

MINUTE OF AGREEMENT

among

THE MORAY COUNCIL, constituted under the Local Government etc (Scotland) Act 1994 and having its principal office at Council Office, High Street, Elgin, IV30 1BX (who and whose statutory successors as the Planning and Roads Authority for the Local Government area of Moray are hereinafter referred to as "the Council")

and

(ONE) NEWTON HOUSE MORAY LIMITED, a Company incorporated under the Companies Act (Company Number SC322671) and having its registered office at Newton Cottage, Newton, Elgin, IV30 8XW and (TWO) WILLIAM KENNETH LIPPE, residing at Six Newburns, Urquhart Road, Old Meldrum (who and whose successors as heritable proprietors of the Subjects are hereinafter referred to as "the Proprietors").

Definitions

"the Act"	means the Town and Country Planning (Scotland) Act 1997 as amended by the Planning etc. (Scotland) Act 2006;
"Commencement of Works"	means the excavation of any trench (or forming in any other way) of a foundation for any dwellinghouse or garage within the development;
"Company"	Newton House Moray Limited (Company Number SC322671) having its Registered office at Newton Cottage, Newton, Elgin, IV30 8XW;
"Development"	erection of five dwellinghouses, more fully detailed in the Planning Application;
"Existing Planning Permission"	planning permission reference 08/01414/FUL and 08/01415/LBC;
"Parties"	means the parties to this Agreement;
"Plan"	means the plan annexed and signed as relative hereto;
"Planning Application"	means the application for planning permission with

reference 09/01714/PPP for five numbered plots in paddock at Newton House, Elgin, Moray, IV30 8XW;

"Subjects" means the subjects known as Sites 1, 2, 3, 4 and 5 The Paddock, Newton House, Elgin in the County of Moray all as coloured purple on the plan annexed and signed as relative hereto which subjects comprise (a) the subjects known as Site 3 Newton house, Newton, Elgin registered in the Land Register of Scotland under Title Number MOR9540 and (b) part and portion of the subjects known as Newton House, Elgin, registered in the Land Register of Scotland under Title Number MOR7193;

WHEREAS

- (One) The Council are the planning authority for the Local Government area of Moray for the purposes of the Act;
- (Two) Following an application for review of the decision notice by the appointed Officer of the Planning Authority, the Local Review Body, set up under the Planning etc (Scotland) Act 2006 and the Town and Country Planning (Scheme of Delegation and Local Review Procedure) (Scotland) Regulations 2008, considered the application for review in the meetings of 25 February 2010 and 19 March 2010 and agreed that it was minded to grant the request for review and approve the Planning Application, subject to conditions and the Proprietor entering into a Section 75 Agreement to secure the restoration of Newton House in terms of the Existing Planning Permission;
- (Three) The Company is the applicant under the Planning Application and subsequent Review Application;
- (Four) Accordingly the Local Review Body proposes to grant the Planning Application, subject to conditions and the Proprietors entering into this Agreement with the Council;
- (Five) The Council as planning authority is empowered by Section 75 of the Act to enter into an Agreement with any person interested in land in their area for the purpose of restricting or regulating the development or use of land.

NOW THEREFORE the Parties in terms of Section 75 of the Act have agreed and hereby agree as follows:-

1. Provision: Development and restoration of Newton House

- 1.1 There shall be no commencement of works on the Subjects until the listed building known as Newton House has been restored and all

works completed to the satisfaction of the Council in terms of the existing Planning Permission.

- 1.2 The Proprietor shall notify the Council once a Completion Certificate has been granted for the development of the Newton House listed building. Once the Council is satisfied that the Newton House listed building has been restored and the abovementioned Completion Certificate has been issued, the Council shall issue a Discharge of this Section 75 Agreement in accordance with Clause 7.
- 1.3 Under no circumstances shall any works commence on the Subjects until the Council has issued the abovementioned Discharge.

2. Effective Date

- 2.1 The provisions of this Agreement shall take effect and be enforceable from the date upon which this Agreement is executed.

3. Non Disposal of Interest in Agreement Subjects

- 3.1 Proprietors by their execution hereof warrant that they have not disposed of any interest in the Subjects or any part thereof and shall not transfer or assign their rights and obligations under this Agreement or dispose of their interest in the Subjects to any party prior to the registration or recording of this Agreement.

4. Registration or Recording of this Agreement

- 4.1 The Proprietors hereby undertake to (register or record) this Agreement in the Land Register of Scotland within 14 days of the last date hereof.

5. Provisions binding on the Proprietors

- 5.1 The provisions of this Agreement shall be binding on the Proprietors so far as regards their interest therein in all time coming and shall be inserted or validly referred to in terms of law in all transmissions of the Agreement Subjects and any part or parts thereof.

6. Planning Permission

- 6.1 The Planning Permission shall be issued on receipt by the Council of the Keeper's acknowledgement relative to these presents.

7. Discharge

- 7.1 The Council shall when requested grant a Discharge to be registered in the Land Register on due performance of the obligations contained in this Agreement.

8. Review

- 8.1 At the option of the Council, the Parties shall review the provisions of this Agreement and, if following such review, the Parties agree that it is necessary or expedient to amend or abandon any of the provisions of this Agreement the Parties shall enter into whatever Agreement is necessary to vary or discharge the terms of this Agreement.

9. Variation

- 9.1 If after the dates of this Agreement, the planning application is granted in terms of the Act for development on the Subjects or any part or parts thereof and the terms and conditions of planning permission are inconsistent with any provision of this Agreement, then when requested by either party, the Council shall enter into a Minute or Minutes of Variation of this Agreement to remedy such inconsistency, said Minutes of Variation to be registered in the Land Register.

10. Quashing etc of Planning Permission

- 10.1 In the event of the Planning Permission being quashed, revoked or in any way falling, this Agreement shall cease to have effect and the Council shall grant a discharge of this Agreement.

11. Severability

- 11.1 The Parties agree that each Clause or Sub-Clause of this Agreement constitutes a separate, individual and severable part of this Agreement and the validity or enforceability of any one or more Clauses or Sub-Clauses shall not effect the validity or enforceability of the remaining Clauses or Sub-Clauses, or the validity or enforceability of this Agreement as a whole or in part.

12. Law of Scotland to Apply

- 12.1 This Agreement shall be in accordance with the Laws of Scotland and the Parties hereby prorogate the exclusive jurisdiction of the Court of Session in Scotland.

13. Arbitration

- 13.1 Any dispute between the Parties shall be referred to the decision of an arbiter to be appointed by the Parties to said dispute or, failing agreement, on the application of any party to said dispute, appointed by the President of the Law Society of Scotland, and the decision of such arbiter (including any award of expenses) shall be final and binding on the Parties.

14. Notices

- 14.1 Any Notice or other communication or document given under or in terms of this Agreement shall be given by First Class recorded post to, in the case of the Council, the Head of Development Services at principal offices of the Council, and in the case of the Proprietor, their registered office, or that of their agents or in all cases to such address

as may be notified in writing to the other Parties from time to time. Any such Notice or other communication or document given by post in accordance with the provisions of this Clause shall be deemed to be given on the second business day after the letter containing same was posted and to prove that any such Notice or other communication or document was given it shall be necessary to prove that the same was properly addressed and posted as aforesaid.

15. Costs

- 15.1 The Company shall be responsible for the Council's reasonable legal fees and outlays in connection with this Agreement and any subsequent discharge or variation thereof, the Stamp Duty (if any) and the recording dues and for providing the Council with two extracts of the duly recorded Agreement.

16. Consent to Registration

- 16.1 The Parties consent to registration hereof for publication as well as for preservation and execution: IN WITNESS WHEREOF

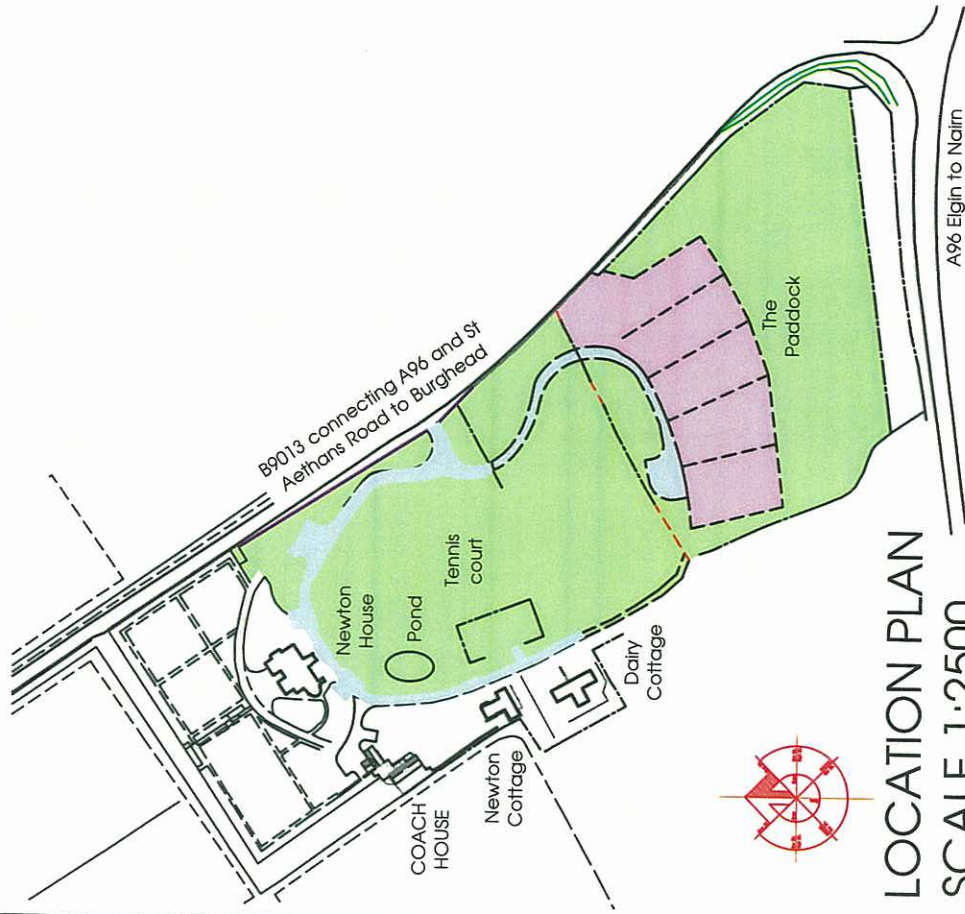
Plan referred to

Area of Ground at The Paddock NEWTON HOUSE, ELGIN

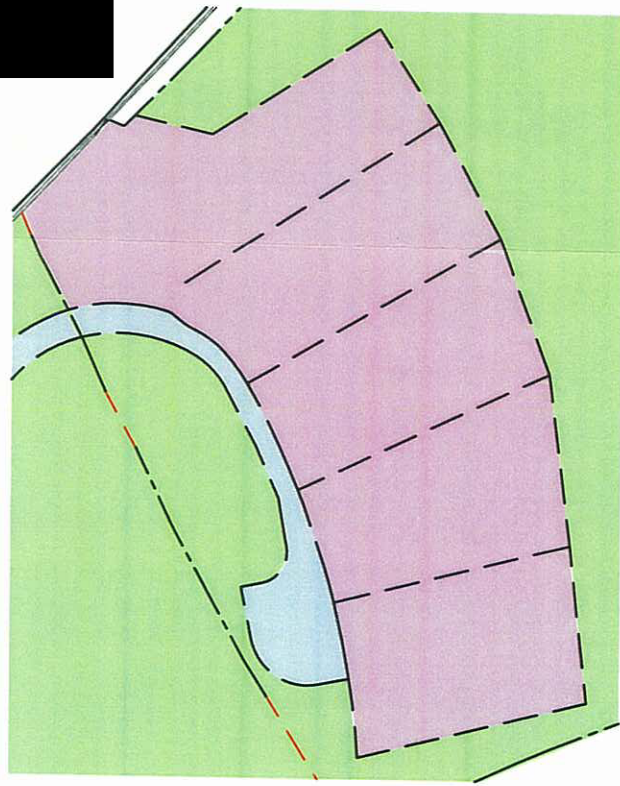
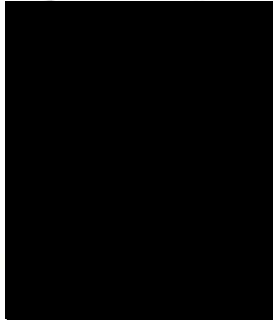
Area of ground disposed coloured pink
0.7098 Hectares (1.754 Acres)

Area of ground disposed coloured blue indicates Right of Vehicular Access

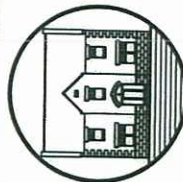
DRAFT
13/07/10



LOCATION PLAN
SCALE 1:2500



SITE PLAN
SCALE 1:1000



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