

DATED 16TH AUGUST 2007

BROADLAND DISTRICT COUNCIL

- AND -

GARY JOHN WOODLEY and TERESA WOODLEY

-AND-

HSBC BANK PLC

**AGREEMENT UNDER SECTION 106
OF THE TOWN AND COUNTRY PLANNING
ACT 1990**

Relating to the erection of a dwelling at
Aylsham Garden Centre Norwich Road
Aylsham Norfolk

Broadland District Council
Thorpe Lodge
1 Yarmouth Road
Thorpe St Andrew
Norwich
NR7 0DU

THIS AGREEMENT is made the 16th day of August 2007

BETWEEN:

1. BROADLAND DISTRICT COUNCIL of Thorpe Lodge 1 Yarmouth Road
Thorpe St Andrew Norwich Norfolk NR7 0DU ("the Council")
2. GARY JOHN WOODLEY and TERESA WOODLEY both of Aylsham
Garden Centre Norwich Road Aylsham Norfolk NR11 6UD ("the
Owners")
3. HSBC BANK PLC of 8 Canada Square London E14 5HQ ("the
Mortgagee")

1. INTERPRETATION AND DEFINITIONS

In this Agreement unless the context otherwise requires the following expressions shall have the following meanings:-

"Act"	the Town and Country Planning Act 1990 (as amended)
"Application"	the detailed application made on for planning permission for a dwelling (revised siting) in accordance with the plans deposited with the Council bearing reference No 20070592
"Commencement Date"	the initiation of the Development by the carrying out on the Site pursuant to the Planning Permission of a material operation within the meaning of Section 56 (4) of the Act (but not including any operations relating to the demolition of any existing buildings or clearance of the Site) and "commence" shall be interpreted in accordance with this definition

NORWICH ROAD

The Greens

Hill House

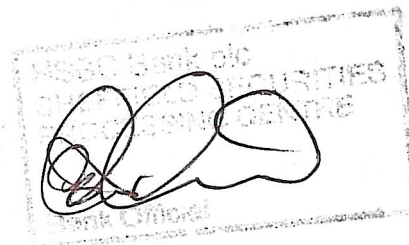
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5840

Ennos

HEAD OF CORPORATE SERVICES
& MONITORING OFFICER



Wooddy
[Signature]



Application No: 20070592

Aylsham Garden Centre, Norwich Road, Aylsham

Scale:
1:1250

Date:
1-May-07



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"Development"	the development permitted by the Planning Permission
"Director"	the Council's Strategic Director and Chief Planner or other officers of the Council acting under his hand
"Original Permission"	the planning permission granted on appeal on 1 August 2002 under reference No. 011084 for the erection of an Owner's dwelling and conservatory extension
"Plan"	the plan annexed to this Agreement
"Planning Permission"	the planning permission to be granted pursuant to the Application
"Site"	the land at Aylsham Garden Centre Norwich Road Aylsham Norfolk NR11 6UD shown for the purposes of identification only edged red on the Plan

In this Agreement unless the context otherwise requires:

- (i) references to any party shall include the successors in title and assigns of that party
- (ii) references to clauses and schedules are references to clauses in and schedules to this Agreement
- (iii) any mention herein of any Act or of any Section Regulation or Statutory Instrument shall be deemed to refer to the same source as at any time amended and where such Act Section Regulation or Statutory Instrument has been replaced consolidated or re-enacted with or without amendment such mention shall be deemed to refer to the

relevant provision of the updating consolidating or re-enacting Act or
Section or Regulation or Statutory Instrument

- (iv) headings in this Agreement shall not form part of or affect its
construction

W H E R E A S:

- A. The Council is the Local Planning Authority for the purposes of the Act for the
area within which the Site is situated
- B. The Site is registered with title absolute at Kingston upon Hull District Land
Registry with title numbers NK258811 and NK259010
- C. The Owners are recent purchasers of the Site by a transfer dated 22nd May
2007 but such transfer has not yet been registered
- D. The Original Permission has been partially implemented by the construction of
the conservatory extension but the Owner's dwelling approved by the Original
Permission has not been constructed
- E. The Owner's agents have submitted the Application
- F. The Council have resolved to approve the Application subject to the
completion of this Agreement
- G. The Mortgagee has agreed to be a party to this Agreement for the purpose of
giving consent as hereinafter appears

2. GENERAL PROVISIONS APPLICABLE TO THIS AGREEMENT

- 2.1 This Agreement is made under Section 106 of the Act, Section 111 of the
Local Government Act 1972 and any other enabling powers

- 2.2 The obligations of the Owners hereunder are planning obligations enforceable by the Council against the Owners and their respective successors in title and assigns
- 2.3 No person shall be liable for any breach of the covenants restrictions or obligations contained in this Agreement occurring after he has parted with his interest in the Site or the part of the Site in respect of which such breach occurs but without prejudice to liability for any subsisting breach which occurs prior to parting with such interest in the Site or any part thereof in respect of which any such breach has taken place
- 2.4 The provisions of this Agreement shall have immediate effect upon completion of this Agreement
- 2.5 The Mortgagee acknowledges and declares that this Agreement has been entered into by the Owners with its consent and that the Site shall be bound by the obligations contained in this Agreement and that the security of the mortgage over the Site shall take effect subject to this Agreement PROVIDED THAT the Mortgagee shall otherwise have no liability under this Agreement unless it takes possession of the Site in which case it too will be bound by the obligations as if it were a person deriving title from the Owners.
- 2.6 This Agreement shall cease to have effect if:
- 2.6.1 the Planning Permission shall be quashed revoked or otherwise withdrawn
- 2.6.2 the Planning Permission shall expire prior to the Commencement Date
- 2.7 This Agreement shall be registered as a charge in the Council's Register of Local Land Charges

3. AGREEMENTS AND DECLARATIONS

IT IS HEREBY AGREED AND DECLARED as follows:

3.1 No Fetter of Discretion

Save insofar as legally or equitably permitted nothing contained or implied in this Agreement shall prejudice or affect the rights powers duties and obligations of the Council in the exercise of its functions as Local Planning Authority and the rights powers duties and obligations under all public and private bylaws and regulations may be as fully and effectively exercised as if the Council were not a party to this Agreement

3.2 Invalidity or Unenforceability of any of the Terms of this Agreement

If any provision in this Agreement shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions hereof shall not in any way be deemed thereby to be affected or impaired

3.3 No Waiver

No waiver (whether express or implied) by the Council of any breach or default by the Owners in performing or observing any of the covenants in this Agreement shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the covenants or from acting upon any subsequent breach or default in respect thereof

4. NOTICES

4.1 Any notice document or other correspondence required to be served or given under the provisions of this Agreement shall be in writing and delivered personally or sent by pre-paid letter or facsimile

- 4.2 The address for any notice or other written communication in the case of each party to this Agreement shall be as follows:-

The Council	The Strategic Director and Chief Planner Thorpe Lodge Yarmouth Road Thorpe St Andrew Norwich NR7 0DU
The Owners	Mr and Mrs G Woodley Aylsham Garden Centre Norwich Road Aylsham Norfolk NR11 6UD

- 4.3 Any notice or other written communication to be given by the Council shall be deemed to be valid and effective if on its face it is signed on behalf of the Council by a duly authorised officer

5. THIRD PARTIES

- 5.1 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement and no person who is not a party to this Agreement (other than a successor in title to one of the original parties) shall be entitled in that person's own right to enforce any provisions of this Agreement pursuant to the provisions of the said Act

6. COSTS

- 6.1 The Owners shall on completion of this Agreement pay the Council's legal and administrative costs incurred in the preparation negotiation and completion of this Agreement

7. PAYMENT OF INTEREST

- 7.1 The Owners shall pay interest at the rate of 4% above HSBC Bank base rate for the time being in force on any monies due under the provisions of this Agreement in the event of late payment for the period from the date the monies should have been paid to the date the money is received

8. VAT

- 8.1 All consideration given in accordance with the terms of this Agreement shall be exclusive of any VAT properly payable
- 8.2 If at any time VAT is or becomes chargeable in respect of any supply made in accordance with the terms of this Agreement, then to the extent that VAT has not previously been charged in respect of that supply the person making the supply shall have the right to issue a VAT invoice to the person to whom the supply was made and the VAT shall be paid accordingly

9. JURISDICTION

- 9.1 This Agreement is to be governed by and interpreted in accordance with the law of England and Wales

- 10. The Owners agrees that any rights to claim compensation arising from any limitations or restrictions on the planning use of the Site under the terms of the Agreement are hereby waived

11. DISPUTE RESOLUTION

- 11.1 The parties will attempt in good faith to resolve any dispute or claim arising out of or relating to this Agreement promptly through negotiations between the respective senior executives of the parties who have authority to settle the same.
- 11.2 If the matter is not resolved through negotiation the parties will attempt in good faith to resolve the dispute or claim through an Alternative Dispute Resolution ("ADR") procedure as recommended to the parties by the Centre for Dispute Resolution.
- 11.3 If the matter has not been resolved by an ADR procedure within 28 days of the initiation of such procedure or if either party will not participate in an ADR Procedure the dispute may be referred by either party to arbitration for

decision by a person appointed by agreement between the parties or in default of agreement by the President for the time being of the Institute of Civil Engineers who shall act as an expert and not as an arbitrator and whose decision shall be final and binding upon the parties.

- 11.4 Nothing in Clauses 11.1 and 11.2 shall apply to the recovery of liquidated sums or prevent the parties from commencing or continuing court proceedings.

12. PLANNING OBLIGATIONS

The Owners hereby jointly and severally covenant with the Council as follows:

- 12.1 not to erect or permit to be erected on the site that part of the development permitted by the Original Permission comprising of the Owner's dwelling
- 12.2 not to make any claim against the Council including a claim for compensation arising out of the non-implementation of the Original Permission or any part thereof or any other provision of this Agreement

EXECUTED by the parties hereto as a deed on the date written above

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



5840

[Signature]

Head of Corporate Services
and Monitoring Officer

SIGNED by the said
GARY JOHN WOODLEY
in the presence of:

[Signature]

U-12-2011

Signature - *[Signature]*
Name - GARY JOHN WOODLEY

Address -
Occupation - SECRETARY
KENNETH BUSH SOLICITORS
11 NEW CONDUIT STREET
KING'S LYNN PE30 1DG

[Signature]

U-12-2011

SIGNED by the said
TERESA WOODLEY
in the presence of:

Signature - *[Signature]*
Name - TERESA WOODLEY

Address -
Occupation - SECRETARY
KENNETH BUSH SOLICITORS
11 NEW CONDUIT STREET
KING'S LYNN PE30 1DG

SIGNED AND DELIVERED

By

[Signature]
Steven Roger Sweeting

[Signature]

In the presence of:

Attorney of
HSBC Bank plc

Witness:

Paul Lawrence Brown

[Signature]

Address:

HSBC Bank plc
SHEFFIELD SECURITIES
TRADING CENTRE
Bank Office

Occupation: