

HARTLEPOOL BOROUGH COUNCIL

and

JOAN MARJORIE HANSEN

&

SANDRA YVONNE LEONARD

&

MARGARET BEATRICE IVESON

&

GEORGE BELL

Agreement

**pursuant to s.106 of the Town and Country
Planning Act 1990 relating to land at North Farm, The Green, Elwick,
Hartlepool**

**P J DEVLIN
CHIEF SOLICITOR
HARTLEPOOL B C
(UN 12.206)**

“Application”	the application for extension of time of planning application H/2008/0026 for change of use, alterations, extensions and new build to create 14 dwellings and creation of new vehicular access at North Farm, The Green, Elwick, as submitted on behalf of the Owners and assigned application reference number: H/2014/0579 and the extent of which is shown edged red on the Plan; or any subsequent amending application pursuant to Section 73 of the Town and Country Planning Act (1990) or any subsequent amending legislation.
“Base Rate”	the base rate from time to time of Barclays Bank plc;
“Bowling Greens Contribution”	the sum of £4.97 (four pounds and ninety seven pence) per Dwelling being £69.58 (sixty nine pounds and fifty eight pence) to be used towards the provision of bowling green activity within the Borough.
“Built Sports Facilities Contribution”	the sum of £250 (two hundred and fifty pounds) per Dwelling being £3,500 (three thousand five hundred pounds) to be used towards providing built sports provision at the Summerhill Country Park or at such other location as determined by the Council.
“Commencement of Development”	The date on which any material operation (as defined in Section 56(4) of the Act begins to be carried out other than (and disregarding for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any

	contamination or other adverse ground conditions, diversion and laying of services, site survey works, temporary access construction works, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and "Commence Development" shall be construed accordingly.
"Default Interest Rate"	2% per annum above the Base Rate:
"Development"	the development of the Site by the Owners consisting of a change of use, alterations, extensions and new build to create 14 dwellings and creation of new vehicular access as set out in the Application to be constructed pursuant to the Planning Permission;
"Dwelling"	any dwelling to be constructed pursuant to the Planning Permission;
"Education Provision"	the sum of £27, 495.00 (twenty seven thousand four hundred and ninety five pounds) towards the provision of primary school places in the North West Planning Area.
"Green Infrastructure Contribution"	the sum of £250 (two hundred and fifty pounds) per Dwelling being £3,500 (three thousand five hundred pounds) in total to be used towards the provision of improvements to public footpath number 1.
"Highway Works"	such onsite works for the construction and maintenance of the highways serving the Site (comprising, but not limited to, access roads, footways and verges, lighting, drainage, parking spaces) approved in relation to this development and which are planning obligations as set out under Schedule 2 of this Agreement.

"North West Planning Area"	means the area as defined on the plan annexed to this agreement.
"NPPF"	National Planning Policy Framework dated March 2012 and issued by the Department for Communities and Local Government;
"Play Provision"	the sum of £250 (two hundred and fifty pounds) per Dwelling being £3,500 (three thousand five hundred pounds); towards play provision or to contribute to the ongoing maintenance and / or replacement or enhancement of the existing provision in Elwick Village.
"Playing Pitches Provision"	the sum of £233.29 (two hundred and thirty three pounds and twenty nine pence) per Dwelling being £3,266.06 (three thousand two hundred and sixty six pounds and six pence); towards play the provision of playing pitches at St Peter's Primary School, Elwick or to contribute to the ongoing maintenance and / or replacement or enhancement of the existing playing pitch provision in Elwick Village.
"Owners"	the freehold landowners of the Site including their successors in title.
"Plan"	the plan showing the site as attached to this Deed at Schedule 1;
"Planning Permission"	the full Planning Permission to be granted by the Council pursuant to the Application or any subsequent amending Permission pursuant to Section 73 of the Town and Country Planning Act (1990) or any subsequent amending legislation.
"Public Footpath number 1"	means that area of public footpath shown coloured yellow and marked accordingly for illustrative purposes on the plan annexed herewith.



“Site”	the land against which the obligations in this Deed may be enforced identified as land at North Farm, The Green, Elwick, Hartlepool, as shown edged red on the Plan and being part of the land registered at Land Registry with Title Absolute under title number CE176982
“Tennis Courts Contribution”	the sum of £57.02 (fifty seven pounds and two pence) per Dwelling being £799.29 (seven hundred and ninety nine pounds and twenty nine pence) to be used towards the provision of tennis courts at High Tunstall School or such establishment within the vicinity of the school or such other educational establishment then providing education at High Tunstall.

2. CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed (unless the context otherwise requires).
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words denoting the masculine gender include the feminine and neuter genders and words denoting actual person include companies, corporations and firms and all such words shall be construed interchangeable in the manner.
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise.
- 2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments orders, plans, regulations, permissions and directions for the time being made, issued or given under the Act or deriving validity from it.

- 2.6 References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council the successors to their respective statutory functions.
- 2.7 The headings and contents list are for reference only and shall not affect the construction of this Deed.

3. **LEGAL BASIS**

- 3.1 This Deed is made pursuant to Section 106 of the Act, Section 111 of the Local Government 1972 and Section 1 of the Localism Act 2011 and any other enabling powers.
- 3.2 The covenants, restrictions and requirements imposed on the Owners under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council as local planning authority against the Owners and respective successors and assigns of the Owners.
- 3.3 The Council enters into this Deed in its capacity as local planning authority only.

4. **CONDITIONALLY**

With the exception of Clauses 3, 4, 7.8, 7.13 and 7.16 which shall come into effect immediately upon the completion of this Deed; this Deed is conditional upon the grant of Planning Permission.

5. **THE OWNERSS' COVENANTS**

The Owners covenant with the Council as set out in Schedule 2.

6. **THE COUNCIL'S COVENANTS**

The Council covenants with the Owners as set out in Schedule 3.

7. **MISCELLANEOUS**

- 7.1 No provision of this Deed shall be enforceable under the Contracts (Right of Third Parties) Act 1999.
- 7.2 Where any sum or amount has not been paid to the Council by the date on which it is due the Owners shall pay the Council interest at the

Default Interest Rate on that amount for the period from the due date to and including the date of payment.

- 7.3 This Deed shall be registered as a local land charge by the Council.
- 7.4 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall upon request effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.
- 7.5 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid, illegal or unenforceable then such invalidity, illegality and unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.
- 7.6 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owners) it is modified by any statutory procedure or expires prior to the Commencement of Development.
- 7.7 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 7.8 The Owners warrant that no person other than the Owners have any legal or equitable interest in the Site.
- 7.9 The parties agree that:
 - 7.9.1 nothing in this Deed constitutes a Planning Permission or an obligation to grant Planning Permission; and
 - 7.9.2 nothing in this Deed grants Planning Permission for any other approval consent or permission required from the Council in the exercise of any other statutory function.
- 7.10 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a Planning Permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.
- 7.11 Nothing in this deed restricts or is intended to restrict the proper exercise at any time by the Council of any of its statutory powers, functions or discretions in relation to the Site or otherwise.
- 7.12 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,

restrictions or obligations of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant terms and conditions contained in this Deed or acting on any subsequent breach or default of this Deed.

- 7.13 Any notice, demand or any other communication served under this Agreement will be effective only if delivered by hand or sent by first class post, pre-paid or recorded delivery.
- 7.14 Any notice, demand or any other communication served is to be sent to the address of the relevant party set out at the beginning of this Deed or to such other address as one party may notify in writing to the others at any time as its address for service.
- 7.15 Unless the time of actual receipt is proved, a notice, demand or communication sent by the following means is to be treated as having been served
- 7.15.1 if delivered by hand, at the time of delivery.
 - 7.15.2 if sent by post, on the second working day after posting it;
or
 - 7.15.3 if sent by recorded delivery, at the time of delivery was signed for.
- 7.16 The Owners covenants to pay to the Council the sum £850 (eight hundred and fifty pounds) in respect of its legal costs in connection with this Deed and the sum of £550 (five hundred and fifty pounds) as a contribution towards the Council's costs of monitoring the implementation of this agreement.

8. JURISDICTION

This Deed is governed by and interpreted in accordance with the laws of England and Wales

9. DELIVERY

The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

IN WITNESS whereof the parties hereto have executed this Deed on the day and year first before written.

SCHEDULE 1

The Plan(s)

SCHEDULE 2

THE OWNERS'S COVENANTS WITH THE COUNCIL

The Owners covenant with the Council strictly in respect of the Development as follows:

1. CONTRIBUTIONS

1.1 PLAY PROVISION

Not to commence the Development without first paying to the Council the sum of three thousand five hundred pound (£3,500) towards the cost of play provision for the ongoing maintenance and for replacement or enhancement of the existing provision in the Elwick Village.

1.2 GREEN INFRASTRUCTURE

Not to commence the Development without first paying to the Council the sum of three thousand five hundred pound (£3,500) towards green infrastructure improvements to public footpath number 1.

1.3 BUILT SPORTS FACILITIES

Not to commence the development without first paying to the Council the sum of three thousand five hundred pound (£3,500) towards build sports facilities at the Summerhill Country Park, or at such other location as determined by the Council.

1.4 EDUCATIONL PROVISION

Not to commence the development without first paying to the Council the sum of £27,495.00 (twenty seven thousand four hundred and ninety five pounds) towards the provision of primary school places in the North West Planning Area.

1.5 PLAYING PITCHES

Not to commence the development without first paying to the Council the sum of £233.29 (two hundred and thirty three pounds and twenty nine pence) per Dwelling being £3,266.06 (three thousand two hundred and sixty six pounds and six pence); towards play the provision of playing pitches at St Peter's Primary School, Elwick or to contribute to the ongoing maintenance and / or replacement or enhancement of the existing playing pitch provision in Elwick Village.

1.6 TENNIS COURTS

Not to commence the development without first paying to the Council the sum of £57.02 (fifty seven pounds and two pence) per Dwelling being £799.29 (seven hundred and ninety nine pounds and twenty nine pence) to be used towards the provision of tennis courts at High Tunstall School or such establishment within the vicinity of the school or such other educational establishment then providing education at High Tunstall.

1.7 BOWLING GREENS

Not to commence the development without first paying to the Council the sum of £4.97 (four pounds and ninety seven pence) per Dwelling being £69.58 (sixty nine pounds and fifty eight pence) to be used towards the provision of bowling green activity within the Borough.

2. HIGHWAY WORKS

- 2.1** Not to commence the Development until there is agreed by the Council in its capacity as Highway Authority a scheme for the construction and maintenance of any access road serving the Site (including for the avoidance of doubt but not limited to, internal site access roads, footways/verges, lighting, drainage infrastructure and parking spaces) to the current standard of the Highway Authority as an adopting authority. Throughout the period from the commencement of those Highway Works until the issue of a completion certificate to obtain all necessary approvals, consents and permissions.
- 2.2** To maintain the Highway Works to the current standard of the Highway Authority as an adopting authority for the lifetime of the development or until formal adoption by the Highway Authority through subsequent agreement.

SCHEDULE 3

THE COUNCIL'S COVENANTS

1. The Council hereby covenants with the Owners to use all sums received from the Owners under the terms of this Deed for the purposes specified in this Deed for which they are to be paid.
2. The Council covenants with the Owners that it will pay to the Owners such amount of any payment made by the Owners to the Council under this Deed which has not been expended or otherwise committed in accordance with the provisions of this Deed within 5 years of the date of receipt by the Council of such payment together with interest (at the current Base Rate) from the period of the date of payment to the date of repayment.
3. The Council will provide to the Owners such evidence (as the Council shall determine) as the Owners shall reasonably require in order to confirm the expenditure of the sums paid by the Owners under this Deed.
4. At the written request of the Owners the Council shall provide written confirmation of the discharge of the obligations contained in this Deed when satisfied that such obligations have been fully performed.

Executed as a Deed by affixing

The Common Seal of

HARTLEPOOL BOROUGH COUNCIL

in the presence of:








Executed as a Deed by)
JOAN MARJORIE HANSEN)
in the presence of:-)

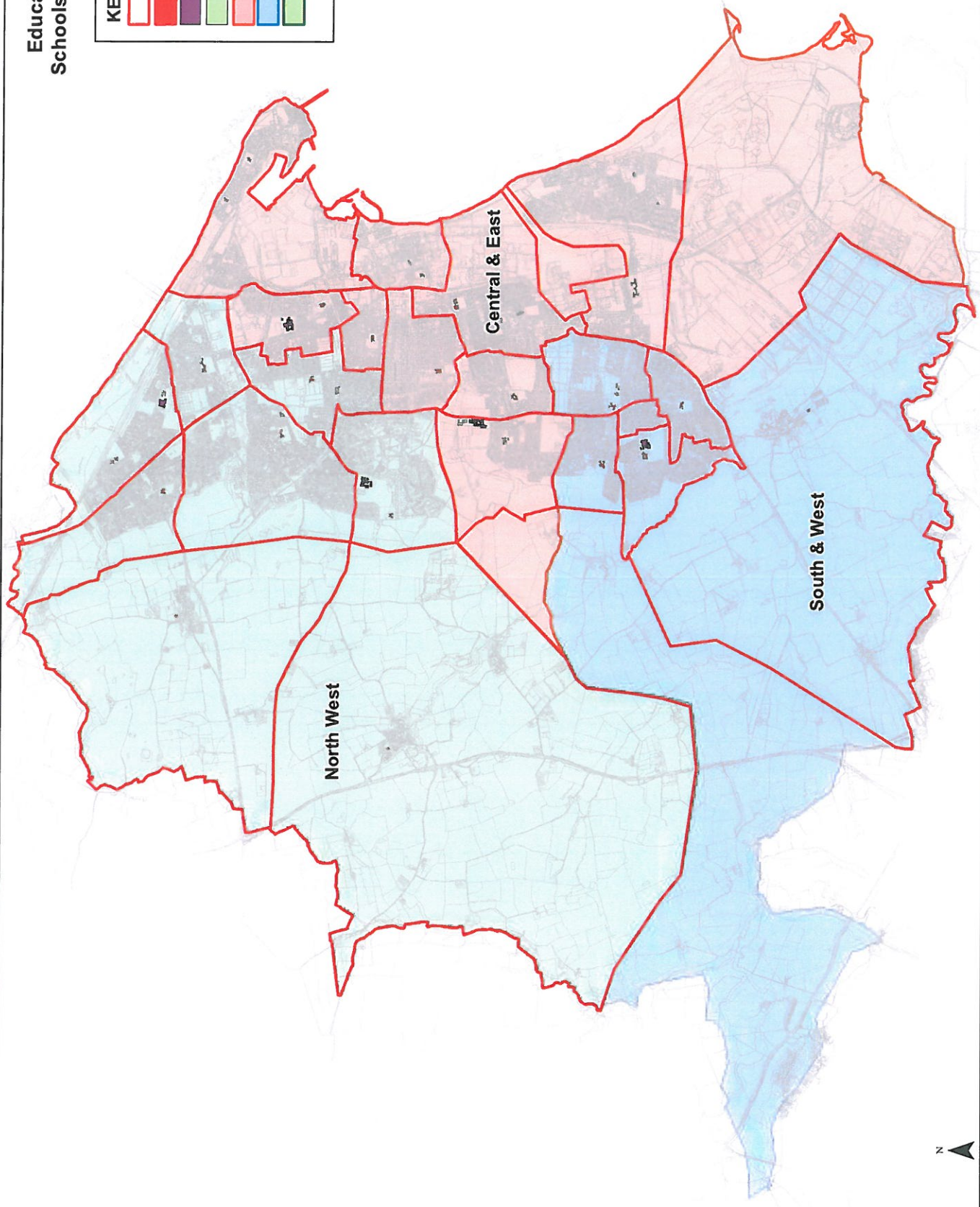
Executed as a Deed by)
SANDRA YVONNE LEONARD)
in the presence of:-)

Executed as a Deed by)
MARGARET BEATRICE IVESON)
in the presence of:-)

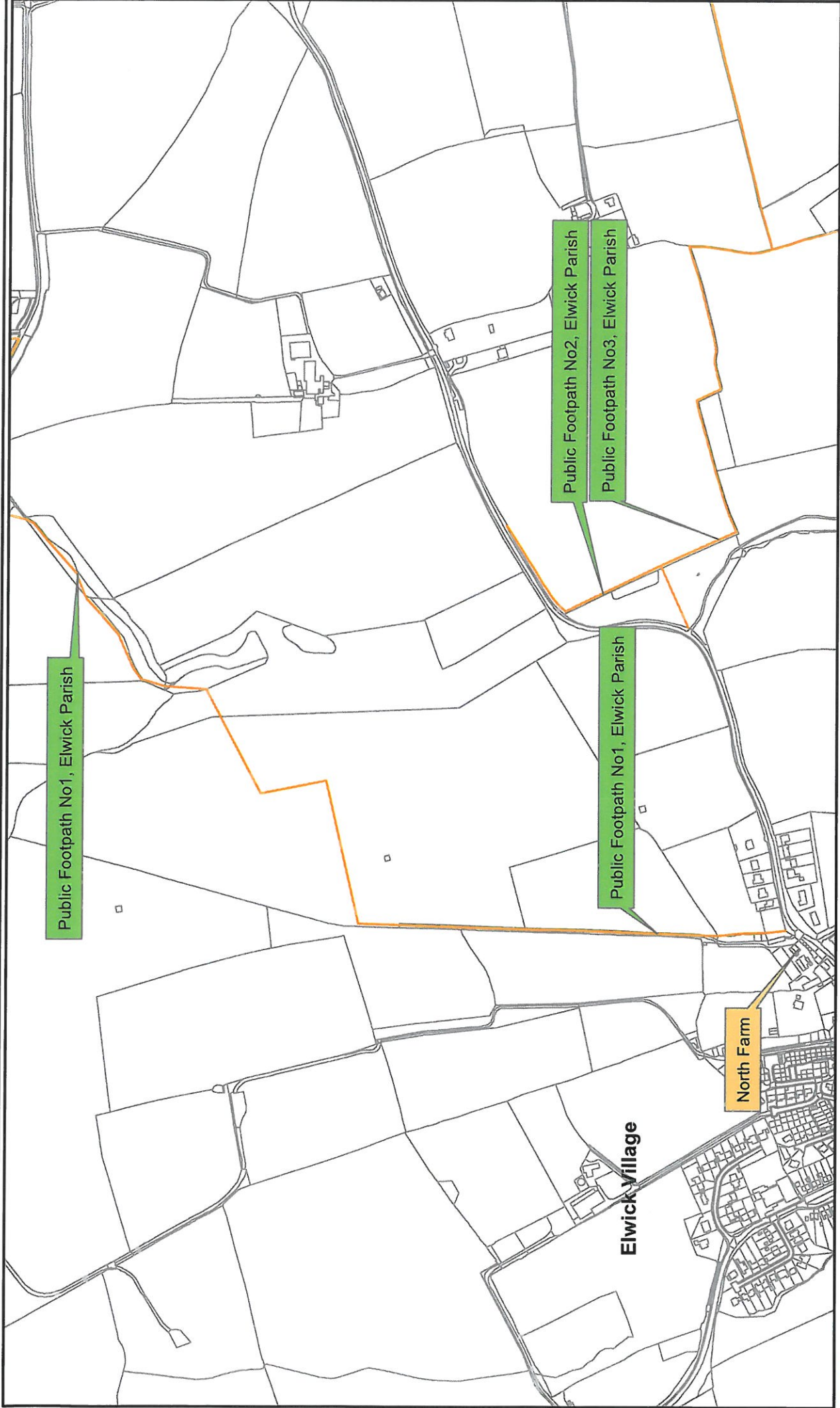
Executed as a Deed by)
GEORGE BELL)
in the presence of:-)

Education Planning Areas Schools and Admission Zones

KEY	
	Admission Zones
	Primary School
	Secondary School
	Other Schools
	Central & East
	South & West
	North West



Public Footpath No.1, Elwick Parish



Hartlepool Borough Council
Regeneration & Neighbourhoods Department
Heritage and Countryside
Edgar Philips Building
1 Church Street
Hartlepool, TS24 7DS Tel: 01429 523524

Sub Title: Elwick 1
Scale: 1:7,000
Date: 8th February 2016
Drawn By: Heritage & Countryside Section

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