

**BOROUGH SECRETARY'S
DEPARTMENT**



LEGAL SERVICES DIVISION

To: Assistant Director, Planning and Transportation
FAO: Laura Bibby and Elaine Ward

Mary Kilroy - Local Land Charges, c/o The Acorn Centre, Phase III,
High Street, Grimethorpe, Barnsley, S72 7BB

My Ref: JF/DH/PG/254/00272

Your Ref:

Date: 1 April 2011

Enquiries to: Jason Field

Ext: 2651

**Section 106 - Land adjacent to 11 Foxfields, Oxspring -
Planning Application Reference No: 2010/1226**

Please find attached copy of the completed Section 106 at Foxfields. The requirement to pay £3,000 towards Public Open Space has already been complied with, as has payment of our legal fees. Nevertheless, the Agreement still needs to be registered on the Local Land Charges Register as there is a requirement on the Council to repay the money if they do not spend it on the open space within the parish of Oxspring. Please note that the precise location and nature of the expenditure is to be determined in consultation with Ward Members.

Secondly, there is an obligation on the Council to remove a Section 52 Agreement from the Local Land Charges Register when we receive a written request from the Developer.

Jason Field
for the Borough Secretary

DATED 1st April 2011

BARNSELY METROPOLITAN BOROUGH COUNCIL

and

ANTONY GREEN

AGREEMENT

under Section 106 of the Town and Country Planning Act 1990 (as amended)
relating to development on land off Foxfields Oxspring Sheffield in the County of
South Yorkshire

A.C. Frosdick, LL.B. DipLG,
Borough Secretary,
Town Hall,
Barnsley S70 2TA.

THIS DEED OF AGREEMENT is made the 15th day of April Two Thousand and Eleven

BETWEEN

(1) **BARNESLEY METROPOLITAN BOROUGH COUNCIL** of Town Hall Barnsley South Yorkshire S70 2TA ("the Council") of the first part and

(2) **ANTONY GREEN** of Stainborough Fold Farm Greno View Hood Green Barnsley South Yorkshire S75 3HQ ("the Owner") of the second part

RECITALS

(1) The Council is the Local Planning Authority for the purposes of this Agreement for the area within which the land described in the First Schedule hereto ("the Land") is situated and is the Authority by whom the obligations contained in this Agreement are enforceable

(2) The Owner is the registered proprietor with Title Absolute of the Land under Land Registry Title Number SYK352844

(3) The Land is subject to an agreement under section 52 of the Town and Country planning Act 1971 dated 30 December 1987 between (1) the Council (2) David Brown & Sons (Huddersfield) Limited and (3) David Brown Gear Industries Limited ("the Section 52 Agreement")

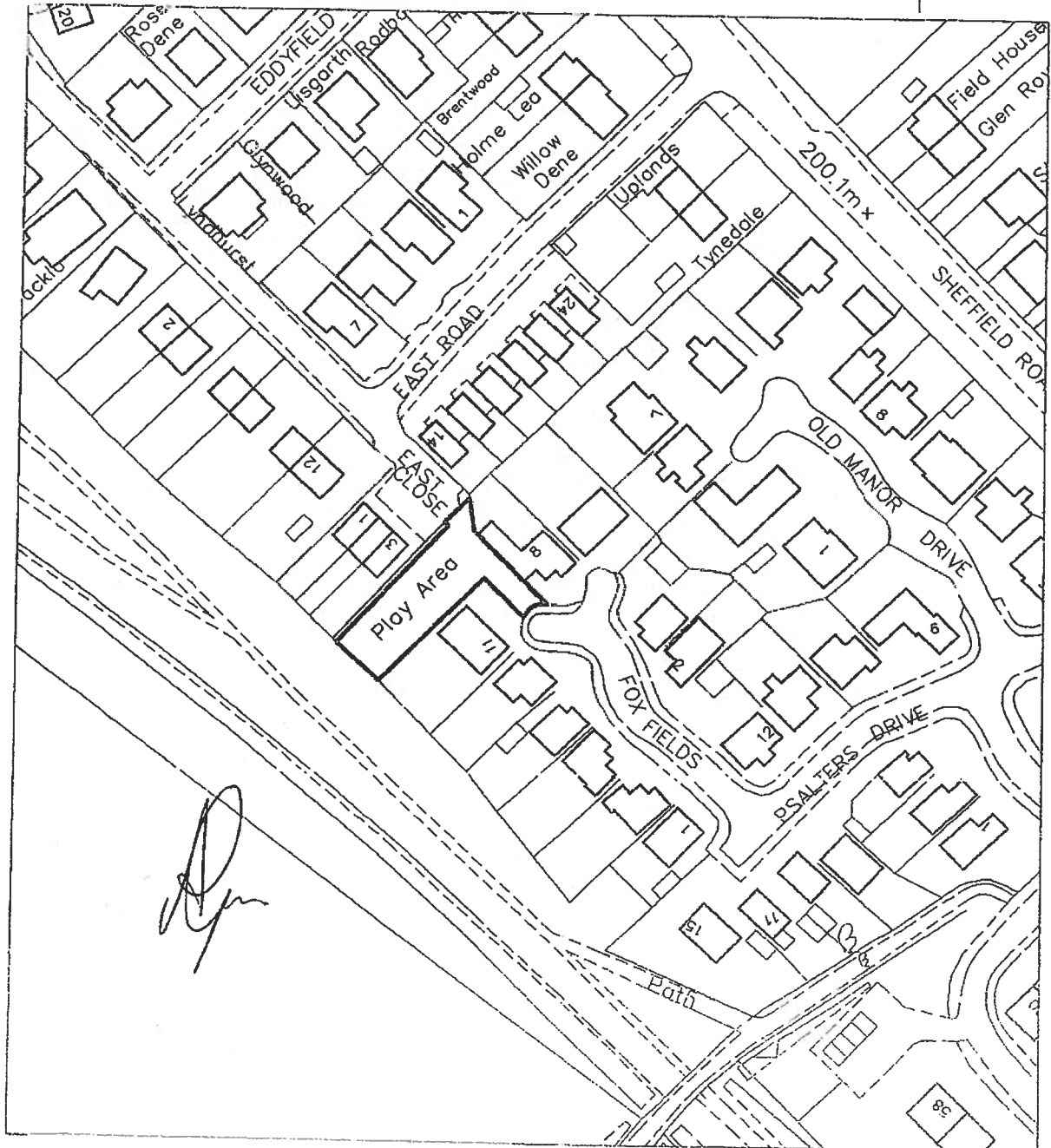
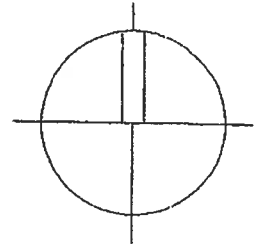
(4) The Owner has submitted the Application to the Council and the parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed

NOW THIS DEED WITNESSETH AS FOLLOWS:-

DEFINITIONS

1 For the purposes of this Deed the following expressions shall have the following meanings

North



**LAND AT FOXFIELDS
OXSPRING
SHEFFIELD**

SITE LOCATION PLAN

Scale 1:1250

Date Jan 08

Ref 22.78

Drwg No OS1



Chris Carr Associates
ARCHITECTS

6a Eselgate Barnsley
S70 2EP
Tel: 01226 28256 Fax: 01226 207304
email: mail@ccc-arch.co.uk

"the 1990 Act" means the Town and Country Planning Act 1990 (as amended)

"the Application" means the application for planning permission submitted to the Council for residential development with the reference number 2010/1226

"the Commencement of Development" means the actual date upon which the Development is begun by the carrying out of any material operation as defined by Section 56(4) of the Town and Country Planning Act 1990 and "Commence Development" is to be construed accordingly

"the Development" means the development of the Land for residential development in accordance with the Planning Permission

"Index" means the All In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation or if that Price Index ceases to exist such index as the Council reasonably nominates

"Interest" means interest at 4 per cent above the base lending rate of Barclays Bank Plc from time to time or should this rate cease to exist such other bank lending rate as the Council may reasonably nominate

"the Plan" means the plan annexed hereto

"the Planning Permission" means the planning permission granted or to be granted pursuant to the Application

"the Public Open Space Commuted Sum" means the sum of £3000 (three thousand pounds only)

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 against each individually 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 deriving title through or under that party and in the case of the Council the successors to its statutory functions.

LEGAL BASIS

3 This Agreement is made pursuant to section 106 of the Town and Country Planning Act 1990 section 111 of the Local Government Act 1972 section 2 of the Local Government Act 2000 and all other enabling powers and is a planning obligation for the purposes of and as defined in the said Section 106 and the covenants restrictions and requirements imposed on the Owner herein are enforceable by the Council as the local planning authority against the Owner

COMMENCEMENT

4 The provisions of this Deed shall have immediate effect upon the completion of this Deed other than the obligations in Clause 5 which shall have effect upon the Commencement of Development

OWNER AND COUNCIL COVENANTS

5.1 The Owner covenants with the Council as set out in the Second Schedule

5.2 The Council covenants with the Owner as set out in the Third Schedule

MISCELLANEOUS

6.1 The Developer shall pay to the Council on completion of this Deed the sum of £500 (on which no VAT shall be payable) in respect of the legal costs of the Council incurred in the negotiation, preparation and execution of this Deed.

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

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

6.4 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Council or by the Council from the Owner 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 the Council by the Assistant Director of Planning and Transportation 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.

6.5 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall upon receipt of a written request by the Owner effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.

6.6 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.

6.7 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Land but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

6.8 Nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.

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

INDEXATION

7 Any sum payable under this deed by the Owner 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.

INTEREST

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

IN WITNESS whereof these presents have been duly executed as a Deed by the parties hereto the day and year first before written

FIRST SCHEDULE

All that land off Foxfields Oxspring Sheffield Barnsley for the purpose of identification shown edged red on the Plan

SECOND SCHEDULE

The Owner covenants with the Council to observe and perform the following obligations:

Public Open Space

1 The Owner shall pay to the Council upon Commencement of Development the Public Open Space Commuted Sum to be spent on the provision, maintenance or improvement of open space within the parish of Oxspring. The precise location and nature of expenditure shall be determined by the Council in consultation with ward members.

THIRD SCHEDULE

The Council covenants with the Owner to observe and perform the following obligation:

Repayment of the Public Open Space Commuted Sum

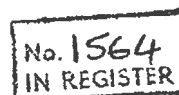
1 The Council shall pay back to the Owner any part of the Public Open Space Commuted Sum received from the Owner pursuant to paragraph 1 of the Second Schedule that has not been expended on the purposes specified in paragraph 1 of the Second Schedule within fifteen years of receipt

Release of obligations contained in the covenants of the Section 52 Agreement

- 1 The Council confirms that upon Commencement of Development the Owner is released from the obligations contained in the covenants of the Section 52 Agreement
- 2 Upon Commencement of Development and a written request from the Owner the Council agrees to remove the Section 52 Agreement from the Local Land Charges register

THE COMMON SEAL of BARNSELY)
METROPOLITAN BOROUGH)
COUNCIL was hereunto affixed to this)
Deed in the presence of:-)

S. Blane
Borough Secretary/Authorised Signatory



EXECUTED as a DEED by ANTONY
GREEN)

Antony Green

In the presence of:

Witness

Philip Smith
PHILIP SMITH
BANK HOUSE
BIRCHWATER STREET
WAKEFIELD
WF1 2DA
SOLICITOR

