
- 8.7 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.
- 8.8 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.
- 8.9 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.
- 8.10 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.
- 8.11 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.

9 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.

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 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.

11 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.

12 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.

13 VAT

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

14 DISPUTE PROVISIONS

- 14.1 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.
- 14.2 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.
- 14.3 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.
- 14.4 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.
- 14.5 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.

15 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.

16 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: -



[Handwritten signature]

Minute 934/82 Reg. No. 6888 Initials <i>CS</i>
--

EXECUTED as a DEED by
ROSEMARY LYN SPAVEN

[Handwritten signature: R L Spaven]

in the presence of: -

[Handwritten signature: D. MacPhee]

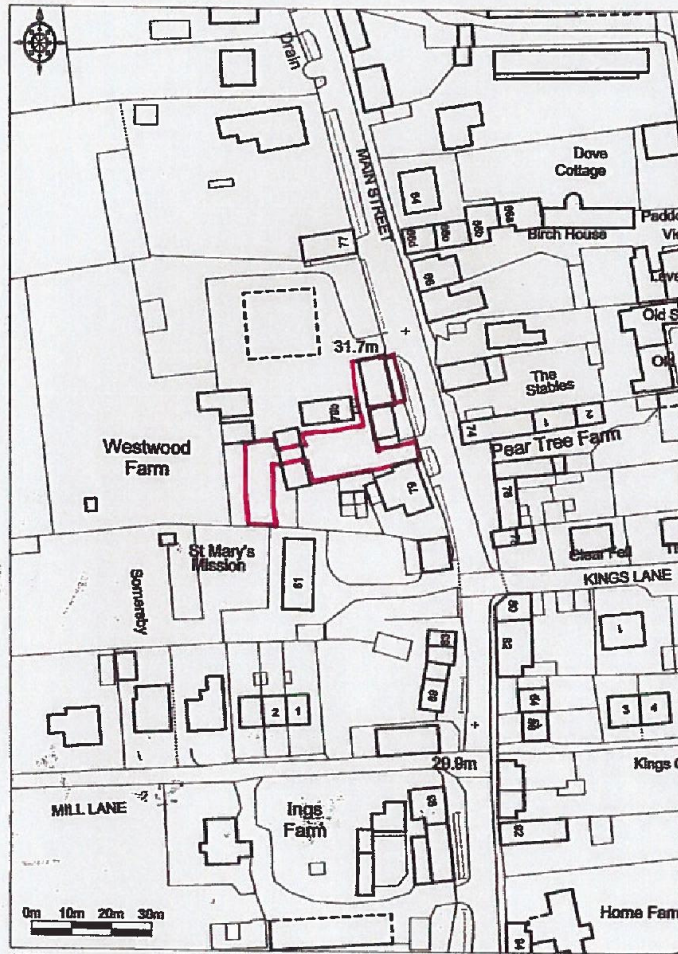
DEREK MACPHEE
THE RISE, HIGH STREET
HOVINGHAM
YORK
YO6 2 4LA

3.11 FIRST SCHEDULE

3.11.1 The Plan

Westwood Farm
Eberston
YO13 9NR
1:1250 Location Plan

REVISED PLAN



Promap

Ordnance Survey. © Crown Copyright 2013. All rights reserved.
25 November 2013 14:23, Printed Scale - 1:1250

DESIGN 4 architecture

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12/12/15

DATE
16/12/15

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: 15/01228/FUL

Proposal: Change of use and alteration of barn to form a three-bedroom dwelling with use of existing garage and garden area

at: Westwood Barn 79A Main Street Ebberston Scarborough North Yorkshire YO13 9NR

for: Mr & Mrs M Spaven

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 SP2 Delivery and Distribution of New Housing
Local Plan Strategy - Policy SP11 Community Facilities and Services
Local Plan Strategy - Policy SP12 Heritage
Local Plan Strategy - Policy SP14 Biodiversity
Local Plan Strategy - Policy SP16 Design
Local Plan Strategy - Policy SP17 Managing Air Quality, Land and Water Resources
Local Plan Strategy - Policy SP19 Presumption in Favour of Sustainable Development
Local Plan Strategy - Policy SP20 Generic Development Management Issues
Local Plan Strategy - Policy SP21 Occupancy Restrictions
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 & Mrs M Spaven
C/O Design 4 Architecture (Mr Tony Harrison)
Chestnut House
Marton
Sinnington
York
YO62 6RD

APPN NO: 15/01228/FUL

- 02 The development hereby permitted by this planning permission shall only be carried out in accordance with the approved Flood Risk Assessment (FRA) from Survey Site Services dated 14 January 2016.

The mitigation measures recommended shall be fully implemented prior to occupation and subsequently in accordance with the timing / phasing arrangements embodied within the scheme, or within any other period as may subsequently be agreed, in writing, by the local planning authority.

Reason: To reduce the risk of flooding to the proposed development and future occupants and to comply with Policies SP17 and SP20 of the Ryedale Plan - Local Plan Strategy and chapter 10 of the National Planning Policy Framework.

- 03 No dwelling shall be occupied until the related parking facilities have been constructed in accordance with the approved drawing number D415004/04 Rev. B. 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 Ryedale Plan - Local Plan Strategy and to provide for adequate and satisfactory provision of off-street accommodation for vehicles in the interest of safety and the general amenity of the development.

- 04 The dwelling hereby approved shall only be occupied by a person(s) together with his/her spouse and dependents, or a widow/widower of such a person, who:

* Have permanently resided in the parish, or an adjoining parish (including those outside the District), for at least three years and are now in need of new accommodation, which cannot be met from the existing housing stock; or

* Do not live in the parish but have a long standing connection to the local community, including a previous period of residence of over three years but have moved away in the past three years, or service men and women returning to the parish after leaving military service; or

* Are taking up full-time permanent employment in an already established business which has been located within the parish, or adjoining parish, for at least the previous three years; or

* Have an essential need arising from age or infirmity to move to be near relatives who have been permanently resident within the District for at least the previous three years

Reason:- To satisfy the requirements of Policies SP2 and SP21 of the Ryedale Plan - Local Plan Strategy.

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

Revised Site Location Plan 1:1250 dated 16.12.2015.

Proposed Site layout - Drawing Number D415004/04 Rev. B.

Proposed Elevations - Drawing Number D415004/06 Rev. B.

Proposed Floor plans - Drawing Number D415004/05 Rev. B.

Mr & Mrs M Spaven
C/O Design 4 Architecture (Mr Tony Harrison)
Chestnut House
Marton
Sinnington
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YO62 6RD

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

INFORMATIVE(S)

- 01 All bats and their roosts are fully protected under the Wildlife and Countryside Act 1981 (as amended by the Countryside and Rights of Way Act 2000) and are further protected under section 41/42 of the Conservation of Habitats and Species Regulations 2010. Should any bats or evidence of bats be found prior to or during development, work must stop immediately and Natural England contacted for further advice. This is a legal requirement under the Wildlife and Countryside Act 1981 (as Amended) and applied to whoever carried out the work.

Contact details: Natural England, 4th Floor, Foss House, Kings Pool, 1 - 2 Peasholme Green, York, YO1 7PX Tel: 0300 060 1911

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 & HOUSING

Mr & Mrs M Spaven
C/O Design 4 Architecture (Mr Tony Harrison)
Chestnut House
Marton
Sinnington
York
YO62 6RD

THIRD SCHEDULE
The Owner's Covenants with the Council

The Owner hereby covenants with the Council as follows: -

Public Open Space Commuted Sum

To pay 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 it will use the Open Space Commuted Sum towards the provision of open space within the vicinity of the Site.
- 3 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.
- 4 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

- 5 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 12 FEBRUARY 2016

RYEDALE DISTRICT COUNCIL (1)

AND

ROSEMARY LYN SPAVEN (2)

AGREEMENT

PURSUANT TO SECTION 106

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

RELATING TO WESTWOOD BARN, 79A MAIN STREET, EBBERSTON,

SCARBOROUGH, YO19 9NR

**K A Winship
Council Solicitors
Malton**