

DATED *28 April* 2021

NORTH YORK MOORS NATIONAL PARK AUTHORITY

AND

MARK ROBERT PEARSON

AGREEMENT

Pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended)
relating to 20 Dikes Lane, Great Ayton, Middlesbrough

THIS DEED is made the 28th day of April

2021

BETWEEN:-

- (1) **NORTH YORK MOORS NATIONAL PARK AUTHORITY** of The Old Vicarage, Bondgate, Helmsley, York, YO62 5BP (“**National Park Authority**”); and
- (2) **MARK ROBERT PEARSON** of 20 Dikes Lane, Great Ayton, Middlesbrough TS9 6HJ (“**Owner**”).

WHEREAS

- A. The National Park Authority is the local planning authority for the purposes of this Deed for the area within which the Land is situated and by whom the obligations contained in this Deed are enforceable.
- B. The Owner is registered at the Land Registry as proprietor of all parts of the Land with title absolute under Title Number NYK311146.
- C. The Owner intends to carry out and complete the Development.
- D. The National Park Authority resolved on 5 December 2019 in response to the Planning Application to grant the Planning Permission subject to the making of this Deed without which the Planning Permission would not be granted.
- E. The National Park Authority considers it expedient in the interests of the proper planning of its area that provision should be made for regulating or facilitating the Development as set out in this Deed. For the purposes of Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) the National Park Authority is satisfied that the restrictions and provisions contained in this Deed are necessary to make the Development acceptable in planning terms, that they are directly related to the Development and are fairly and reasonably related in scale and kind to the Development.
- F. The Owner by entering into this Deed does so to create planning obligations in favour of the National Park Authority pursuant to Section 106 of the Act and to be bound by and observe and perform the covenants agreements conditions and stipulations hereinafter contained on the terms in this Deed.

NOW THIS DEED WITNESSES as follows:

In this Deed the following words and expressions shall where the context so requires have the following meanings:-

- “Act”** means the Town and Country Planning Act 1990 (as amended);
- “Commencement of Development”** means the date upon which the Development shall commence by the carrying out on the Land pursuant to the Planning Permission of a material operation as specified in Section 56(4) of the Act;
- “Development”** means the development of the Land and all other operations and works authorised by the Planning Permission to provide for the conversion of and extension to stable building to form cycle hire shop and cafe at ground floor and 2 no. holiday letting units at first floor, construction of plant room/store together with alterations to access, provision of parking and landscaping works;
- “Index”** means the 12 month percentage change in the All Items Retail Price Index published by the Office for National Statistics contained in the Monthly Digest of Statistics (or contained in any official publication substituted therefore) or such other index as may from time to time be published in substitution therefore;
- “Index Linked”** means such increase or decrease to sums payable pro-rata per diem from the date of this Deed until such date that payment of the sum is made based upon the difference between the index at the date of this Deed and the index at the date of payment;
- “Interest”** means interest at the rate of 2% above the base lending rate of the Bank of England in force for the period when interest is payable;

“Land”	means the land which is shown edged red on the Plan;
“Plan”	means the plan contained in the Third Schedule;
“Planning Application”	means the application for the Development, with reference NYM/2018/0732/FL submitted by the Owner to the National Park Authority (and shall include any variations thereto);
“Planning Permission”	means the planning permission issued by the National Park Authority for the Development pursuant to the Planning Application (and any variations thereto);
“Rights of Way Contribution”	means £1,000 (one thousand pounds) (Index Linked);
"Working Days"	means any day except Saturday or Sunday or a bank holiday or any days which in England and Wales are public holidays.

CONSTRUCTION OF THIS DEED

- 1.1 For the purposes of this Deed the singular includes the plural and vice versa and words importing the masculine gender only include the feminine gender and extend to include a corporation sole or aggregate.
- 1.2 References to any party in this Deed shall include the successors in title and assigns of that party and in the case of the National Park Authority shall include any successor local planning authority exercising planning powers under the Act.
- 1.3 Where there is more than one person named as a party and where more than one party undertakes a covenant all of their covenants can be enforced against all of them jointly and against each individually unless there is an express provision otherwise.
- 1.4 The expression “person” means any person, firm, authority or company or other legal entity.

- 1.5 Unless otherwise stated, references to clause numbers are references to the clauses in this Deed. The headings are for reference only and shall not affect construction.
- 1.6 Unless otherwise stated, references to schedules and paragraph numbers are references to the schedules and paragraphs of schedules in this Deed.
- 1.7 Any covenant by the Owner not to knowingly do any act or thing shall be deemed to include a covenant not to cause permit or suffer the doing of that act or thing.

LEGAL BASIS

2. This Deed is a planning obligation made pursuant to Section 106 of the Act and all other powers so enabling and may be enforced by the National Park Authority against the Owner and, where the obligation binds their land, any persons deriving title from them.

PARTIES COVENANTS

- 3.1 The Owner covenants with the National Park Authority to perform the obligations and observe the restrictions specified in the First Schedule and that all the interest which the Owner has in the Land shall be subject to those obligations and restrictions.
- 3.2 The National Park Authority covenants with the Owner to perform the obligations and observe the restrictions specified in the Second Schedule.
- 3.3 The Owner and National Park Authority agree that the obligations in this Deed shall not be enforceable against any mortgagee or chargee from time to time of the whole or part of the Land unless the mortgagee or chargee takes possession of all or part of the Land in which case it will be bound by the obligations as if it were a person deriving title from the Owner.

MISCELLANEOUS

It is declared as follows:-

- 4.1 The obligations in the Deed shall be enforceable in accordance with the provisions of Section 106(3) of the Act.
- 4.2 The expressions "National Park Authority" shall include their successor(s) to their statutory functions and the expressions "Owner" shall include their successors in title to the Land and any part thereof.
- 4.3 The parties to this Deed hereto covenant on behalf of themselves and their successors in title that no person shall be liable for breach of a covenant contained in this Deed:

- (a) occurring after they shall have parted with all interest in the Land or the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest; or
 - (b) if it is a statutory undertaker which has an interest in any part of the Land or with equipment or apparatus on the Land for the purposes of its undertaking.
- 4.4 The planning obligations contained in this Deed shall not become effective until the earliest date on which the following conditions are satisfied:-
 - (a) the Planning Permission has been granted; and
 - (b) save where otherwise stated in this Deed the Commencement of Development occurs.
- 4.5 This Deed shall have effect as from the date specified in clause 4.4 until discharged but shall cease to have effect if the Planning Permission shall lapse or expire or be revoked or modified without the consent of the Owner or for any reason cease to have effect before the Commencement of Development.
- 4.6 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, legality or enforceability of the remaining provisions of this Deed.
- 4.7 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 after the date of this Deed.
- 4.8 In the event that an application is made pursuant to section 73 of the Act for an amendment to the Planning Permission and planning permission is granted in respect of the application and the National Park Authority is satisfied that the stipulations in clause 4.15 of this Deed apply to the new planning permission then references to Planning Permission in this Deed shall be to the new planning permission granted pursuant to section 73 of the Act and this Deed shall apply to and remain in full force in respect of that new planning permission without the need for a further agreement to be entered into pursuant to section 106 of the Act.
- 4.9 This Deed is a Local Land Charge and shall be registered as such by the National Park Authority.
- 4.10 This Deed does not nor is it intended to confer a benefit on a third party within the meaning of the Contracts (Rights of Third Parties) Act 1999 provided that this clause shall not affect any right of action of any person to whom this Deed has been lawfully assigned or becomes vested in law.

- 4.11 In the event that a party to this Deed fails to make payment in accordance with their obligations set out in this Deed they shall pay Interest on the sum due from the date it becomes payable until actual payment thereof.
- 4.12 All consideration given in accordance with the terms of this Deed shall be exclusive of any Value Added Tax properly payable.
- 4.13 Any notice agreement consent or approval required to be given under this Deed shall not be unreasonably withheld or delayed and shall be in writing and shall be delivered personally or sent by pre-paid first class recorded delivery post.
- 4.14 The address for service of any such notice consent or approval as aforesaid shall be the parties' addresses stated in the parties' clause of this Deed.
- 4.15 The parties to this Deed have given due consideration to the requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010 (SI 2010 No. 948) and agree that the planning obligations it contains are:
- (a) necessary to make the Development acceptable in planning terms;
 - (b) directly and fairly related to the Development; and
 - (c) fairly and reasonably related in scale and kind to the Development.
- 4.16 The Developer shall pay to the National Park Authority prior to the completion of this Deed £500 (five hundred pounds) (no vat) being the reasonable legal costs of the National Park Authority incurred in the negotiation, preparation and execution of this Deed.
- 4.17 This Deed is governed by and interpreted in accordance with the laws of England and Wales and the parties submit to the exclusive jurisdiction of the courts of England and Wales.

DISPUTE PROVISIONS

- 5.1 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 in England relevant to the matter 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.
- 5.2 In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to Clause 5.1 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.

5.3 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.

5.4 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.

IN WITNESS whereof this Deed has been duly executed by the parties the day and year first before written

FIRST SCHEDULE
(Covenants by the Owner)

The Owner covenants with the National Park Authority as follows:

Public Rights of Way Contribution

1. The Owner shall pay the Public Rights of Way Contribution to the National Park Authority as a contribution to the maintenance and improvement of all public rights of way affected by the Development and affected by users of the Development, with payment to be made annually in advance, first payment to be made on the third anniversary of the date of the first operation of any cycle hire shop, cafe or holiday letting on the Land, and payments to continue to be made for so long as any material operation of the cycle hire shop, cafe or holiday letting exists.

Scheme of Signage

2. Prior to the commencement of operation of any part of the cycle hire shop, cafe or holiday letting on the Land, to commission, pay for and fully install all signage necessary to prevent all users of the cycle hire shop, cafe or holiday letting from parking on the adjacent highway, such signage to be in accordance with any related requirements contained in the parking management plan required by the Planning Permission.

Goods to be Sold

3. Unless otherwise agreed in writing with the National Park Authority no goods shall be sold at the Land other than the following goods sold from the cycle hire shop and café within the Development,
 - i) retail sales associated with and ancillary to cycling such as gloves, jackets, helmets, inner tubes, tyres, maps, guides, hats & waterproofs, including sale of ex-hire bicycles from the cycle hire shop and sale of new bicycles, and
 - ii) retail sales associated with and ancillary to basic domestic items reasonably required by occupiers of the two holiday letting units on the Land, such as toothbrushes, soap, shower gels, toilet rolls, cutlery, crockery and other small items of kitchen and bathroom equipment, and
 - iii) food and drink sales.

Common Ownership and Control

4. To ensure the need for additional and separate management functions and visits on the Land does not accrue, and to avoid unacceptable amenity impacts arising, disposal of any interest in the Land or any part thereof is not permitted except by a transfer or lease of the whole of the Land (with no transfer or lease of part of the Land permitted and no sub-letting permitted) so as to ensure that the Land shall at all times remain together in common ownership and control.

THIRD SCHEDULE

(Plan)

SECOND SCHEDULE

(Covenants by the National Park Authority)

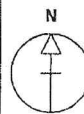
The National Park Authority covenants with the Owner as follows:

Discharge of Obligations

- 1 At the written request of any party to this Deed the National Park Authority shall provide written confirmation of the discharge of the obligations contained in this Deed when satisfied that such obligations have been performed.



TITLE NUMBER
NYK311146



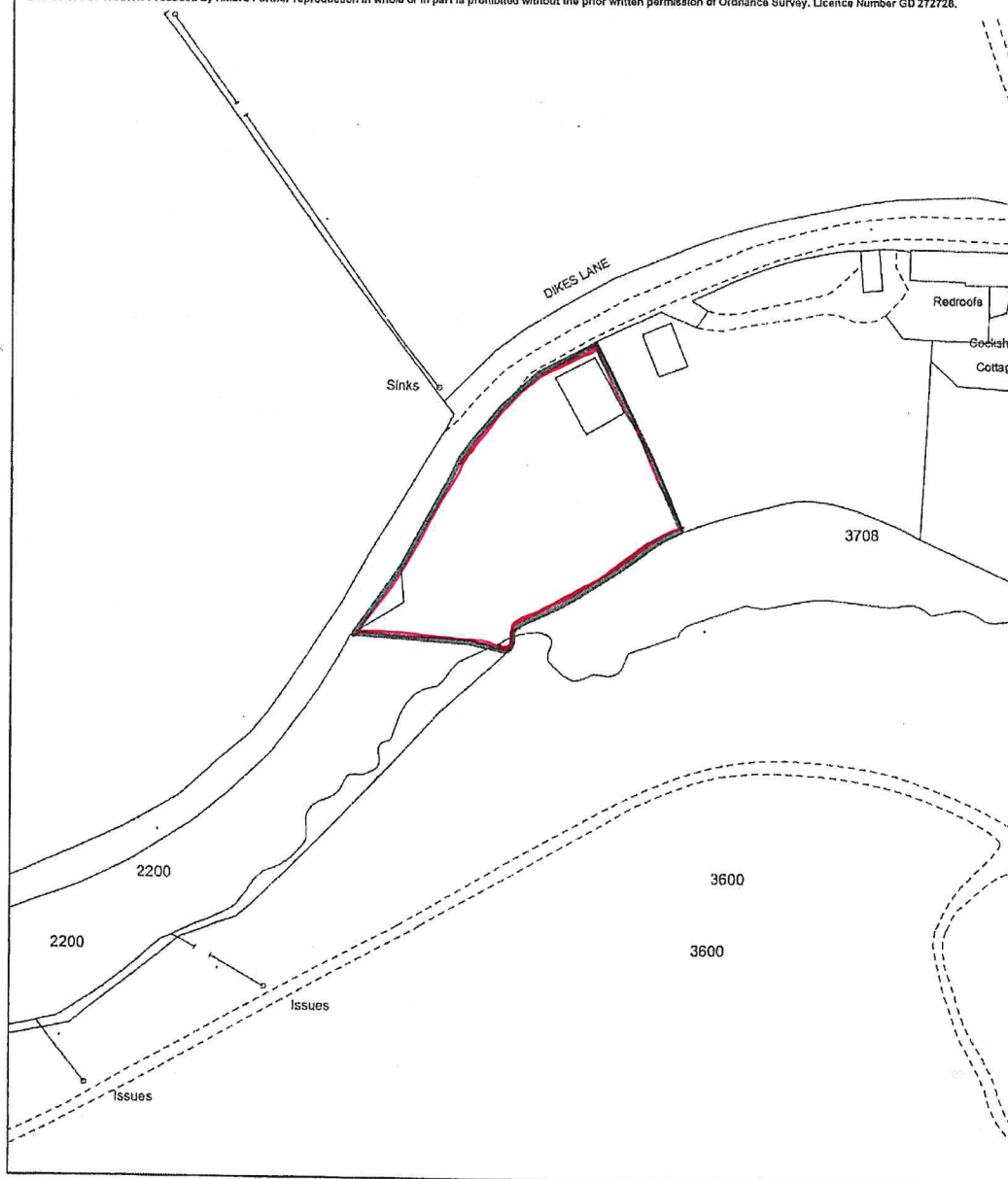
NORTH YORKSHIRE : HAMBLETON

ORDNANCE SURVEY MAP REFERENCE:

NZ8811SW

SCALE 1:1250 Enlarged from 1/2500

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This title plan shows the general position of the boundaries: it does not show the exact line of the boundaries. Measurements scaled from this plan may not match measurements between the same points on the ground. For more information see Land Registry Public Guide 7 - Title Plans.

This official copy shows the state of the title plan on 19 August 2005 at 9:51:32. It may be subject to distortions in scale. Under s.67 of the Land Registration Act 2002, this copy is admissible in evidence to the same extent as the original. Issued on 19 August 2005.

This title is dealt with by the York District Land Registry.



**THE COMMON SEAL OF
THE NATIONAL PARK AUTHORITY**

was affixed in the presence of:

Authorised Signatory

(RICHARD SMITH)



2160

**EXECUTED AS A DEED BY
MARK ROBERT PEARSON**

...

In the presence of:

Witness signature

Name

Address

.....
RICHARD VAUX

VAUX FLETCHER SOLICITORS
14 Baker Street
Middlesbrough
TS1 2LH

