

**DRAFT**

**DATED**

**2003**

**GEDLING BOROUGH COUNCIL**

**AND**

**PLANNING OBLIGATION**

**under Section 106 of the Town and Country  
Planning Act 1990 relating to Land  
at 152 Burton Road, Gedling  
in the County of Nottingham**

S. M. Sale  
Head of Legal & Administrative Services  
Gedling Borough Council  
Civic Centre  
Arnot Hill Park  
Arnold  
Nottingham  
NG5 6LU

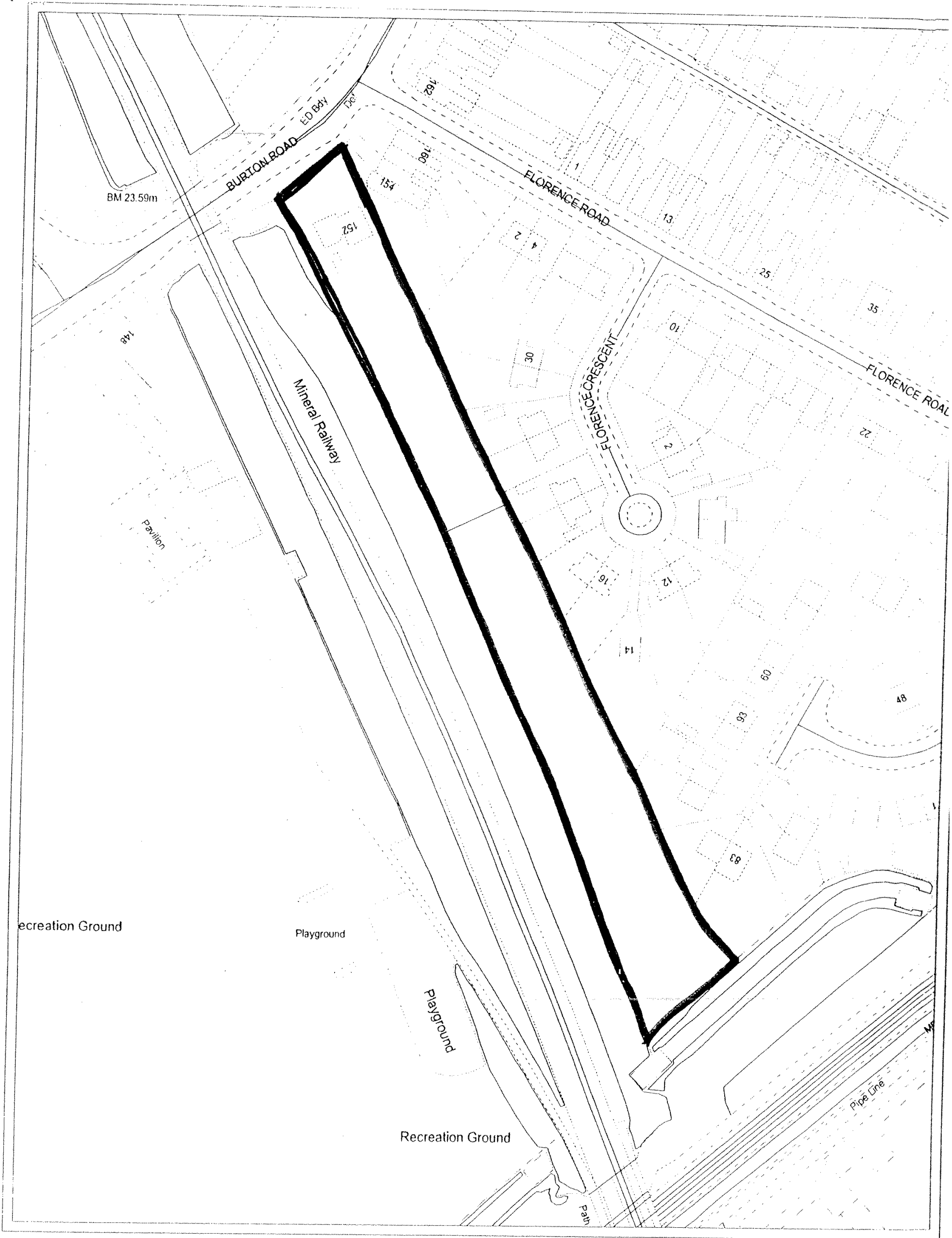
**THIS AGREEMENT** is made the \_\_\_\_\_ day of \_\_\_\_\_ Two  
Thousand and Three


**BETWEEN**

1. **THE GEDLING BOROUGH COUNCIL** of the Civic Centre Arnot Hill Park  
Arnold in the County of Nottingham ("the Council")
2. -----**TORR** and -----**TORR** ("the Owner")
- (3 ("The Mortgagee"))

**WHEREAS**

1. The Owner has the legal and beneficial freehold interest in all that piece or parcel of land situate at and adjoining 152 Burton Road Gedling in the County of Nottingham (the "Land") shown for the purpose of identification only edged red on the plan annexed hereto
2. For the purposes of the Town and Country Planning Act 1990 as amended (the "Act") the Council are the Local Planning Authority for the area within which the Land is situated
3. The obligations restrictions and provisions contained in this Agreement are planning obligations for the purposes of Section 106 of the Act and enforceable as such by the Council
4. The Owner has applied to the Council for outline planning permission under Reference No. 2003/1018 ("the Application") for residential development on the Land ("the Development")
5. At a meeting of the Council's Planning and Highways Committee held on 22 October 2003 it was resolved that subject to the completion of this Agreement and subject to completion by the Owner of an Agreement under Section 106 of the Act with the Nottinghamshire County Council as Highway Authority for a financial contribution to be made towards the development of integrated transport measures the need for which arises from the Development planning permission ("the Permission") for the carrying out of the Development should be granted in the form of the draft appended hereto




**GEDLING**  
 BOROUGH COUNCIL

M.D. Stevenson Dip.T.P. M.R.T.P.I.  
 Head of Planning and Environment  
 Civic Centre, Arnot Hill Park, Arnold  
 Nottingham NG5 6LU.

**Location**  
 152 BURTON ROAD GEDLING

1:1,250  
 2/12/2003  
 m<sup>2</sup>

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**NOW THIS DEED WITNESSES** as follows:-

**1. Enabling Powers**

- 1.1 This Agreement is made pursuant to Section 106 of the Act and all other enabling powers to the intent it shall bind the Owner (and the Mortgagees) and the successors in title of the Owner (and the Mortgagees) to each and every part of the Land and it/their assigns

**Liability for the Covenants herein**

- 1.2 No person will be liable for any breach of this Agreement unless they hold an interest in the part of the Land in respect of which such breach occurs or held such an interest at the date of the breach

**Conditions Precedent**

- 1.3 This Agreement is conditional and shall only come into effect on the issue by the Council of the Permission and the covenants herein contained on the part of the Owner shall not take effect until such time as the Permission is implemented by the carrying out of a material operation as defined in Section 56 of the Act other than the carrying out of development comprising trial holes or other ground or other ground investigation works or ground surveys or works as demolition
- 1.4 If the Permission shall expire before the Development has begun as aforesaid, within the meaning of Sections 91,92 or 93 of the Act or is revoked or otherwise withdrawn or without the consent of the Owner or his successors in title modified by any statutory procedure this Agreement shall cease to have effect

**Application of Agreement**

- 1.5 Nothing in this Agreement shall be construed as prohibiting or limiting any right to develop any part of the Land in accordance with a planning permission granted by the Council or by the Secretary of State on appeal or by reference to him after the date of this Agreement

## **General**

- 1.6 Where any consent approval or action is required on the part of the Council in respect of any aspect of this Agreement then such consent approval or action shall not be unreasonably withheld or delayed by the Council
- 1.7 The Owner will pay the Council's reasonable costs for the preparation and completion of this Agreement
- 1.8 In the event of the Owner disposing of its interest in the Land or any part thereof the Owner shall within twenty eight days of such disposal give written notice of the name and address of their successors to the Council together with sufficient details of the Land included in the disposal to allow its identification
- 1.9 This Agreement is a Local Land Charge and shall be registered as such

## **2. Definitions**

In this Agreement the following words and expressions shall have the following meanings

- 2.1 "the Act" shall have the meaning given in Recital 2
- 2.2 "the Application" shall have the meaning given in Recital 4
- 2.3 "the Contribution" means a financial contribution to be agreed with the Council and calculated in accordance with the provisions contained in paragraphs 9 and 10 of the Council's adopted guidance entitled "New Housing Development – a Supplementary Planning Guidance for Open Space Provision" ("the Guidance" a copy of which is annexed hereto ) such sum to be adjusted by the sum equivalent to the increase in the Retail Price Index (for all items) published by the Office for National Statistics or any index substituted therefore from the date of this Agreement to the date when payment is made and to be paid to the Council for the purposes of improving open space facilities in the vicinity of the Land in lieu of provision on site
- 2.4. "the Development" shall have the meaning given in Recital 4

2.5 "the Permission" shall have the meaning given to it in Recital 5 together with the approval of reserved matters

3. **Covenants of the Owner and the Council**

3.1 The Owner hereby covenants with the Council to pay to the Council the Contribution prior to the occupation of any dwelling to be constructed on the Land pursuant to the Development provided that the Contribution or any part thereof which remains unspent for the purposes for which it was paid at the expiration of the period of 10 years beginning with the date of payment to the Council shall (upon request being made from the Owner within the period of 3 months from the expiry of the 10 year period) be repaid together with interest at the rate specified in clause 4.3.

3.2 The Council hereby covenants with the Owner to issue the Permission to the Owner within seven days of the date hereof

4. **Payment of Monies**

4.1. The obligation herein contained to pay the Contribution to the Council shall be enforceable against the party having a freehold interest in the Land or that part of the Land to which the payment relates at the date on which the obligation arises and any obligation to repay monies shall be construed as referring to a repayment to the party or parties who paid the monies in the first instance

4.2. The Contribution payment to the Council under this Agreement shall be held by them in an interest bearing account at all times throughout the period that any part of the said monies remain unspent

4.3. The obligation within this Agreement to repay any monies shall include an obligation to pay interest accruing on such sums as will earn interest at a rate equal to the daily average rate or return on the Council's in-house investment activity calculated from the date of payment to the Council to the date of repayment

4.4. the Council shall when reasonably requested to do so by the Owner provide written details of all expenditure of monies paid to them under this Agreement to verify compliance with the Agreement save that the number of requests shall be limited to two in any calendar year

4.5. The Contribution paid to the Council may be paid by the Council to such other body or bodies who will use the Contribution for the purposes hereinbefore defined and for the purposes of this Agreement the Council shall be deemed to have spent the Contributions in such circumstances from the date the Council irrevocably commit themselves to pay the monies to such body or bodies excepting that no such commitment shall be given by the Council unless and until they can be satisfied that the body in question has a suitable scheme for the expenditure of the monies on the purposes specified herein within a reasonable period of time

5. **Monitoring**

For the purposes of monitoring compliance with this Agreement the Owner shall notify the Council's Head of Planning and Environment in writing of the occupation of the first dwelling constructed on the Land save for the use of show homes for display purposes within 14 days thereof;

6. **Resolution of Disputes**

6.1 In the event of any dispute or difference arising between the parties in relation to any matter under this Agreement such dispute or difference shall be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of agreement) by and on behalf of the President for the time being of the professional body chiefly concerned in England with such matters as may be in dispute and such person shall act as an expert and his decision shall be final and binding on the parties to the dispute or difference 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 to the dispute in equal shares

7. **Notices**

- 7.1 Any notice consent or approval required to be given under this Agreement shall be in writing and shall be delivered personally or sent by prepaid first class Recorded Delivery post telex or facsimile transmission
- 7.2 The address for service of any such notice consent or approval as aforesaid shall be on all of the parties at the addresses aforesaid or such other address for service as shall have been previously notified in writing by the parties to all the other parties to this Agreement
- 7.3 A notice consent or approval under this Agreement shall be deemed to have been served as follows:-
- (i) if personally delivered at the time of delivery
  - (ii) at the expiration of forty eight hours after the envelope containing the same was delivered into the custody of the postal authority within the United Kingdom
  - (iii) if sent by telex or facsimile transmission at the time of successful transmission
- 7.4 In proving such service it shall be sufficient to prove that personal delivery was made or that the envelope containing such notice consent or approval was properly addressed and delivered into the custody of the postal authority in a prepaid first class or Recorded Delivery envelope (if appropriate) or that the telex or facsimile was successfully transmitted on a tested line as the case may be

8. **Contracts (Right of Third Parties) Act 1999**

The provision of the Contract (Rights of Third Parties) Act 1999 shall not apply to this Agreement

9. **Interpretation**

- 9.1 The expressions "the Owner" "the Council" (and "the Mortgagee") shall include their respective successors in title and assigns and/or any successor body
- 9.2 Where appropriate the singular includes the plural and vice versa. Words importing one gender include all other genders



- 9.3 Unless otherwise stated all references to clause numbers schedules and paragraph numbers of schedules are references to clause numbers schedules and paragraph numbers of schedules contained within this Agreement
- 9.4 References to statutory provisions shall be construed as references to those provisions as may hereafter be amended or re-enacted
- 9.5 The obligations herein relate to the Land and each and every part thereof
- 9.6 The clause headings in this Agreement are for ease of reference only and shall not affect the construction thereof

**IN WITNESS** whereof this Agreement has been duly executed as a Deed by all the parties hereto the day and year first above written

**THE COMMON SEAL** of )  
**GEDLING BOROUGH COUNCIL** )  
 was hereunto affixed in the )  
 presence of:- )

**Mayor**

**Director**

**EXECUTED** as a **DEED** by )  
 In the presence of:- )

**EXECUTED** as a **DEED** by )  
 In the presence of:- )



SUMMARY OF DECISION

Application number: 2003/1018

Decision dated:

Proposal: Demolish existing house & construct 7 No. new dwellings with garages

Location: 152, Burton Road, Gedling.

Decision: Subject to a Section 106 Agreement

1. Application for approval of reserved matters must be made not later than the expiration of three years beginning with the date of this permission and the development must be begun not later than whichever is the later of the following dates:- (a) The expiration of five years from the date of this permission; or (b) The expiration of two years from the final approval of the reserved matters, or in the case of approval of reserved matters on different dates, the final approval of the last such matter to be approved.
2. This permission relates to the application as amended by the revised plans received on 29th August 2003 showing a revised site layout.
3. Before development is commenced there shall be submitted to the Planning Department and approved by the Borough Council:-
  - a) Detailed plans, sections and elevations of all buildings proposed together with details of the materials proposed to be used in their external elevations.
  - b) Details of the means of enclosure of the site and the individual plot boundaries.
  - c) Details of the means of surfacing of the unbuilt on portions of the site.
  - d) Details of street lighting.
  - e) A landscape plan of the site showing the position, type and planting size of all trees and shrubs proposed to be planted and including where appropriate details of existing trees to be felled and retained.
  - f) Precise details of the refuse disposal facility.
4. The proposed development shall be constructed in accordance with the details approved under condition 3 above.
5. The proposed means of enclosure shall be erected before the dwellings they serve are first occupied and shall thereafter be retained unless alternative means of enclosure are agreed in writing by the Borough Council.





# GEDLING

## BOROUGH COUNCIL

6. The approved landscape scheme shall be carried out in the first planting season following the substantial completion of the development and any planting material which becomes diseased or dies within five years of the completion of the development shall be replaced in the next planting season by the applicants or their successors in title.
7. The proposed means of surfacing of the unbuilt on portions of the site shall be completed in accordance with the approved details before the dwellings they serve are first occupied.
8. The proposed road shall be constructed to base course level before the dwellings it serves are first occupied.
9. Parking spaces shall be provided for the proposed dwellings in accordance with the Nottinghamshire County Councils Interim Parking Standards for new development in Nottinghamshire June 1998 before the dwellings hereby permitted are first occupied all in accordance with the details to be approved by the Borough Council as local planning authority.
10. Open space shall be provided in accordance with the requirements of Policy R3 of the First Replacement Revised Deposit Draft Local Plan May 2002.
11. Before development (including site preparation) is commenced a protected species survey shall be undertaken and any mitigation measures implemented.
12. No development shall commence until the applicant has undertaken and submitted to the Borough Council a noise impact assessment in accordance with Planning Policy Guidance Note 24. Should the noise impact assessment show that the development falls within noise exposure categories B, C or D as defined in Annex 1 to PPG24, then no works shall be commenced until proposals for noise mitigation measures have been submitted to and approved by the Borough Council as local planning authority.
13. Any noise mitigation measures required by condition 3 above shall be implemented before any of the flats hereby approved are first occupied.

### REASONS

1. In order to comply with Section 92 of the Town and Country Planning Act 1990.
2. For the avoidance of doubt.
3. To ensure a satisfactory development in accordance with the aims of Policy EN2 of the Gedling Borough Local Plan (1990).
4. To ensure a satisfactory development in accordance with the aims of Policy EN2 of the Gedling Borough Local Plan (1990).
5. To ensure a satisfactory development in accordance with the aims of Policy EN2 of the Gedling Borough Local Plan (1990).



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6. To ensure a satisfactory development in accordance with the aims of Policy EN2 of the Gedling Borough Local Plan (1990).
7. To ensure a satisfactory development in accordance with the aims of Policy EN2 of the Gedling Borough Local Plan (1990).
8. In the interests of road safety, in accordance with the aims of Policy EN2 of the Gedling Borough Local Plan (1990).
9. In the interests of road safety, in accordance with the aims of Policy EN2 of the Gedling Borough Local Plan (1990).
10. To satisfy the requirements of Policy R3 of the First Replacement Revised Deposit Draft Local Plan May 2002.
11. To ensure a satisfactory development in accordance with the aims of Policy EN2 of the Gedling Borough Local Plan (1990).
12. To ensure an adequate level of amenity noise for residents
13. To ensure an adequate level of amenity noise for residents.

NOTES TO APPLICANT

The attached permission is for development which will involve building up to, or close to, the boundary of the site. Your attention is drawn to the fact that if you should need access to neighbouring land in another ownership in order to facilitate the construction of the building and its future maintenance you are advised to obtain permission from the owner of the land for such access before beginning your development.

You must contact the Borough Council's Building Control Section with regard to any proposed demolition of buildings on the site at least 4 weeks prior to any site clearance commencing.

This decision is subject to a Section 106 Agreement.

