



Memorandum

From: Mr K A Winship, Head of Legal Services
To: Senior Elections and Land Charges Officer ✓
cc Head of Planning Services, FAO Paul Simpson

RE: See Below

Date: 12 January 2000

Our Ref: AH/JAN00/LF603

Planning Application Number: 97/00983/OUT
Section 106 Agreement Town & Country Planning Act 1990
Development at Land Off Scarborough Road, Norton, Malton

A Section 106 Agreement dated 5th January 2000 has been made between the Council (1), North Yorkshire County Council (2), Seamer Engineering Company Ltd (3), Jack Raymond Burr and Jean Burr (4), S A Bell (5) and HSBC Bank Plc (6).

A copy of the Agreement is attached for your records.

Notice of planning permission can therefore now be issued to the applicants.

K.A. Winship
K A Winship
Solicitor
Head of Legal Services

169

*See 106 reg'd on
card for 50 Scarb. Rd.
(S A Bell Dept)
13.1.2000*

Ryedale District Council Electoral/Land Charges	
13 JAN 2000	
Copy to-	
Reply Sent-	

THIS DEED is made the *Fifth* day of *January* ~~1999~~ ²⁰⁰⁰

BETWEEN

- (1) THE RYEDALE DISTRICT COUNCIL whose principal office is at Ryedale House Malton North Yorkshire YO17 7HH ("the Council")
- (2) NORTH YORKSHIRE COUNTY COUNCIL of County Hall Northallerton North Yorkshire DL7 8AD ("the County Council")
- (3) SEAMER ENGINEERING COMPANY LIMITED whose registered office is at 50 Scarborough Road Norton Malton in the County of North Yorkshire ("the First Owner")
- (4) JACK RAYMOND BURR and JEAN BURR his wife both of Bar Bank House 1 Croft Court Bishopthorpe York in the County of North Yorkshire ("the Second Owner")
- (5) S A BELL LIMITED whose registered office is situate at 50 Scarborough Road Norton Malton aforesaid ("the Licensee")
- (6) HSBC BANK PLC whose registered office is at Poultry London EC2P 2BX acting for the branch at 27 Market Place Malton North Yorkshire YO17 7LU ("the Mortgagee")

RECITALS

- (1) The Council is the Local Planning Authority for the purposes of this Agreement for the area within which the property described in the First Part of the First Schedule ("the First Property") is situated and the property described in the Second Part of the First Schedule ("the Second Property") is situated
- (2) The County Council is the Highway Authority for North Yorkshire
- (3) The First Owner is the owner in fee simple in possession of the First Property subject as hereinafter mentioned but otherwise free from encumbrances
- (4) The Licensee being the holding company of the First Owner occupies the First Property as Licensee at will of the First Owner
- (5) The Mortgagee is mortgagee of the First Property under a Legal Charge dated the 24th day of October 1986 and made between the First Owner of the one part and the Mortgagee of the other part
- (6) The Second Owner is the owner in the fee simple of the Second Property free from encumbrances
- (7) The Licensee with the consent of the First Owner has applied to the Council for permission to develop the First Property in the manner and for the uses set out in Second Schedule hereto ("the Proposed Development")

- (8) The Council is satisfied that the performances by the First Owner the Second Owner and the Licensee of the covenants herein will remove certain arguments against or objections to the Proposed Development which would without the execution of this Agreement have led to the refusal of consent for the Planning Application
- (9) The First Owner the Second Owner and the Licensee have agreed to enter into this Agreement with the Council and the County Council and be bound by and observe and perform the covenants agreements conditions and stipulations hereinafter contained and on their respective parts to be observed and performed
- (10) The Mortgagee has agreed to join herein in manner hereinafter appearing

NOW THIS DEED WITNESSES as follows:-

1 **THIS** Agreement is made pursuant to Section 106 of the Town & Country Planning Act 1990 as amended ("the 1990 Act") Section 111 of the Local Government Act 1972 and all other powers the parties hereunto enabling and the covenants in this Agreement are planning obligations for the purpose of the 1990 Act which are enforceable by the Council

2 **THE** Second Owner covenants with the First Owner the Council and the County Council that the Second Owner will on commencement of the Proposed Development dedicate the Second Property to the County Council as part of the highway maintainable at public expense

3 **THE** First Owner (with the consent of the Mortgagee) and the Licensee covenant with the Council that the First Property shall be subject to the restrictions and provisions regulating the Proposed Development and use thereof specified in the Third Schedule hereto

4 **THE** First Owner (with the consent of the Mortgagee) and the Licensee jointly and severally covenant with the Council and the County Council to comply with the restrictions and provisions specified in the Fifth Schedule

5 **IT** is agreed and declared as follows:-

5.1 The expressions "the Council" "the County Council" "the First Owner" "the Second Owner" and "the Mortgagee" shall include their respective successors in title and assigns

5.2 The First Owner and the Licensee hereby agree to carry out the Proposed Development in strict conformity with the plans and specifications and particulars submitted in connection with the Planning Application and to use the First Property and all erections to be made thereon in strict accordance with this Agreement and not otherwise

5.3 Upon submission of its application for approval of the reserved matters in respect of the Proposed Development of the First Property the First Owner covenants to pay a commuted sum for the future maintenance of the Open Space (as defined in paragraph 2 of the Third Schedule hereto) which sum is to be:-

5.3.1 calculated in accordance with the provisions of the Fourth Schedule hereto; and

5.3.2 paid to the Council or its nominee upon the transfer of the Open Space in accordance with clause 7 of the Third Schedule hereto

5.4 The Council will accept a transfer of the Open Space from the First Owner following the completion of the positive obligations in relation thereto which are specified in the Third Schedule

5.5 For the purpose of such parts of this Agreement as may be subject to the Rule Against Perpetuities that part of the Agreement shall remain in force for the period of eighty years from the date hereof

5.6 The Licensee shall on execution of this Agreement pay to the Council a fee to cover the Council's legal costs

5.7 The First Owner and the Licensee shall indemnify and keep indemnified the Council against all damages costs charges losses demands expenses or action sustained by the Council arising from any breach of their covenants under this Agreement by the First Owner and the Licensee

5.8 The Mortgagee consents to the First Owner entering into this Agreement to the intent that the First Property shall hereafter always be bound by the restrictions and covenants in this Agreement **PROVIDED** that the Mortgagee shall in no circumstances be liable for any breach of this Agreement unless it has itself caused such breach and irrespective of whether or not the Mortgagee shall have caused such breach it shall have no liability after it has discharged its security or has disposed of the First Property whether by sale or otherwise

5.9 In this Agreement words importing the masculine gender shall include the feminine gender and vice versa and words importing the singular number shall include the plural number and where there are two or more persons included in the expression "the First Owner" or "the Second Owner" covenants expressed to be made by or with the First Owner or the Second Owner shall be deemed joint and several

5.10 For the purpose of avoidance of doubt and subject to clause 5.11 hereof the requirements of this Agreement shall bind both the First Property and the Second Property and remain in full force and effect until formally varied by agreement of the parties or by the Secretary of State notwithstanding that the

Planning Application and any plans submitted with the same shall have lapsed or shall have been amended superseded renewed or resubmitted

5.11 This Agreement is a local land charge and shall be registered as such and shall come into force and effect when the Proposed Development is commenced and not otherwise

5.12 If any difference or dispute shall arise between the parties hereto out of this Agreement the same shall be referred to an Arbitrator to be agreed between the parties or in default of agreement by an Arbitrator appointed by the President for the time being of the Royal Institution of Chartered Surveyors on the written application of any of the parties whose decision shall be final and binding in accordance with the Arbitration Act 1996 or any modification or re-enactment thereof

6 The Council covenants with the First Owner and the Licensee that the Council will from time to time upon reasonable demand provide to the First Owner and the Licensee a copy of the then current Ryedale District Council Grounds Maintenance Contract

7 In this Clause the expression "the Council" shall also mean its nominee

7.1 It is hereby agreed and declared by and between the parties hereto as follows:-

7.1.1 That the transfer of the area of Open Space ("the Transfer") shall contain the following covenant namely:-

"The Council (so as to bind the area of land edged and hatched green ("the Open Space") on the plan annexed hereto ("the Plan") and each and every part thereof unto whosoever hands the same may come and to the intent that the benefit of this covenant shall be attached to and inure for the benefit of the land edged red on the Plan and each and every part thereof) **HEREBY COVENANTS** with the Owner and its successors in title:-

- (a) Not to carry out or allow or permit to be carried out any development in respect of which an application for planning permission would be required to be made under the 1990 Act (or under any statutory re-enactment or modification thereof) or otherwise on the Open Space which shall remain forever open to the sky and unbuilt upon
- (b) Not to cut down save in the ordinary course of horticulture or arboriculture any trees or shrubs now on the Open Space or to be planted on the Open Space to comply with landscaping requirements but to maintain the same as required in good condition"

7.1.2 That the Council will in the Transfer covenant with the First Owner to observe and perform the covenants and other matters (if any) affecting the Open Space so far as the same are still subsisting and capable of being enforced

7.1.3 That the Transfer shall contain the following declaration namely:-

"That the Council hereby **DECLARES** that it and its successors in title will hold the Open Space upon the trust following namely upon the trust for the perpetual use thereof by the public for the purpose of exercise and recreation pursuant to the provisions of the Open Spaces Act 1906 (or any statutory re-enactment or modification thereof)"

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

THE FIRST SCHEDULE

Part I

[The First Property]

ALL THAT piece of land **TOGETHER WITH** the buildings erected thereon situate off Scarborough Road Norton Malton in the County of North Yorkshire comprising 0.9232 hectares or thereabouts and for the purposes of identification only shown edged red on Plan No. 1 annexed hereto

Part II

[The Second Property]

ALL THAT piece of land to the north of the First Property and directly situate off Scarborough Road aforesaid comprising 135 square metres or thereabouts and for the purposes of identification only shown hatched red coloured blue on Plan No. 3 annexed hereto

THE SECOND SCHEDULE

[The Proposed Development]

Residential Development.

THE THIRD SCHEDULE

[Obligations]

1(i) Upon being requested to do so by the owner or owners of the Adjoining Land (as defined in paragraph 1 of the Fifth Schedule hereto) and upon receiving payment in full from or from a third party on behalf of the owner or owners of the Adjoining Land of the sums specified in sub-paragraph (ii) of this paragraph the First Owner will dedicate as highway maintainable at public expense that part of the First Property as it co-extensive with and lies between the end of the roadway referred to in paragraph 3(b) of the Fifth Schedule hereto and the boundary of the Adjoining Land

(ii) The sums referred be in sub-paragraph (i) of this paragraph are:-

(a) a sum equal to the amount expended by the First Owner in complying with his obligations set out in paragraphs 1 2 and 3 of the Fifth Schedule hereto

in excess of the amount required to construct an access road with footways from Scarborough Road capable of serving only the First Property; and

(b) the proper value calculated in accordance with the principles laid down in Stokes v Cambridge of the granting of a right of way (between a willing Grantor and a willing Grantee) across that part of the First Property as lies between the end of the roadway referred to in paragraph 3(b) of the Fifth Schedule hereto and the boundary of the Adjoining Land or £315,000 whichever shall be the greater sum; and **ALSO PROVIDED** that if the amounts of the above payments are not agreed between the parties at the date on which a signed Section 38 Agreement for the Adjoining Land is presented to the County Council for sealing the amounts of such payments are to be determined by the binding arbitration of a Valuer to be appointed (in default of agreement as to such appointment) by the President for the time being of the Royal Institution of Chartered Surveyors and any such reference shall be deemed to be submitted to arbitration within the meaning of the Arbitration Act 1996 and any statutory modification or re-enactment for the time being in force and the costs of such arbitration shall be paid as determined by the arbitrator; and

(c) any Value Added Tax or other tax substituted therefor payable on the aforementioned sums

2 To submit to the Council's Head of Planning Services for his written approval (such approval not to be unreasonably withheld or delayed) simultaneously with the application for approval of the reserved matters a specification for the landscaping of an open space to be provided on the First Property and shown edged and hatched green on Plan No. 2 annexed hereto ("the Open Space") such specification to include the layout levelling top-soiling and turfing or seeding of the Open Space and the specification as approved in writing shall be called "the Approved Open Space Landscaping Specification"

3 Not to permit cause or suffer any dwelling constructed on the First Property to be occupied until the Approved Open Space Landscaping Specification has been agreed

4 Not to permit cause or suffer the Open Space to be used or reserved for any purpose other than as amenity space for the purpose of public recreation

5 To implement and complete the Approved Open Space Landscaping Specification to the reasonable satisfaction of the Council's Head of Planning Services within twelve months of the date of the approval of the reserved matters

6 To maintain the Open Space in good condition for a period of twelve months from the date of completion of the Landscaping Specification Works to the reasonable satisfaction of the Council's Head of Planning Services and to resow any grass and replace any trees plants or shrubs thereon that have died or become diseased within that period

7 Immediately following the twelve months maintenance period to transfer the Open Space to the ownership of the Council or its nominee in accordance with the terms set out in clauses 5 and 7 of this Agreement together with payment of the commuted sum referred to in clause 5.3

8 To provide as part of the Proposed Development on the First Property five units of affordable housing in accordance with (i) the need for such housing as assessed at the time a reserved matters application is submitted and (ii) the criteria for affordable housing as set down in the Council's draft Development Guidelines issued in December 1997

THE FOURTH SCHEDULE

[Commuted Sum]

The commuted sum for maintenance of the Open Space shall be calculated as follows:

The annual maintenance cost (per square metre) multiplied by the total area of the Open Space multiplied by fifteen (being the number of years)

For definition of "maintenance costs" note the following:

- (1) The maintenance costs may not be the same over the whole of the Open Space but may vary according to the plant material (eg grassed areas or planted with trees or shrubs); and
- (2) The maintenance costs will be those laid down in the Ryedale District Council Grounds Maintenance Contract current at the time the Open Space is to be transferred in accordance with paragraph 7 of the Third Schedule

THE FIFTH SCHEDULE

[Highway Works]

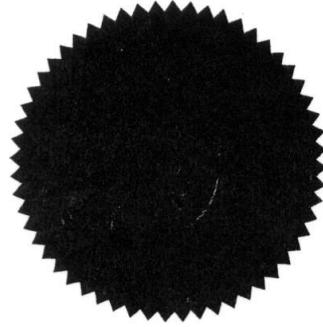
1 Not to commence the Proposed Development until plans detailing the land required for the construction of a right turning lane in accordance with the requirements of "the Design Manual for Roads and Bridges" which will be capable of serving both the First Property and the adjoining piece of land comprising approximately 12 acres ("the Adjoining Land") and shown edged brown on Plan No. 2 have been submitted to and approved in writing by the County Council

2 To dedicate as Highway Maintainable at the public expense the land required for the approved right turning lane as delineated on Drawing Number 2958/0 of JSM Designs Limited (an extract of which is annexed as Plan No. 3) prior to the commencement of the Proposed Development

3 Not to commence the Proposed Development until an Agreement under Section 38 of the Highway Act 1980 has been completed with the County Council in a form stipulated by the County Council which provides for the construction and dedication as highway maintainable at public expense of:-

- (a) a tarmacadamed footpath constructed between Maudon Grove and Scarborough Road crossing the Open Space
- (b) a road to be constructed to a minimum standard of two metre wide footways and a six metre wide carriageway serving the Proposed Development and capable of extension onto and serving the development of the Adjoining Land extending from Scarborough Road through the First Property to one metre short of the boundary of the Adjoining Land

THE COMMON SEAL of THE RYEDALE)
DISTRICT COUNCIL was hereunto affixed)
and is authenticated by:)



Minute CP109/97
Reg No. 4697
Initials AHLH

M. M. M.
Chairman

K. W. H. S.
Head of Legal Services

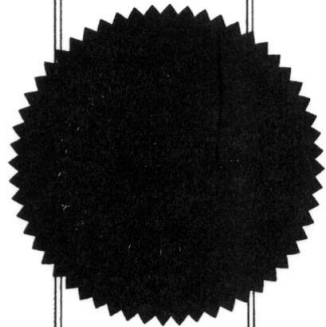
THE COMMON SEAL of NORTH)
YORKSHIRE COUNTY COUNCIL)
was hereunto affixed in the presence of:)

28366



George Edl
Senior Solicitor

THE COMMON SEAL of SEAMER)
ENGINEERING COMPANY LIMITED)
was hereunto affixed in the presence of:)



Director

[Signature]

Company Secretary

M. L. Bell

SIGNED as a Deed by the said)
JACK RAYMOND BURR)
in the presence of:)

J.R. Burr

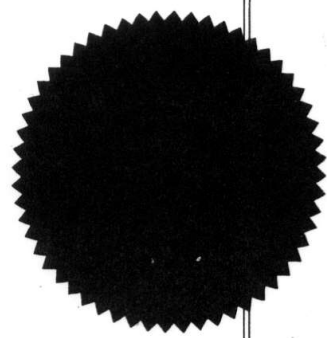
P. J. Lawrence
Robert
Martin

SIGNED as a Deed by the said)
JEAN BURR in the presence of:)

Jean Burr

P. J. Lawrence

THE COMMON SEAL of **S A BELL**)
LIMITED was hereunto affixed in the)
presence of:)



Director

[Signature]

Company Secretary

M. Bell

SIGNED as a Deed)
by **DAVID POWELL**)
MANAGER)
as Attorney for and on behalf of)
HSBC BANK PLC)

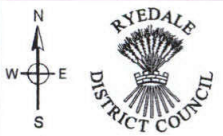
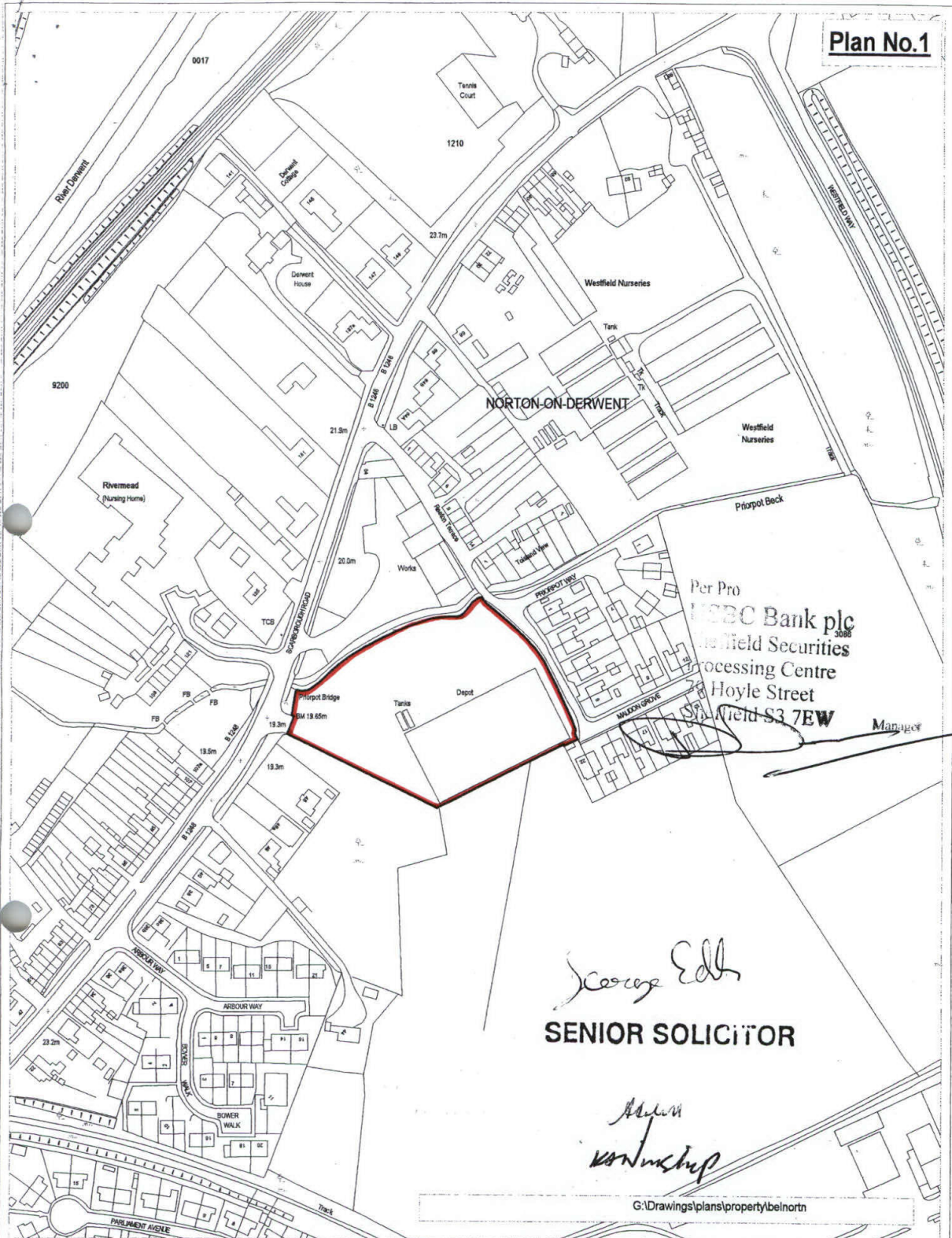
[Signature]

in the presence of:
Michael Bedford

[Signature]

HSBC BANK PLC
CORPORATE SEAL
PROCESSING

Plan No.1



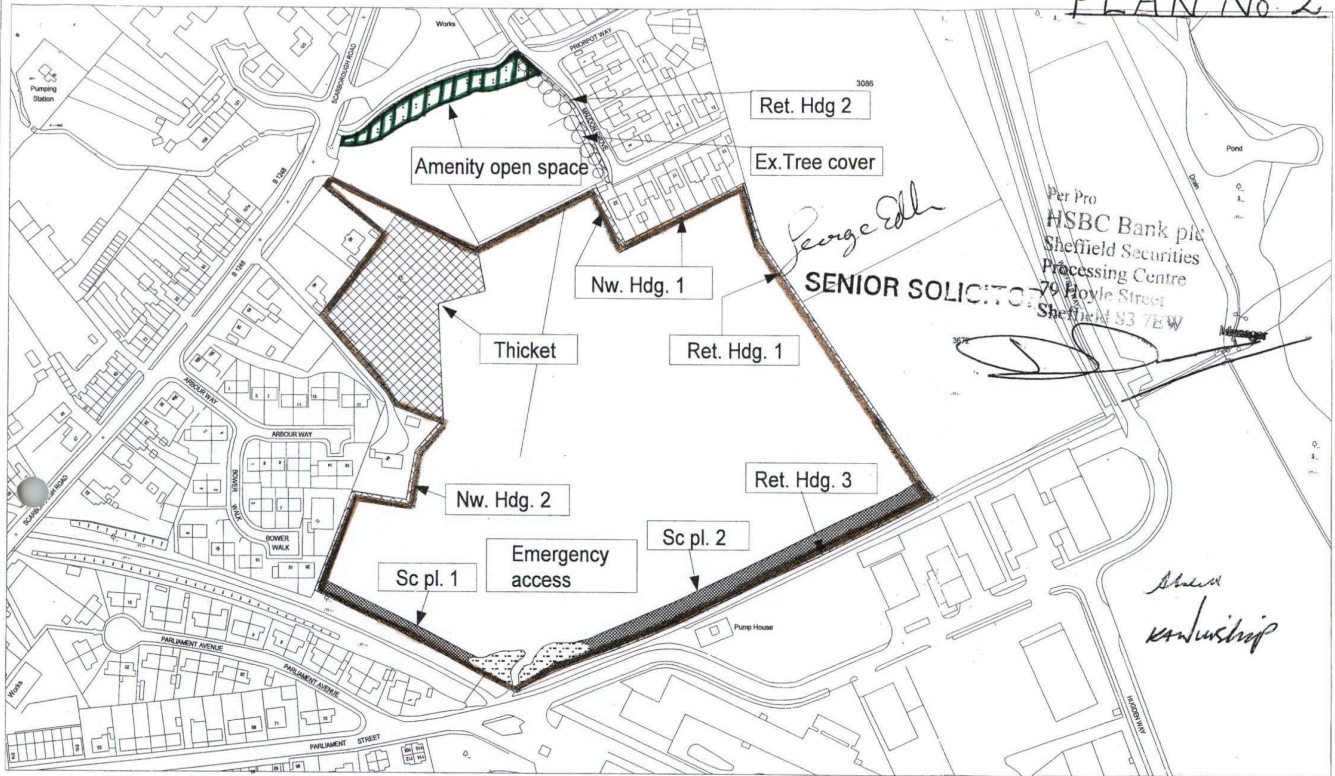
Ryedale House, Malton
North Yorkshire, YO17 7HH

Scarborough Road - Norton

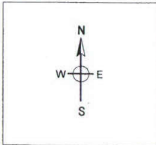
SCALE 1:2500 DRAWN BY David Summers DATE 18th October 1999
 Department Environmental Services Drawing No.

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 18th October 1999

PLAN No. 2



N.B. Tree positions only approximate

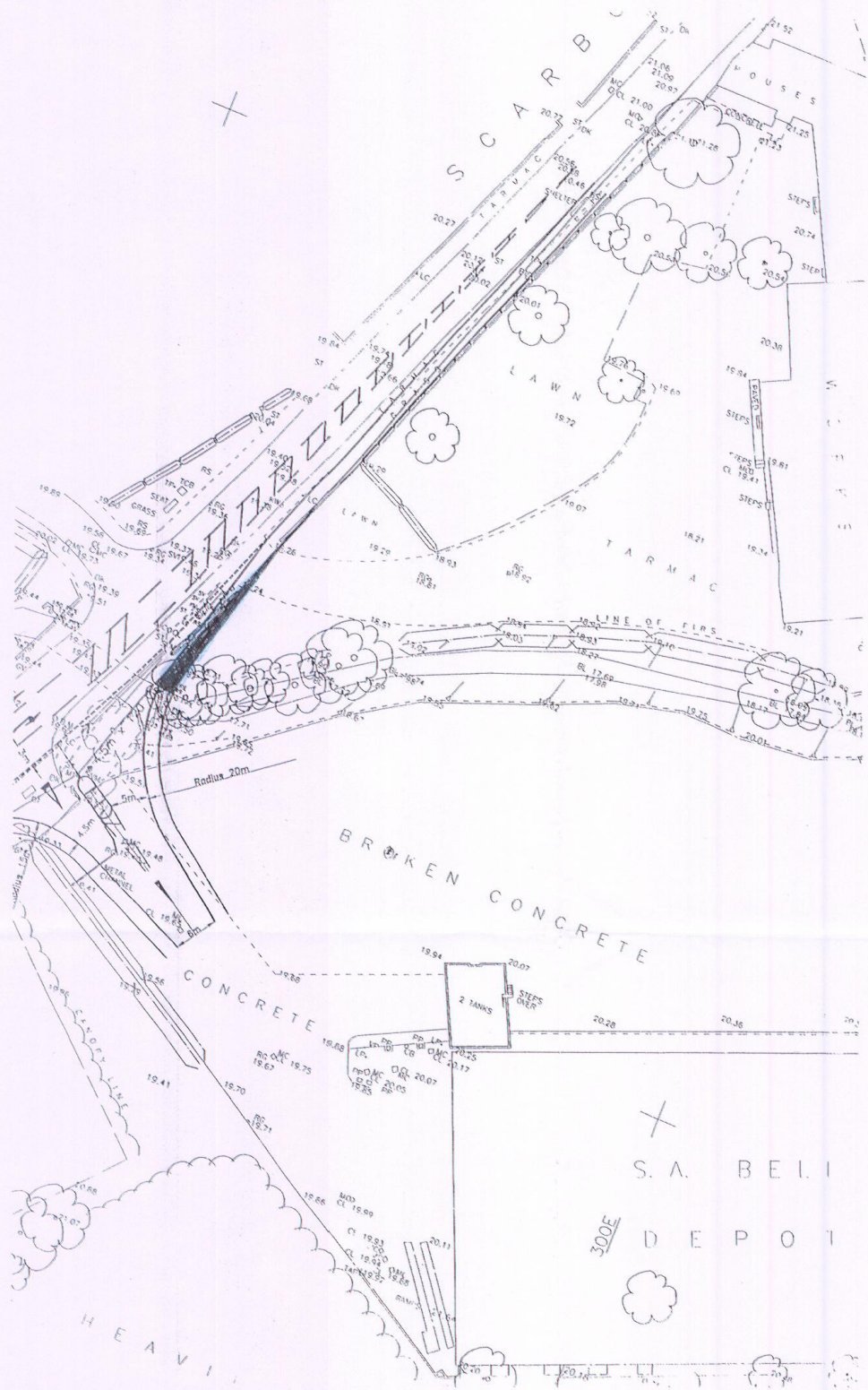


Scarborough Road - Planting & retention proposals

SCALE: 1:2500	DRAWN BY:	DATE:
Originating Group:		Drawing No.:

Produced from the 1923 Ordnance Survey 1:2500 mapping with the permission of the Controller of Her Majesty's Stationery Office
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PLAN No 3



Date: 27/5/54
Scale: 1/50

S. A. BELL
300E
DEPOT

DATED 5th January ~~1999~~ ²⁰⁰⁰

THE RYEDALE DISTRICT COUNCIL

- and -

NORTH YORKSHIRE COUNTY COUNCIL

- and -

SEAMER ENGINEERING COMPANY LIMITED

- and -

MR & MRS J R BURR

- and -

S A BELL LIMITED

- and -

HSBC BANK PLC

AGREEMENT

pursuant to Section 106 of the
Town & Country Planning Act 1990 as amended
and Section 111 of the Local Government Act 1972
in respect of land situate off Scarborough Road
Norton Malton in the County of North Yorkshire

K A Winship
Solicitor
Head of Legal Services
MALTON