

DATE

29 FEBRUARY

2016

PARTIES

- (1) **RYEDALE DISTRICT COUNCIL** of Ryedale House, Malton, North Yorkshire, YO17 7HH ("Council")
- (2) **WILLIAM RALPH WORSLEY** of The Estate Office, Church Street, Hovingham, York, YO62 4LX (Title Number NYK328253) and
WILLIAM RALPH WORSLEY and **PETER MARCUS WORSLEY** c/o The Estate Office, Church Street, Hovingham, York, YO62 4LU being the Trustees of the Hovingham Trust (Title Number NYK328118) together ("Owners")

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 Owners are the freehold owner of the Site registered at the Land Registry with Title Numbers NYK328253 and NYK328118.
- 3 The Owners have 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 16 February 2016 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 Sum" | the sum of £72,000 (Seventy Two Thousand 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 20 November 2015 submitted to the Council for the Development and allocated reference number 15/01339/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 with erection of 1no. 3 bedroom dwelling, 1no. 4 bedroom dwelling and conversion of existing studio building to form 1 no. 2 bedroom dwelling and detached garage together with formation of access road and associated parking 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 £7,554 (seven thousand, five hundred and fifty four pounds) 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 the construction of the relevant Dwelling (and in the case of the third Dwelling construction of the access road and associated parking as set out in the Application) notwithstanding that there may be latent defects, for the purpose of allowing a prospective purchaser to take possession of the relevant Dwelling (and in the case of the third Dwelling construction of the access road and associated parking as set out in the Application) 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 Owners 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

The Owners covenants with the Council as set out in the Third Schedule PROVIDED THAT once the Owners have disposed of their interest in the Site the Owners shall be released from all obligations contained in this Deed.

6 THE COUNCIL'S COVENANTS

The Council covenants with the Owners as set out in the Fourth Schedule.

7 MISCELLANEOUS

- 7.1 The Owners shall pay to the Council on completion of this Deed the sum of £800.00 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's 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 as soon as reasonably practicable 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 or that part of the Site in relation to which the breach occurs 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 Owners 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 Owners from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

9 CHANGE IN OWNERSHIP

The Owners agrees with the Council to give the Council written notice as soon as reasonably practicable 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 new owner'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 not paid within 21 days from the date payment is due, 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 13.1 or as to the appropriateness of the professional body then such question may be referred by either party to the president for the time being of the Royal Institute of Chartered Surveyors for him to appoint a Fellow of the Royal Institute of Chartered Surveyors with at least 10 years' experience to determine the dispute 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 parties 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

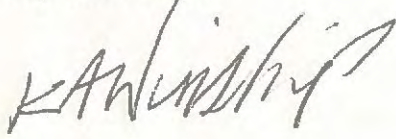
This Deed is governed by and interpreted in accordance with the law of England and Wales and the parties submit to the exclusive jurisdiction of the courts of England and Wales.

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.

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



Minute	170
	15/16
Reg No.	6895
Initials	BS

EXECUTED as a DEED by
WILLIAM RALPH WORSLEY
in the presence of: -

EXECUTED as a DEED by
PETER MARCUS WORSLEY
in the presence of: -

FIRST SCHEDULE

The Plan

THE COMMON SEAL of
RYEBALE DISTRICT COUNCIL
was hereunto affixed
in the presence of

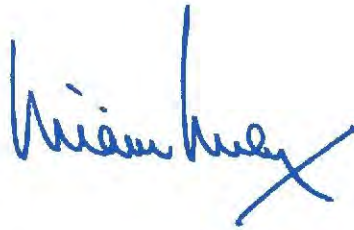
[Signature]

EXECUTED as a DEED by
WILLIAM RALPH WORSLEY
in the presence of

EXECUTED as a DEED by
PETER MARCUS WORSLEY
in the presence of

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

**EXECUTED as a DEED by
WILLIAM RALPH WORSLEY**

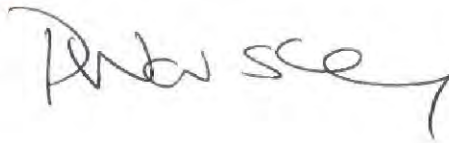


in the presence of: -

✓ 

✓ CLAIKE ELIZABETH FLETCHER
✓ 18 DALE END, KIRKBYMOORSIDE
✓ ADMINISTRATOR

**EXECUTED as a DEED by
PETER MARCUS WORSLEY**



in the presence of: -

✓ 

✓ LESLEY GARTON
✓ 65 LENEVBY ROAD
✓ SUBBITON
✓ KT6 5BG

PERSONAL ASSISTANT



LOCATION PLAN
Scale 1:1250

- Rev H 23.02.16 Site boundary amended
- Rev G 18.02.16 3 spaces added to plot 3
- Rev F 12.01.16 Red line app site amended
- Rev E 07.01.16 Minor amendments to Plots 2 & 3
- Rev d 17.11.15 Minor amendments
- Rev c 10.11.15 Minor amendments
- Rev b 02.11.15 Minor amendments
- Rev a 28.10.15 Boundary amended

RIBA #

BrierleyGroom
ARCHITECTS

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Founded by AIAA, CAA, CMAA, IFAA, RIBA, RICS, RIBA Chartered

Client	HOVINGHAM ESTATE
Project	RESIDENTIAL DEVELOPMENT LAND WEST OF PASTURE LANE, HOVINGHAM
Drawing	BLOCK PLAN & LOCATION PLAN
Date	OCT. 2015
Scale	1:500 @ A1
Revision	H

Number **H117.01.300**



SECOND SCHEDULE
The 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: 15/01339/FUL

Proposal: Erection of 1no. 3 bedroom dwelling, 1no. 4 bedroom dwelling and conversion of existing studio building to form 1 no. 2 bedroom dwelling and detached garage together with formation of access road and associated parking.

at: Land West Of Pasture Lane Hovingham

for: The Hovingham Estate Mr Rupert Drury

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
National Planning Policy Guidance
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 SP10 Physical Infrastructure
Local Plan Strategy -Policy SP11 Community Facilities and Services
Local Plan Strategy - Policy SP12 Heritage
Local Plan Strategy - Policy SP13 Landscapes
Local Plan Strategy - Policy SP14 Biodiversity
Local Plan Strategy - Policy SP16 Design
Local Plan Strategy - Policy SP20 Generic Development Management Issues
Local Plan Strategy - Policy SP22 Planning Obligations, Developer Contributions and the Community Infrastructure Levy

The Hovingham Estate Mr Rupert Drury
C/O Brierley Groom Architects Mr Matthew Groom
2 Holly Tree House
Harwood Road
Northminster Business Park
York
YO26 6QU

- 07 Notwithstanding the provisions of Schedule 2, Part 1 of the Town & Country Planning (General Permitted Development) Order 2015 (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

Class G: The erection or provision within the curtilage of a dwellinghouse of a container for the storage of oil for domestic heating

Class H: Installation, alteration or replacement of a satellite antenna on a dwellinghouse or within its curtilage.

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.

- 08 Prior to 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 Policy SP20 of the Ryedale Plan - Local Plan Strategy.

- 09 Prior to the commencement of the development, details of proposed planting to provide additional screening to the development, and supplement existing landscape features, shall be submitted to the Local Planning Authority for approval in writing. The submitted scheme shall consist of locally native species only, and specified in a planting schedule providing details of species, planting sizes and numbers of each species. The approved scheme shall be implemented within the first available planting season (Nov - March) following completion of the development. In the event of any plant material dieing , or become seriously diseased or damaged within a 5 year period following planting, it shall be replaced with similar species to a specification that shall be first agreed in writing with the Local Planning Authority unless the Local Planning authority give written consent to any variation.

Reason: To ensure that the development is properly integrated into its rural and to protect the amenities of neighbouring occupiers, in accordance with Policies SP13 and SP20 of the Ryedale Plan - Local Plan Strategy.

The Hovingham Estate Mr Rupert Drury
C/O Brierley Groom Architects Mr Matthew Groom
2 Holly Tree House
Harwood Road
Northminster Business Park
York
YO26 6QU

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

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.

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

The Hovingham Estate Mr Rupert Drury
C/O Brierley Groom Architects Mr Matthew Groom
2 Holly Tree House
Harwood Road
Northminster Business Park
York
YO26 6QU

THIRD SCHEDULE

The Owners Covenants with the Council

The Owners hereby covenant with the Council as follows: -

Affordable Housing Commuted Sum

1 To pay to the Council the Affordable Housing Commuted Sum upon Practical Completion of the Development and;

Public Open Space Commuted Sum

2 To pay to the Council the Public Open Space Commuted Sum in the following manner:

- i) £2518.00 to be paid upon Practical Completion of the first Dwelling; and
- ii) £2518.00 to be paid upon Practical Completion of the second Dwelling; and
- iii) £2518.00 to be paid upon Practical Completion of the third Dwelling

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 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.
- 6 at the written request of the Owners the Council shall as soon as reasonably practicable provide written confirmation of the discharge of the obligations contained in this Deed when the Council (acting reasonably) is satisfied that such obligations have been performed.

DATED 29 FEBRUARY 2016

RYEDALE DISTRICT COUNCIL (1)

AND

WILLIAM RALPH WORSLEY (2)

AND

**WILLIAM RALPH WORSLEY & PETER MARCUS WORSLEY BEING
THE TRUSTEES OF THE HOVINGHAM TRUST (3)**

AGREEMENT

PURSUANT TO SECTION 106

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

RELATING TO LAND WEST OF PASTURE LANE, HOVINGHAM

NORTH YORKSHIRE

**K A Winship
Council Solicitor
Malton**