

Burrell, Becky

From: Gedney, David
Sent: 10 September 2023 17:20
To: _planningadvice
Subject: FW: H20-0790-22: Land off Draw Dyke Sutton St James Spalding (APP/A2525/W/23/3319481)
Attachments: 20230907 - Completed s106 Land off Draw Dyke.pdf

Please scan email and attachment on file and appeal file – 3106 (S106)

Regards

David Gedney

Senior Planning Officer
South Holland District Council
T: 01775 764468
E: dgedney@sholland.gov.uk

Working Days: Monday, Tuesday & Thursday



Please note that any informal officer opinion expressed by this email is without prejudice and is not binding on the Council during the consideration of any formal application.

From: Davies, Lisa <ldavies@sholland.gov.uk>
Sent: 07 September 2023 13:03
To: Gedney, David <DGedney@sholland.gov.uk>
Cc: Simmonds, Mark <Mark.Simmonds@sholland.gov.uk>; Asher, Marie <masher@sholland.gov.uk>
Subject: H20-0790-22: Land off Draw Dyke Sutton St James Spalding (APP/A2525/W/23/3319481)

Hi Dave,

Please find attached a copy of the completed s.106 agreement for the above matter, which has been produced for the above appeal.

Can you please let me know the outcome of the appeal, so that if required I can arrange to have the s.106 agreement registered as a local land charge.

Kind regards
Lisa

Lisa Davies

Senior Planning Lawyer
South Holland District Council

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My working week is Monday and Wednesday 8:30 – 16:45; Tuesday 8:30 – 16:30; and Thursday 7:30 – 15:00

DATED 7 September 2023

**PLANNING OBLIGATION UNDER SECTION 106 OF THE TOWN AND
COUNTRY PLANNING ACT 1990 RELATING TO LAND OFF DRAW DYKE,
SUTTON ST JAMES**

between

SOUTH HOLLAND DISTRICT COUNCIL

and

MICHAEL PEACE AND KATIE PEACE

I certify that
this is a true
copy of the original
LY Davies
For South Holland DC
07/09/23.

SHDC Reference: LD/H20-0790-22

Appeal Reference: APP/A2525/W/23/3319481

THIS DEED is dated 7 September 2023.

- (1) SOUTH HOLLAND DISTRICT COUNCIL of Council Offices, Priory Road, Spalding, Lincolnshire, PE11 2XE (**Council**).
- (2) MICHAEL PEACE and KATIE JANE PEACE of Black Barn Cottage, Black Barn, Gedney Drove, Spalding, Lincolnshire, PE12 9NE (**Owner**).

BACKGROUND

- (A) The Council is the local planning authority for the purposes of the TCPA 1990 for the area in which the Property is situated.
- (B) The Owner is the freehold owner of the Property registered under title number LL244954 free from encumbrances.
- (C) The Owner via their agent submitted the Planning Application to the Council for the Dwelling to be constructed on the Property.
- (D) On 10 November 2022 the Council refused the Planning Application. The Owner has appealed against the said refusal to the Secretary of State under appeal reference number APP/A2525/W/23/3319481.
- (E) The parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed.
- (F) The parties agree that the planning obligations contained in this Deed are necessary to comply with the requirements of regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended)

AGREED TERMS

1. INTERPRETATION

The following definitions and rules of interpretation apply in this deed:

1.1 Definitions:

2015 Act: the Self-build and Custom Housebuilding Act 2015 as amended by the Housing Act 2016

Appeal: the appeal made to the Secretary of State and allocated reference number APP/A2525/W/23/3319481

Commencement of Development: the carrying out in relation to the Development of any material operation as defined by section 56(4) of the TCPA 1990 but disregarding for the purposes of this deed and for no other

purpose, the following operations: demolition works; site clearance; ground investigations; site survey works; temporary access construction works; archaeological investigation; and erection of any fences and hoardings around the Property.

Commence and Commences shall be construed accordingly.

Commencement Date: the date Development Commences.

Development: the development of the Property authorised by the Planning Permission.

Dwelling: an environmentally low impact home designed and built using materials and technology that reduces its carbon footprint and lowers its energy needs and meets the definition in the 2015 Act.

Plan: the plan attached as 0.

Planning Application: the application for full planning permission registered by the Council on 9 August 2022 under reference number H20-0790-22

Planning Permission: the planning permission to be granted by the Secretary of State pursuant to the Appeal or such other planning permissions for the Development granted after the Appeal pursuant to section 73 or 96A of the TCPA 1990.

Property: the land at Sutton St James shown edged red on the Plan and registered at HM Land Registry with absolute title under title number(s) TBC

Secretary of State: the Secretary of State for Levelling Up, Housing and Communities from time to time appointed and includes any successor in function

TCPA 1990: Town and Country Planning Act 1990.

Working Day: any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England.

1.2 Clause headings shall not affect the interpretation of this deed.

1.3 A **person** includes a **natural** person, corporate or unincorporated body (whether or not having **separate** legal personality).

1.4 A reference to a **company** shall include any company, corporation or other body corporate, **wherever and** however incorporated or established.

- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to any party shall include that party's personal representatives, successors and permitted assigns and in the case of the Council the successors to its respective statutory functions.
- 1.8 Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.9 Unless the context otherwise requires, a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.10 A reference to **writing** or **written** includes email but not faxes.
- 1.11 A reference to **this deed** or to any other deed or document referred to in this deed is a reference to this deed or such other deed or document as varied or novated (in each case, other than in breach of the provisions of this deed) from time to time.
- 1.12 References to clauses and Schedules are to the clauses and Schedules of this deed.
- 1.13 An obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.14 Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.15 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.

2. STATUTORY PROVISIONS

- 2.1 This deed constitutes a planning obligation for the purposes of section 106 of the TCPA 1990, section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and any other enabling powers.
- 2.2 The covenants, restrictions and obligations contained in this deed are planning obligations for the purposes of section 106 of the TCPA 1990 and are entered into by the Owner with the intention that they bind the interests held by those persons in the Property and their respective successors and assigns.
- 2.3 The covenants, restrictions and obligations contained in this deed are enforceable by the Council in accordance with section 106 of the TCPA 1990.

3. CONDITIONALITY

This deed and the obligations contained herein are conditional on:

- (a) the grant and issue of the Planning Permission; and
- (b) the Commencement of Development

SAVE FOR the provisions of Clauses 9 and 11.2 (local land charge and change of ownership clauses) and any other relevant provisions which shall come into effect immediately upon completion of this deed.

4. COVENANTS TO THE COUNCIL

The Owner covenants with the Council to:

- (a) observe and perform the covenants, restrictions and obligations contained in 0; and
- (b) give at least 10 Working Days written notice to the Council of the intended Commencement Date.

5. COVENANTS BY THE COUNCIL

The Council covenants with the Owner to observe and perform the covenants, restrictions and obligations contained in 0.

6. **RELEASE**

No person shall be liable for any breach of a covenant, restriction or obligation contained in this deed after parting with all of its interest in the Property, except in respect of any breach subsisting prior to parting with such interest.

7. **DETERMINATION OF DEED**

The obligations in this deed (with the exception of clause 9) shall cease to have effect if before the Commencement of Development, the Planning Permission:

- (a) expires;
- (b) is varied or revoked other than at the request of the Owner; or
- (c) is quashed following a successful legal challenge.

8. **LOCAL LAND CHARGE**

This deed is a local land charge and shall be registered as such by the Council.

9. **COUNCIL'S COSTS**

- 9.1 The Owner shall pay to the Council within 28-days of the grant of the Planning Permission the Council's reasonable and proper legal costs of £1,000 together with all disbursements incurred in connection with the preparation, negotiation, completion and registration of this deed.

10. **OWNERSHIP**

- 10.1 The Owner warrants that no person other than the Owner has any legal or equitable interest in the Property.
- 10.2 The Owner shall give to the Council within 20-Working Days written notice of any change in the ownership of any of its interest in the Property occurring before all the obligations under this deed have been discharged such notice to give details of the transferees name and address together with details of the part of the Property disposed of.

11. REASONABLENESS

Any approval, consent, direction, authority, agreement or action to be given by the Council under this deed shall not be unreasonably withheld or delayed.

12. CANCELLATION OF ENTRIES

12.1 On the written request of the Owner at any time after each or all of the obligations have been performed or otherwise discharged (and subject to the payment of the Council's reasonable and proper costs) the Council will issue a written confirmation of such performance or discharge.

12.2 Following the performance and full satisfaction of all the terms of this agreement or if this deed is determined pursuant to clause 7 (and subject to the payment of the Council's reasonable and proper costs and charges) the Council will on the written request of the Owner cancel all entries made in the local land charges register in respect of this deed.

13. DISPUTES

Any dispute, controversy or claim arising out of or relating to this deed, including any question regarding its breach, existence, validity or termination or the legal relationships established by this deed, shall be finally resolved by arbitration in accordance with the Arbitration Act 1996. It is agreed that:

- (a) the tribunal shall consist of one arbitrator appointed jointly by the parties;
- (b) in default of the parties' agreement as to the arbitrator, the arbitrator shall be appointed on either party's request by the President for the time being of the Royal Institution of Chartered Surveyors;
- (c) the costs of the arbitration shall be payable by the parties in the proportions determined by the arbitrator (or if the arbitrator makes no direction, then equally); and
- (d) the seat of the arbitration shall be Lincolnshire.

14. NO FETTER OF DISCRETION

Nothing (contained or implied) in this deed shall fetter or restrict the Council's statutory rights, powers, discretions and responsibilities.

15. WAIVER

No failure or delay by the Council to exercise any right or remedy provided under this deed or by law shall constitute a waiver of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

16. FUTURE PERMISSIONS

Nothing in this agreement shall prohibit or limit the right to develop any part of the Property in accordance with any planning permission (other than the Planning Permission or modification, variation or amendment thereof) granted after the date of the Planning Permission.

17. AGREEMENTS AND DECLARATIONS

The parties agree that:

- (a) nothing in this deed constitutes a planning permission or an obligation to grant planning permission; and
- (b) nothing in this deed grants planning permission or any other approval, consent or permission required from the Council in the exercise of any other statutory function.

18. NOTICES

18.1 Any notice or other communication to be given under this deed must be in writing and must be:

- (a) delivered by hand; or
- (b) sent by pre-paid first-class post or other next working day delivery service.

18.2 Any notice or other communication to be given under this deed must be sent to the relevant party's address as appears in the deed or as otherwise specified by the relevant party by notice in writing to each other party.

18.3 Any notice or other communication given in accordance with clause 18.1 and clause 18.2 will be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice or document is left at the address provided that if delivery

occurs before 9.00 am on a Working Day, the notice will be deemed to have been received at 9.00 am on that day, and if delivery occurs after 5.00 pm on a Working Day, or on a day which is not a Working Day, the notice will be deemed to have been received at 9.00 am on the next Working Day; or

- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Working Day after posting.

18.4 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

19. THIRD PARTY RIGHTS

A person who is not a party to this deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this deed.

20. VALUE ADDED TAX

20.1 Each amount stated to be payable by the Council or the Owner to the other under or pursuant to this deed is exclusive of VAT (if any).

20.2 If any VAT is at any time chargeable on any supply made by the Council or the Owner under or pursuant to this deed, the party making the payment shall pay the other an amount equal to that VAT as additional consideration on receipt of a valid VAT invoice.

21. MISCELLANEOUS

21.1 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.

21.2 This deed shall cease to have effect (insofar only as it has not already be complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owners) modified by any statutory procedure or expires prior to Commencement of Development.

21.3 This deed shall not be enforceable against:

21.3.1 any party solely as a result of such party possessing an interest in the Property relating to subsoil of land which has been adopted by the Council or any other relevant public body as maintainable at public expense;

21.3.2 statutory undertakers acquiring an interest in the Property for the purposes of their undertaking;

21.3.3 any mortgagee or charge exercising their charge

21.4 Representative of the Council may enter upon the Property at any reasonable time upon reasonable prior written notice to ascertain whether the terms of this deed are being or have been complied with

21. GOVERNING LAW

This deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

The Common Seal of
**SOUTH HOLLAND DISTRICT
COUNCIL** was hereunto affixed
in the presence of:

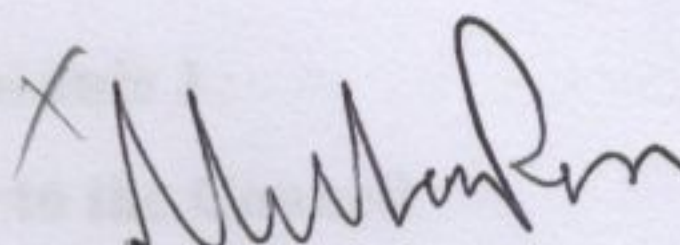
Authorised signatory



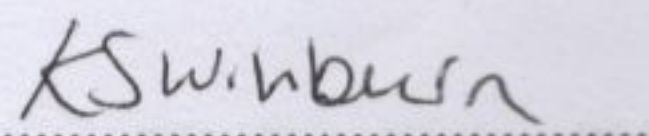
Signed as a Deed by

MICHAEL PEACE

in the presence of:



SIGNATURE OF OWNER



SIGNATURE OF WITNESS

NAME KIRSTY SWINBURN

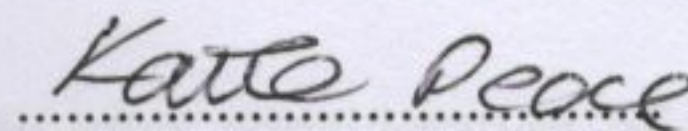
ADDRESS 15 ANVIL CLOSE, CEDNEY DYKE, PE12 0BG

OCCUPATION ADMINISTRATOR

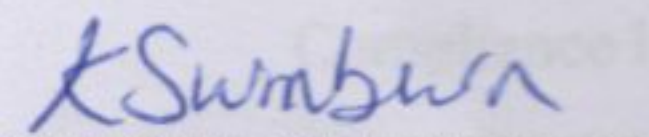
Signed as a Deed by

KATIE JANE PEACE

in the presence of:



SIGNATURE OF OWNER



SIGNATURE OF WITNESS

NAME KIRSTY SWINBURN

ADDRESS 15 ANVIL CLOSE, CEDNEY DYKE, PE12 0BG

OCCUPATION ADMINISTRATOR

Schedule 1

Covenants to the Council

The Owner covenants with the Council as follows:

1. The Dwelling will be constructed pursuant to the Planning Permission and meet the definition of a self-build home within the Self-build and Custom Housebuilding Act 2015 as amended.
2. The Dwelling constructed pursuant to the Planning Permission will meet the following Zero Carbon definition (as outlined by the Zero Carbon Hub):
 - (a) The fabric performance of the home must at a minimum, comply with the defined standard known as the Fabric Energy Efficiency Standard (FEES); and
 - (b) Any CO₂ emissions that remain after consideration of heating, cooling, fixed lighting and ventilation, must be less than or equal to the Carbon Compliance limit established for Zero Carbon homes, and
 - (c) Any remaining CO₂ emissions, from regulated energy sources (after requirements a and b have been met), must be reduced to zero.

Requirement c may be met by either deliberately 'over performing' on requirements a and b so there are no remaining emissions, or by investing in Allowable Solutions.

The Standard Assessment Procedure 2012 will be the base calculation used to demonstrate compliance with Zero Carbon.
3. The Dwelling shall be powered by electricity generated on site through renewable technologies with any surplus sold back to the National Grid.
4. The Dwelling shall be provided with on site electrical battery storage to a standard to be agreed in writing with the Council, the approval of the Council to the standard shall not be unreasonably withheld or delayed.

5. The Dwelling shall be provided with an on-site electric vehicle charging point with minimum capacity to charge two vehicles.
6. The Dwelling shall be provided with an electric vehicle as part of the fixtures to the property. The vehicle shall have an MOT and be fully taxed and insured at all times whilst the Dwelling is occupied.
7. The occupier of the Dwelling shall within 48 hours' notice from the Council provide copies of all documentation outlined above or provide access to the Council to inspect both the electric vehicle and documentation on site.

Schedule 2
Covenants by the Council

1. Following the performance and satisfaction of all the obligations contained in this deed, the Council shall as soon as practically possible effect the cancellation of all entries made in the Register of Local Land Charges in respect of this deed.
2. At the written request of the Owners, the Council shall provide written confirmation of the full or partial discharge of the obligations given for the benefit of the Council contained in this deed when satisfied that such obligations have been performed.

Annex A
Plans



[Handwritten signature or initials]

[Handwritten signature]

[Handwritten signature]

Table with multiple rows and columns, likely a schedule or list of items. The text is faint and difficult to read, but it appears to be a structured table with several columns and rows of data.



A	DATE	BY	REVISION
000001	01-01-2000	00	Initial design
000002	01-01-2000	01	Revised design
000003	01-01-2000	02	Final design

STUDIO 11

KINGS LYNN INNOVATION CENTRE
INNOVATION DRIVE, KINGS LYNN,
NORFOLK, PE20 5BY

T: 01553 970033
E: designstudio1@architecture.co.uk
W: www.studio1architecture.co.uk

CLIENT Mr & Mrs Peoce

PROJECT	Proposed power generation, zero carbon self-build experimental home on land off Drawdyke, Sutton St James
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DRAWING Site Plan

DRAWN	PROJECT DESIGNER	PROJECT DIRECTOR
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JMG	JMG	KB
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DATE	SCALE	PAPER SIZE
09.08.2022	1:200	A1

DRAWING NUMBER

519.PLO1

Working in partnership with Ralph Dahmann Associates & Steven Conforti

x Michael J. ...

x Have Peace

