

PAINSHAW FIELD, BATT HOUSE,
AND
BIRCHES NOOK ESTATE,
STOCKSFIELD-ON-TYNE.

COPY OF THE
MUTUAL COVENANTS,
ROAD SPECIFICATION, ETC.

Newcastle-on-Tyne :
PRINTED BY R. ROBINSON & Co. LD., CLAVERING PLACE.

Committee :

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GEO. W. RICHARDSON.

Solicitors :

CLAYTON & GIBSON, Newcastle-on-Tyne.

Surveyors :

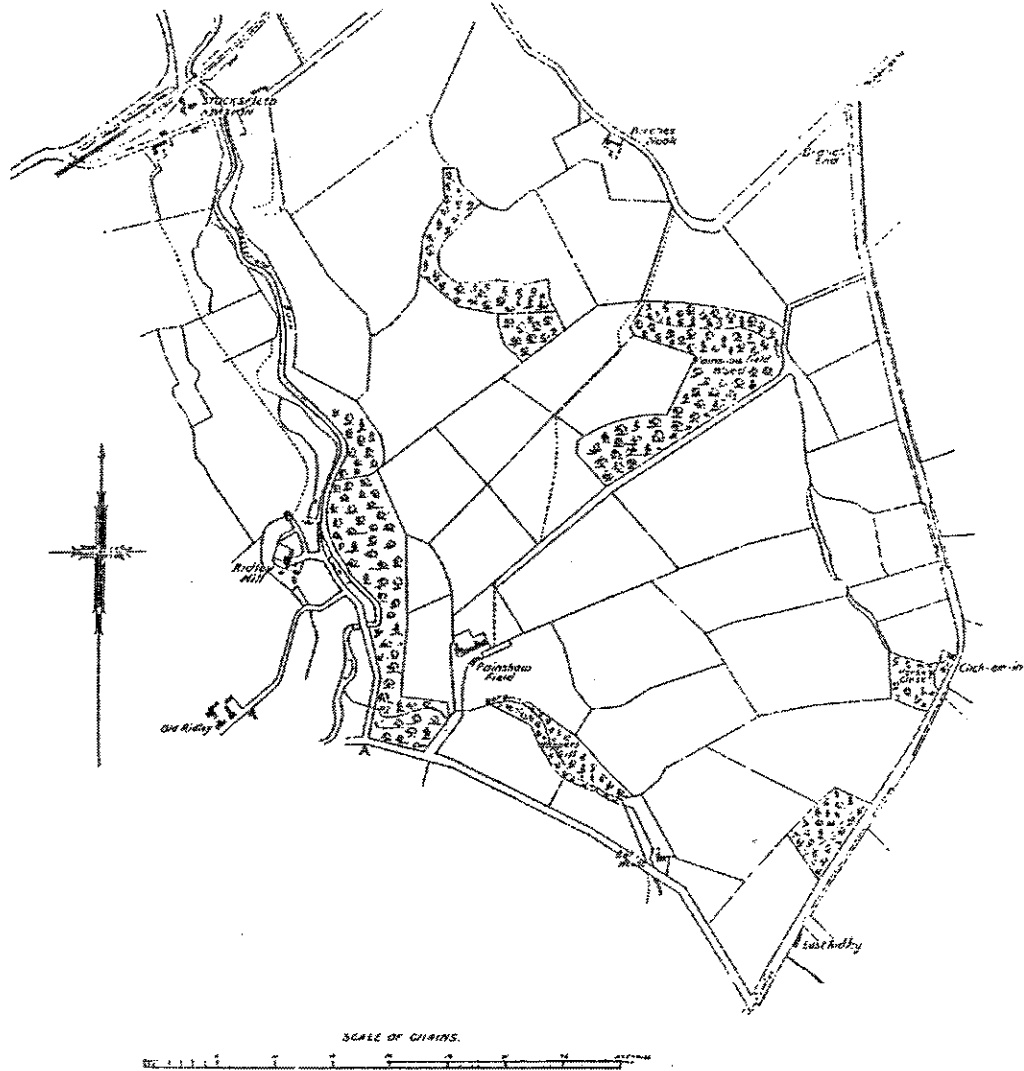
WATSON & SCOTT, 48, Dean Street, Newcastle-on-Tyne.

Secretary and Treasurer :

JOSEPH W. WAKINSHAW.

PLAN ON DEED OF MUTUAL COVENANTS

DATED 30th MAY 1895.



This Indenture made the Thirtieth day of May one thousand eight hundred and ninety-five BETWEEN The Several Persons whose names addresses and occupations are subscribed in the first, second and third columns respectively of the Schedule hereto and whose seals are affixed hereto and who have respectively signed sealed and delivered these presents in the presence of the witnesses whose names addresses and occupations are respectively set out in the fifth column of the said Schedule and who are hereinafter referred to as "the Mutual Covenantors" which expression when not inconsistent with the context shall be deemed to include the heirs and assigns of each of the Mutual Covenantors. WHEREAS the Mutual Covenantors have agreed to purchase in various shares 215.674 acres or thereabouts of Freehold land with certain buildings thereon consisting of what is known as Birches Nook Painshaw Field and Batt House Farms now in the respective occupations of Walter Ridley George Richardson and Anne Todd situate near Stocksfield in the County of Northumberland and in order that each may the more surely and advantageously enjoy all the benefits contemplated from the ownership of his share of the said land and in order to clearly define the extent of such ownership as between the said parties themselves they have agreed to execute these presents. NOW THIS INDENTURE WITNESSETH that each of the Mutual Covenantors for himself his heirs and assigns and so as to bind their said land in the hands of whomsoever it shall come hereby covenant and declare with and to the others and each of the others of them their and each of their heirs and assigns as follows:—

1.—EACH of the Mutual Covenantors shall subject to the provisions hereof become the Owner in the manner hereinafter provided or otherwise of the quantity of land set out in the fourth column of the said Schedule against his signature.

**Owner-
ship.**

2.—THE said land is surrounded by a verge line on the plan attached hereto which plan is signed by each of the Mutual Covenantors. The said land shall at the instance of the majority of the Mutual Covenantors be valued at so much per acre field by field or lot by lot (except where hereinafter it otherwise appears) by Mr. Henry Wallace of Trench Hall Gateshead in the County of Durham Land Agent and except where there is a resolution to the contrary passed by a majority at any duly convened meeting none of the said land shall be allotted to any Mutual Covenantor at a less price per acre than the minimum value placed upon it by such valuation.

Valuation.

3.—WHERE it is thought desirable to obtain the consideration or wishes of the Mutual Covenantors on any subject affecting the enjoyment or ownership of the said land or in connection therewith or to appoint or discharge a Secretary a Treasurer and other Officers a meeting shall be called of which not less than two clear days notice in writing shall be given at the request of any two or more of the Mutual Covenantors by

Meetings.

their Secretary or if there shall at the time be no Secretary or he shall refuse or neglect to act on the request within seven days of its being made to him a meeting may be called by any two or more of the Mutual Covenantors and at every meeting nine votes shall form a quorum. At such meetings each of the Mutual Covenantors shall have one vote and no more except where hereinafter it is otherwise stated. Any vote may be given by proxy properly appointed in writing if notice of the appointment of such proxy be presented to the Secretary or Chairman of the meeting before the time fixed for its commencement or during the meeting.

Division of Land.

4.—THE following method shall be adopted by the Mutual Covenantors to fix the site of the plot of land each shall become the owner of namely:—In the first instance at a meeting called as aforesaid (the object of which shall be stated in the notice convening the meeting to each person which shall in this case be given at least three clear days before the date fixed for the same) each of the Mutual Covenantors shall hand to the Secretary or if none the Chairman appointed for that meeting a sealed request in writing which shall be endorsed with his initials specifying as exactly as possible the position of the land of which he wishes to become the owner. Such requests shall be opened by the Chairman and if the wishes of the Mutual Covenantors as contained in such requests can be reconciled or if otherwise they can at that meeting come to a mutual agreement whereby each shall have allotted to him the portion of the said estate he is willing to take then the Secretary or if none the Chairman at such meeting shall declare each to be the owner of the land agreed to be taken by him and if there are no formal and audible dissents following such declaration of which fact a statement in writing signed by the Chairman shall be sufficient evidence the same shall finally bind each party present or represented at such meeting to become the owner of the land there and then declared his at the price fixed by the said valuation of Mr. Henry Wallace or a modification thereof duly agreed upon and to forthwith complete the purchase of the same to him. If at such meeting a motion shall be duly made and passed that the Mutual Covenantors there assembled or represented cannot expeditiously agree as to the respective portions of the land and hereditaments to be taken by each then the whole estate shall be put up for competition at such meeting or any adjournment thereof or otherwise as may be determined by a majority there represented at the minimum price of such valuation (subject as aforesaid) as an upset price and each of the Mutual Covenantors there represented not already provided with the acreage agreed to be taken by him shall bid at such competition or adjournment thereof until he has been declared the owner of the quantity of land so agreed to be taken by him as aforesaid.

Indis- posed of Land.

5.—THE land and hereditaments remaining undisposed of at such meeting or adjournment thereof shall be disposed of among such of the Mutual Covenantors whether represented at the said meeting or not as are still unprovided with the acreage agreed to be taken by them the said land to be allotted to each

such person (so far as it will go) *pro rata* according to the acreage to be taken by each by the declaration of the Chairman at such meeting which declaration the Mutual Covenantors agree shall when duly recorded on the minutes absolutely bind the Mutual Covenantors to take the land so allotted to him at the price fixed by the said valuation so long as the quantity so allotted is not in excess of that hereby agreed to be taken by him. The method to be adopted to enable the Chairman to make the said declaration of ownership in each case shall be left entirely in his discretion.

6.—THE auction or competition provided for in clause 4 hereof shall be conducted by the Chairman of the meeting and shall be governed by the usual conditions of any ordinary sale by auction of real property so far as the same are not from the nature thereof inconsistent with the present case and the declaration of the said Chairman (put into writing and signed by him at the time) after the sale of each lot that the highest bidder (naming him) has become the purchaser thereof shall bind such person as fully as if at a sale by auction of such lot he had been the highest bidder therefor and had signed a contract to purchase the same and the Chairman though Auctioneer shall bid for himself until he is provided with the acreage agreed to be taken by him. The total quantity of land appropriated by the Mutual Covenantors amounts to 206 acres leaving 9.674 acres unappropriated. It is hereby agreed that all the last mentioned land shall for the present be reserved in view of short acreage common purposes or other contingencies and in the event of it or any part of it not being absorbed for Estate purposes the same shall be disposed of in accordance with a vote of the majority of the Mutual Covenantors at any duly convened meeting thereof.

7.—SUBJECT as aforesaid in the event of no Mutual agreement being come to the land shall for the purposes of the said auction be divided and offered in lots to be determined by a majority of the Mutual Covenantors at any duly convened meeting and to be marked out and separately numbered on a plan and shall be sold in numerical rotation commencing with the lot marked No. 1 and the purchaser of any lot shall have the option of taking to the extent of his allotted quantity any adjoining unsold lot consecutively numbered at the valuation price per acre (subject as aforesaid) plus a premium thereon equivalent to what he may have given on the former lot provided that such option shall in the opinion of the Chairman of the meetings have been audibly declared before any such adjoining lot be put up by the Chairman acting as Auctioneer but a majority of the Mutual Covenantors present at any duly convened meeting of the Mutual Covenantors may before completion of the purchase of the estate by motion duly passed and entered on the minutes increase or diminish any holding by not more than ten per cent of its area in order that the boundaries may be defined by an existing fence.

8.—SUCH part of the estate as consists of buildings shall be separately valued and shall be set out with such area of adjoining land as shall be determined by a majority of the Mutual Covenantors at any duly convened meeting as lots but none

The Auction

Lotting.

Buildings.

of the Mutual Covenantors shall be compelled to take any of the said lots by reason of his having failed to secure any other lot. If the sewage from any of the said lots shall be found to discharge on to any other lot the purchaser of such lot may at any time refuse to take the sewage and in such case it shall devolve upon the purchaser of the lot discharging the sewage to find another outfall for such sewage at his own expense. No owner of any of the buildings aforesaid shall in that capacity be entitled to a share of the balance of surplus referred to in clause 9 or be liable to calls in case of a deficit as provided by the same clause or clause 11 although as owner of land he may be so entitled or liable.

Surplus Funds.

9.—ANY surplus realised by the disposal of the said Estate to the various owners over and above its cost to the Mutual Covenantors as a body shall be expended in surveying valuing and allotting the said estate in the payment of road making the improvement of Ridley Mill Road as provided under clause 13 law charges and expenses of a joint character not herein otherwise provided for and generally shall be used to meet all liabilities for work of a joint character which confers or is supposed or intended to confer a benefit upon the whole of the Mutual Covenantors, any balance left in the hands of the Treasurer after discharging these obligations shall subject to clause 8 be distributed amongst the Mutual Covenantors in proportion to the cost price and not the area of their holdings and any deficit shall subject to clause 8 be made good by calls made by the Treasurer on the respective parties hereto in proportion to the cost price of their holdings. Each of the Mutual Covenantors shall punctually pay any such call or calls as aforesaid when and as the same shall fall due and in default the person making the call or the Secretary for the time being of the Mutual Covenantors shall have power to enforce payment of the same by action against the defaulter as for an ordinary debt.

Roads.

10.—THE position length width and specification of all new roads and footpaths which may be required upon the estate shall be determined by a majority of votes at any duly convened meeting held before the allotment of the estate and an estate plan showing such roads and footpaths shall be submitted to the Hexham Rural District Council or other the local road authority before the allotment takes place and in the event of the said Council or Authority requiring any modification in the said plan or making any requisition with regard to any other matter concerning the Mutual Covenantors as a body the course to be taken by them with reference thereto shall be determined by a majority at any duly convened meeting.

Road Ex- penses.

11.—The initial cost of forming making and draining such roads and footpaths including any costs incurred under clause 10 shall be defrayed out of the common funds or shall be borne by the Mutual Covenantors according to the cost price of their holdings but the said roads and footpaths when constructed shall until the same shall be taken over by the local road authority be kept in reasonable good repair and maintained by and at the cost of the Owners having a frontage thereon respectively in proportion to

these respective frontages and the character and extent of such repair and maintenance shall be determined by a majority of such owners present at any duly convened meeting and the Secretary for the time being of the Mutual Covenantors shall have power to enforce payment of the amount payable by any such owner as his proportion of the expense of the repair and maintenance aforesaid by action against the defaulter as for any ordinary debt. The Mutual Covenantors will use their best endeavours to induce the local road authority to take over as soon as possible the said roads and footpaths and to assume liability for their repair and maintenance.

12.—THE Mutual Covenantors shall forthwith make application to the Newcastle and Gateshead Water Company for the extension of their main along such roads on the estate or in the neighbourhood of the estate as a majority at any duly convened meeting shall decide and the frontagers upon such roads and any other owner having a connection to such main shall enter into a joint and several bond with the said Company (if they shall require the same) to guarantee a revenue not exceeding ten per centum per annum upon the outlay involved in such extension for a period not exceeding ten years from the date of such bond. In the event of the revenue derived from such extension at any time within such period of ten years falling below the amount guaranteed a levy shall be made by the Secretary for the time being upon the said frontagers and owners and the amount of the levy upon each individual shall be apportioned according to the area of his holding. If the said Water Company shall refuse to carry out such extension upon the terms aforesaid the work shall be done at the cost of the Common Fund and when completed shall be afterwards maintained by and at the expense of the frontagers upon such new roads according to the proportionate extent of such frontage thereon and all pipes shall remain the property of the Mutual Covenantors and the size of the pipes to be laid down shall be determined by a majority at any duly convened meeting of the Mutual Covenantors.

Water.

13.—THE sum of One hundred and fifty pounds shall be reserved out of the general fund of the estate, and shall be devoted to the following objects namely:—The improvement of the carriage road through Ridley Mill from the point A to the point B on the said plan and towards the making of a carriage road from the said point B to the turnpike road at Stocksfield Station and the further conditions under which this contribution shall be expended thereon shall be determined by a majority of the votes of the Mutual Covenantors at any duly convened meeting of the Mutual Covenantors. In the event of the said sum of One hundred and fifty pounds or any part thereof not being expended as aforesaid on or before the thirty first day of December 1897 the said sum or any part thereof shall be divided among the then owners of the portion of the Estate which lies to the west of the line marked "Line of Definition" on the said plan according to the cost price of their holdings.

**Reserve
Fund,
Roads,
etc.**

**Building
and User.**

14.—A MAJORITY of the Mutual Covenantors may at any duly convened meeting fix the position of building lines on any part of the estate and no dwelling house, coal house, hen house, cow byre, stable, piggery, greenhouse or any other building whatever shall be built erected or set up upon the land lying between the said building line and the road or roads abutting upon each lot and such majority may appoint a Committee of not less than nine members chosen from the Mutual Covenantors whose duty it shall be to inspect plans of dwellinghouses and other buildings proposed to be erected and no dwellinghouse or other building shall be erected unless the plans thereof have first been submitted to and approved by a majority of such committee. The position of the said building lines shall be drawn subject to any modification therein that may be determined upon by a majority of votes at any duly convened meeting which shall be held before the thirty first day of December one thousand eight hundred and ninety five. Only self contained dwellinghouses shall be erected upon the estate and no house shall be built in flats nor occupied by more than one family at one and the same time. No holding on the said estate nor any building erected or to be erected thereon shall be used as an Inn or alehouse nor for the sale or manufacture of ale beer wine spirits or intoxicating liquors nor for the purposes of a slaughter house infectious diseases hospital chemical works soap works tallow chandlery explosive powder magazine or factory nor for any other noisome or offensive business whatever. Not more than two pigs shall at any one time be kept on any holding save with the permission of a majority of the Mutual Covenantors at any duly convened meeting and no part of the estate shall save with the permission of such majority be used for the purpose of making bricks or tiles. In case of the breach of any portion of this clause (14) the person upon whose holding such breach takes place or by whom (being an owner) such breach takes place shall for every such breach pay to the Common Fund of the Mutual Covenantors as liquidated damages agreed between the Mutual Covenantors and not by way of penalty the sum of five pounds for every week or part of a week during which such breach takes place and the Secretary for the time being of the Mutual Covenantors shall have power to recover such damages on behalf of the Mutual Covenantors by action in any court of competent jurisdiction as though the same were an ordinary debt.

Fences.

15.—EACH holding shall be fenced round its boundaries where no suitable fence exists by a creosoted post and wire fence with creosoted top rail of uniform character put up under the order of the Mutual Covenantors and the cost thereof shall be levied upon each owner at the cost price per lineal yard reckoned according to the length of his boundary thus fenced. In the case of a new fence serving as a party fence between two adjoining owners the cost shall be borne equally between them. In the case of a fence bordering any new road or footpath such fence shall be considered a party fence and the cost shall be borne as to a moiety by the owner of the holding and as to the other moiety out of the

common fund The maintenance of the fences upon the estate both existing and new shall be determined by a majority of the Mutual Covenantors at any duly convened meeting.

16.—THE amount of compensation (if any) which shall be paid to the tenants of the land and any other question relating to or arising out of the tenancies shall be determined by a majority of votes at any duly convened meeting of the Mutual Covenantors and all compensation shall be discharged and paid out of the common fund.

Compensation.

17.—THE Mutual Covenantors may be entitled to possession or receipt of the rents of the fields comprising the estate at various dates and it is agreed that each owner shall accept possession or receipt of the rent of his own particular holding upon the date on which the tenant surrenders possession thereof and the purchasers of the arable land off which the tenant takes his away going crop shall not be entitled to any compensation in respect of deferred entry.

Possession

18.—IT IS AGREED that the apportioned tithe rent charge payable by the estate shall be divided and paid by the Mutual Covenantors at an equal rate per acre and they hereby agree to execute any deed that may be necessary to effect such division.

Tithe Rent Charge.

19.—PORTIONS of the estate shall be reserved before allotment as the common property of the Mutual Covenantors or other the owners for the time being of the estate and the uses to which such common land from time to time may be put and the mode in which any revenue or profits derived from such common land may be disposed of shall be determined by a majority of the Mutual Covenantors or owners of the estate at any duly convened meetings. Such wells springs and sources of natural water supply on the estate as such majority as aforesaid shall think fit shall before allotment and under such conditions as may be determined by the said majority be devoted to the common use either of the whole body of the Mutual Covenantors or of several owners according as the said majority may determine.

Common Land.

20.—PORTIONS of the estate shall be reserved before allotment as quarries and as sand and gravel pits and such quarries and sand and gravel pits shall be owned by the whole of the Mutual Covenantors and shall be set out and used in common upon such terms and subject to such regulations as shall be determined from time to time by a majority at a meeting or meetings duly convened and held for the purpose and such majority shall also have power to close and dispose of the quarries and sand and gravel pits at any time if they shall think it desirable. The land reserved as common land and for the quarry and the sand and gravel pits shall be fenced off from the adjoining land and the cost thereof shall be borne out of the common fund.

Quarries, Sand and Gravel Pits.

21.—EACH lot shall be conveyed subject to an exception and reservation of all mines and minerals thereunder which do not belong to the Mutual Covenantors with such powers of winning working and carrying away the same and any other mines and minerals as the owner or owners of such mines and minerals is or are entitled to use and exercise and subject to an exception and

Mines and Minerals.

reservation to the Mutual Covenantors in fee simple or to a trustee or trustees in fee simple on their behalf of all other mines and minerals within and under the said hereditaments except clay sand gravel and stone quarries which can be worked by surface operations with all usual necessary and convenient rights powers liberties privileges and easements for winning working making merchantable and carrying away the same whether by surface operations or otherwise provided that reasonable compensation shall be paid to the owners of the surface for all damage done to the surface or any buildings and erections or trees crops and herbage thereon by the exercise of any the right powers liberties privileges and easements reserved to the Mutual Covenantors but so that the persons actually exercising the same shall alone be liable to pay such compensation. The manner in which and terms and conditions upon which such of the mines and minerals as are reserved to the Mutual Covenantors shall be dealt with and worked from time to time and the destination of the revenue or purchase money derived therefrom shall be determined by a majority of the Mutual Covenantors at any duly convened meeting and for the purpose of determining such manner terms and conditions the vote shall be taken on a quantative franchise. Each person shall be entitled to one vote in respect of each square chain of land of which he is the owner.

Default.

22.—IF any purchaser shall make default in completing his purchase the remaining purchasers or a majority of them may sell his holding either by public auction or private contract and shall appropriate any deposit paid by him and thereout pay and discharge all expenses incidental to such resale and any deficiency shall be paid by the defaulter. Should there be any balance remaining after the expense of such resale have been met the same shall be payable to the defaulter.

Subsequent Liabilities.

23.—IF after the execution hereof any liabilities not herein dealt with to which the estate is liable shall be discovered the same shall be discharged solely by the owner of the land affected or advantages likewise being discovered shall be apportioned in the same manner.

Arbitration.

24.—IN case any dispute or difference shall arise as to any matters affecting the Mutual Covenantors the ownership of the said land the meaning of these presents or to any act or thing to be provided or done in pursuance thereof the same shall unless otherwise provided for be referred to arbitration under the provisions of the Arbitration Act 1889.

25.—IN WITNESS whereof the said persons parties to these presents have herennto set their hands and seals the day and year first hereinbefore written.

NAME.	ADDRESS.	OCCUPATION.	ACRES	WITNESS.
John Cunningham	Ship Inn, Felling Shore	Innkeeper	10	E. J. Watson, 48, Dean Street, Newcastle. (Architect)
Alfred Howson	S, Heaton Road, Heaton	Accountant	5	E. J. Watson
Edward Adams	1, Cross Terrace, Ryton	Retired Gentlemen	20	E. J. Watson
William Summerbell Richardson	6, Richmond Terrace Gateshead	Accountant	6	E. J. Watson
Rob. William Burden..	10, Heaton Road Heaton	Provision Merchant	2	M. Henderson
Jas. Johnson Weighell.	28, Heaton Park Road, Heaton	Wholesale Grocer	10	M. Henderson, 35, Crown St., Newcastle.
Simpson English	48, Alston Street Gateshead	Clerk	2	E. J. Watson
Mark Henderson	Tyne View Lemington	Grocer	5	E. J. Watson
John Bradshaw	Bensham, Gateshead	Builder	3	E. J. Watson
Jos. Whiteside Wakinshaw	Kenton, Newcastle	Cashier	10	E. J. Watson
John Nathan Kidd	1, Havelock Terrace Gateshead	Accountant	2	E. J. Watson
Thos. G. J. Brown	Alders Terrace, Forest Hall	Accountant	1	E. J. Watson
Jas. Parmley Graham...	56, Snow Street, Newcastle	Accountant	4	E. J. Watson
Joseph Henry Penny ..	86, Langhorn Street Heaton	Cabinet Maker	3	E. J. Watson
Edwin Slater	73, Clara Street South Benwell	Fitter	4	E. J. Watson
William Carrick	1, Stratford Grove West Heaton	Butcher	5	E. J. Watson
Thomas Davison	80, Grey Street Newcastle	Watchmaker	3	E. J. Watson
Humphrey Atkinson ..	Blaydon	Builder	5	E. J. Watson
George Wm. Richardson	Holywell Terrace, Stocksfield	Miner	1	E. J. Watson
John Moore	14, Northbourne Street, Gateshead	Grocer	3	E. J. Watson
John Leonard Watson..	19, Wilberforce Terrace, Gateshead	Solicitors Clerk	5	E. J. Watson
George Atkinson	Thomas Terrace, Blaydon	Moulder	3	E. J. Watson
Edward Eugene Brown	9, Nixon Street Jesmond	Electrical Engineer	5	E. J. Watson
Jacob Brown	Holywell Terrace Stocksfield	Miner	1	E. J. Watson
George Charlton	Corbridge	Clothier	5	E. J. Watson
James Scott	Corbridge	Land Surveyor	5	E. J. Watson
Benjamin English	279, Tamworth Road Newcastle	Builder	3	E. J. Watson
Isaiah Feariss	2, Maughan Street South Benwell	Cupola-man	10	E. J. Watson
John Gaddes	Tyne St., Blaydon	Bootmaker	3	E. J. Watson

NAME.	ADDRESS.	OCCUPATION.	ACRES	WITNESS.
Thomas Gardner	2, Stanley St., Lemington, Scotswood	Miner	4	E. J. Watson
James Heslop	18, Grainger Street, W., Newcastle	Accountant	4	R. A. Strachan, Accountant. 18, Grainger Street, W., Newcastle.
Robert Hisco	Kendal Green, Kenton, Newcastle	Builder	3	E. J. Watson
William Hockey	2, Clavering Avenue, Dunston, Gateshead	Bricklayer	2	E. J. Watson
Thomas Lewis	81, Croydon Road, Newcastle	—	2	E. J. Watson
Henry Moat	175, Beaconsfield Street, Newcastle	Slate Merchant	3	E. J. Watson
John Parker	Thomas Terrace, Blaydon	Provision Merchant	3	E. J. Watson
Thomas Wm. Pattison	Branch House, Stocksfield	Butcher	4	E. J. Watson
William Paxton	Blaydon	Cabinet Maker	3	E. J. Watson
Henry Robt. Reed	2, Ravensworth Terrace, Gateshead	—	1	E. J. Watson
William Richardson ..	Willington-on-Tyne	Assistant Overseer	3	E. J. Watson
George G. Richardson..	Willington-on-Tyne	Manager	3	W. W. Pittuck.
John Stuart Robson ..	Coatsworth Road, Gateshead	Merchant	1	E. J. Watson
William Robson	Summerhill, Blaydon	Commercial Traveller	3	E. J. Watson
Alice Florence Rudge..	c/o J. Scott, Trinity Terrace, Corbridge	Spinster	3	M. Henderson
Henry Bell Saint	39, Malvern Terrace, Newcastle	Provision Agent	4	M. Henderson
Parmley Stobart	7, Warrington Road, Newcastle	Commercial Traveller	3	Alfred Henderson
Watson & Scott	48, Dean Street, Newcastle	Land Agents	3	E. J. Watson
Hannah Weighell	26, Kingsley Place, Newcastle	—	2	John E. Coulson 41, Stephenson Terrace, Felling-on-Tyne.
Francis Elliot	10, Stratford Grove, Heaton	Agent	3	E. J. Watson.
Wm. Graham	8, Avondale Terrace, Chester-le-Street	Gentleman	2	John Hedley, Accountant, Newcastle.
William Henry Proctor	2, Jesmond Vale Terrace, Newcastle	Clerk	1	Alf. Henderson, clerk to Messrs. Clayton & Gibson Solicitors, Newcastle-on-Tyne.
John William Dodds ..	27, Waller Street, Newcastle	Commercial Traveller	1	Alfred Henderson.
James Gledson	Heathery Cottage, Gosforth	Commercial Clerk	1	M. Henderson.
TOTAL			206	
Reserved for New Roads, Public Purposes, Short Acreage, &c.			9.674	
TOTAL AREA			215.674	

**Painshaw Field, Batt House, and Birches Nook Estate,
STOCKSFIELD-ON-TYNE.**

RECOMMENDATIONS OF THE COMMITTEE.

Specification of the Works to be done in constructing and finishing the foundation, paving and draining of the Private Roads upon the above Estate.

The stone for the bottoming of carriage road, kerbing and foundation to footway shall be provided by the Owners from their Quarry, lot No. 34 on the Estate Plan, or from New Ridley, or other approved quarry, as may be determined by a majority at any duly convened meeting.

Stone.

The width of the Carriage Way is to be 17 feet, and of the Footway alongside, 4 feet, making a total width of Roadway of 21 feet.

Width.

EXCAVATION.

Wherever the site of the intended roads and footpaths shall at present be covered with turf, it shall be carefully and properly bared from the surface and packed in mounds of a suitable size on the ground abutting upon the road as directed by the Surveyors.

Turf.

The excavated soil shall be either cast on to the adjacent land on each side equally, or filled into carts, but the cartage shall be at the expense of the receiver of the soil so carted.

Soil.

All clay or other materials not suitable for purposes of cultivation to be removed to a proper deposit.

Clay, etc.

Drainage to be provided where required.

Drainage.

FOOT WAY (alongside Carriage Way).

Kerb to be laid to margin of footway not less than 9 inches deep, 4 inches wide, rough dressed on top and sides, to be firmly bedded. All the kerb to be laid on suitable material and to be well beaten when being laid.

Kerb.

Footway to be prepared to a formation level 5 inches below the intended finished level.

Foot Way.

**Broken
Stone.**

Upon the formation level a stratum of broken stones 4 inches deep to be laid. To be evenly spread and rolled. Over this a layer of quarry chippings one inch in thickness, or breeze.

Gradient.

The footway shall incline to the kerb one inch to each foot of width.

CARRIAGE WAY.**Excava-
tions.**

The ground for the carriage way is to be prepared to a formation level 18 inches below the intended finished surface shown on the sections.

Penning.

Foundation of freestone penning 9 inches deep to be laid over whole site of carriage way. Stones not to exceed 9 inches cube, nor to be less than 9 inches by 3 inches across. To be laid broadside downwards and thoroughly wedged with stone chippings. Penning to incline towards kerbstones $\frac{1}{2}$ inch to the foot. The entire penning to be well rolled with a heavy roller.

**Quarry
Chippings.
Metalling**

Upon the penning a layer of quarry chippings 2 inches thick to be evenly overspread.

The metalling shall consist of a layer of Jarrow, Ferryhill, or other approved slag, limestone or whinstone, broken to cubes of not more than $2\frac{1}{2}$ inches, rolled and set with a steam roller. The finished thickness or depth of the slag covering to be 3 inches. The metal to be used shall be determined by a majority at any duly convened meeting.

**New Foot-
paths.**

The new footpaths between the turnpike at Birches Nook and Lot 11, and between Lots 26 and 27, are to be 10 feet wide, and the new footpath between the turnpike at Lot 42 and the new road at Lot 166, is to be 6 feet wide.

They are to be prepared to a formation level 5 inches below the intended finished level. Upon the formation level a stratum of broken stones 4 inches deep to be laid. To be evenly spread and rolled. Over this a layer of quarry chippings one inch in thickness or breeze.

No kerbstone to be provided.

**Length,
etc., of
Roads
& Paths.**

The estimated length of the 10 feet footpaths is 400 yards, and their area 1,333 square yards.

The estimated length of the 6 feet footpath is 557 yards, and its area 1,114 square yards.

The estimated length of the projected new roads is 3,110 yards, and their area, taken at a width of 21 feet, is $4\frac{1}{2}$ acres.

The estimated total area required for projected new roads and footpaths is about 5 acres.

Footpath between Lots 26 and 27. RECOMMENDED that a majority at any duly convened meeting be empowered to sanction an alteration in the course of this path if the two lots should be purchased by one person, and he should apply for it.

A new foot bridge to be erected over Stocksfield Burn connecting the projected footpath between Lots 26 and 27 with the carriage road at Ridley Mill. The bridge to be 10 feet wide and to be constructed of stone abutments and iron girders, but if the cost of making it of stone throughout with brick soffits shall not exceed £20 extra, it shall be built of stone.

**Foot
Bridge
at Ridley
Mill.**

The repair and maintenance of the bridge shall be borne by the whole of the frontagers upon the new roads and footpaths as provided in Clause 11 of the mutual Covenants, and the cost levied accordingly.

RECOMMENDED that the Newcastle and Gateshead Water Co.'s main be extended along the existing and projected roads, but not footpaths, so as to serve every lot.

**Water
Service.**

The conditions under which this extension is to be effected are set out in Clause 12 of the Mutual Covenants.

Wells in Lot 35 and 46. RECOMMENDED that the wells in Lots 35 and 46 be common to the whole of the owners of the Estate, and that the former be connected with the existing road between 34 and 35, and the latter with the adjacent turnpike by footpaths 4 feet wide, fenced off on both sides, when required by the owners of Lot 35 and 46 respectively, out of the common fund.

Birches Nook, North Bog Field, No. 84 on Ordnance Plan, and South Bog Field, No. 157 on Ordnance Plan.

Drainage.

RECOMMENDED that the purchaser of any part of these two fields shall be at liberty to drain the bog therein into the runner or stream in Crabtree Haugh, No. 86 on the Ordnance Plan.

The owner of the bog to be drained shall bear the cost of the drainage and re-instatement of the ground, and shall give notice of his intention so to do within 12 months of obtaining possession, defining at the same time the exact course of the drain, and he shall execute the work within 2 years of obtaining possession.

The lots affected by this stipulation are probably 82, 84, 16 and 15.

JOSEPH W. WAKINSHAW,

48, Dean Street,

Secretary.

Newcastle-on-Tyne,

29th August, 1895.

A IN THE HIGH COURT OF JUSTICE
 CHANCERY DIVISION

Royal Courts of Justice
Friday, 9th June 1986

Before:

B MR. JUSTICE MILLETT

C _____
 ERNEST EDWARD ROY PRICE
 and
 MYRA PRICE

v

D W.E. BOUCH
 R.N. BEECH
 R.M. BROWELL
 K.J. HARRISON
 G.R.A. MARCH
 I.C. MUNRO
 I.M.E. POTTER
E I.W. ROULSTONE and
 A. MacDONALD
 (Sued personally and as
 representing the Committee
 of the Painshawfield Batt
F House and Birches Nook
 Estate

(Transcribed from Tape by Baxter & McCarthy, 31 Kempton Close, Erith, Kent DA8 3SR)

G MR. J. HENRY, instructed by Messrs. Ingledew Botterell Roche & Pybus
 (Newcastle - upon - Tyne), appeared for the Plaintiffs

MISS SHEILA M.C. CAMERON Q.C. and MR. K. LINDLOM, instructed by
Messrs. Wilkinson Marshall Clayton & Gibson (Newcastle - upon - Tyne)
H appeared for the Defendants

 JUDGMENT
 (As approved)

- A MR.JUSTICE MILLETT: I have before me two preliminary questions of law arising from a deed of mutual covenant dated 30th May 1895. That deed established a co-operative scheme on the part of 53 Victorian tradesmen for the acquisition, lotting and sub-division among themselves for building purposes of an estate in Northumberland. The deed contained restrictive covenants entered into by the mutual covenantors *inter-se* as part of the scheme of development, to be administered by a committee appointed by the mutual covenantors or their successors in title. The questions which I am required to answer concern the extent of the committee's powers under the deed of mutual covenant.
- B

The deed described the parties thereto as "the mutual covenantors", and defined that expression to include the heirs and assigns of each of the mutual covenantors. It contained covenants on the part of each of the mutual covenantors for himself, his heirs and assigns with the others and each of the others of them, their and each of their heirs and assigns.

- C
- I need read only two of the clauses of that deed: clause 3 is in the following terms: "Where it is thought desirable to obtain the consideration and wishes of the mutual covenantors on any subject affecting the enjoyment or ownership of the said land or in connection therewith or to appoint or discharge a secretary, a treasurer and other officers, a meeting shall be called of which not less than two clear days notice in writing shall be given at the request of any two or more of the mutual covenantors by their secretary or if there shall at the time be no secretary or he shall refuse or neglect to act on the request within seven days of its being made to him a meeting may be called by any two or more of the mutual covenantors and at every meeting nine votes shall form a quorum. At such meetings each of the mutual covenantors shall have one vote and no more except where hereinafter it is otherwise stated. Any vote may be given by proxy properly appointed in writing if notice of the appointment of such proxy be presented to the secretary or chairman of the meeting before the time fixed for its commencement or during the meeting".
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- E

- Clause 14 is in the following terms: "A majority of the mutual covenantors may at any duly convened meeting fix the position of building lines on any part of the estate and no dwelling house, coal house, hen house, cow byre, stable, piggery, greenhouse or any other building whatever shall be built, erected or set up upon the land lying between the said building line and the road or roads abutting upon each lot and such majority may appoint a committee of not less than nine members chosen from the mutual covenantors whose duty it shall be to inspect plans of dwelling houses and other buildings proposed to be erected unless the plans thereof have first been submitted to and approved by a majority of such committee. The position of the said building lines shall be drawn subject to any modification therein that may be determined upon by a majority of votes at any duly convened meeting which shall be held before the 31st day of December 1895. Only self contained dwelling houses shall be erected upon the estate and no house shall be built in flats nor occupied by any more than one family at one and the same time." The rest of that rather long clause need not be read. It prohibits any building erected on any of the lots being used for purposes which a 19th century draftsman would have regarded as being detrimental to the estate and the clause even provided that not more than two pigs should at any one time be kept on any holding save with the permission of the majority of the mutual covenantors, a provision which I take was for the amenity of the estate rather than the comfort of the pigs. Since 1895 many of the original lots have been further sub-divided, some of them several times, and I am told that there are now nearly 300 plots in different ownership. Successive committees have been
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- A elected from among themselves by the original mutual covenantors and their successors in title, who hold an annual general meeting every year and proceed to elect one third of the committee each year. Thus for 90 years the stipulations in the deed of mutual covenant have formed a private, local law, democratically administered by a committee elected by a majority of the owners of land comprised in the estate, the committee itself having an express power to act by a majority. It is conceded for the purpose of the present application that the present committee is the lawful committee established by the deed of mutual covenant and has the powers conferred on it by that deed. It must, I think, follow from that concession that the present plot-owners who elect them are the mutual covenantors within the meaning of the deed and may exercise the powers conferred on them by that deed.
- B
- C In 1911, Mr. Justice Nevill granted a declaration that under the covenant contained in clause 14 of the deed of mutual covenant the committee were justified in refusing to pass plans in consequence of objection to the position of the proposed building. That declaration was made in an action between the secretary of the committee, who claimed the right under clause 14 to represent all the mutual covenantors and their successors in title, and a plot-owner who wished to build, or had built, in defiance of the committee's decision. I need not consider whether that judgment binds the present plaintiffs, because I am in any event persuaded by the learned judge's reasoning that the object of clause 14 was to enable the committee to preserve the character and amenity of the estate by withholding or granting approval, or by imposing proper conditions on the grant of approval, and that they might properly take into consideration any matter, such as the precise location of any proposed new building, which might affect the character and amenity of the estate.
- D
- E Lots 32 and 33, comprising some 10 acres in all, were originally taken by a Mr. James Johnson Weighell. The plaintiffs are his successors in title to part of lot 32, which was sub-divided in 1914. In 1982 the plaintiffs further sub-divided their land and sold part, together with the house standing on that part and known as Beech Hurst, but they retained some half an acre, and now wish to build themselves a new house upon that retained land.
- F With that in view the plaintiffs duly prepared building plans and submitted them to the committee for approval. They were rejected on the ground that they failed to conform to certain guidelines which the committee had recently, with the approval of the plot-owners, laid down for the development of the estate and as a guide to future applicants for approval. The plaintiffs submitted amended plans on two further occasions. On each occasion they were rejected without reasons.
- G The plaintiffs wish to discover the nature of the committee's objections so that they may, if possible, meet them and, if not, challenge them. They have, therefore, brought proceedings for a declaration that, the committee's approval having been unreasonably withheld, they are entitled to proceed without it.
- H In those circumstances two preliminary questions of law have been formulated and argued before me. They are:
1) whether, as alleged in paragraph 4 of the amended statement of claim, it is an implied term of stipulation 14 of the deed of mutual covenant, dated 30th May 1895, that approval of plans shall not be unreasonably withheld; 2) whether it is incumbent on the defendants to give reasons for their refusal to approve a building plan submitted to them.

- A To some extent these questions concealed the true nature of the dispute between the parties. It became evident from the submissions of counsel for the plaintiffs that it was suspected that their application was refused on the grounds of density and it was submitted that, since clause 14 of the deed of mutual covenant contained no provisions as to density, this would be an improper ground for their refusal. Although this is not a question which is strictly before me,
- B I ought to observe that, in my view, this is a consideration which, on any view, the committee could properly take into consideration, for the reasons given by Mr. Justice Nevill.

- C There is no general principle of law that, whenever a contract requires the consent of one party to be obtained by the other, there is an implied term that such consent is not to be unreasonably refused. It all depends upon the circumstances of the particular contract. In Wrotham Park Estate Company Limited v. Parkside Homes Limited 1974 2 A.E.R. 321 the restrictive covenants were in the form of an absolute prohibition against building without the consent of the covenantee. In one case, however, the covenant was qualified by the addition of the words "such consent not to be unreasonably refused". Mr. Justice Brightman (as he then was) said that these words would in any event have been implied, as counsel for the covenantee had conceded. There, however, the covenants were imposed not as part of a building scheme or scheme of development, but by a common vendor as he sold off the estate piecemeal, and they were enforceable not by the mutual covenantors but by the common vendor and his successors in title. I am prepared to assume, without in anyway deciding, that, in such circumstances, a term is to be implied that consent shall not be unreasonably refused. That, however, was a very different case from the present.
- D

- E In the present case the decision to approve the plans or not is vested not in a common vendor or his successors in title but in the mutual covenantors themselves, who have delegated the decision to a majority of a committee elected by themselves. It was conceded that the committee had a duty to inspect and consider any application submitted to them, to reach a decision themselves and not to delegate it to others, and to act honestly and in good faith and not for some improper or ulterior purpose. It was also accepted that, if the committee took into account irrelevant considerations or failed to take into account relevant considerations or reached a perverse decision such that no reasonable committee could possibly reach, then their decision could be impugned, for it would be *ultra vires*. This, however, was not enough for the plaintiffs. They insisted that the committee must act reasonably and that they must give reasons for their decision, so that it could, if necessary, be challenged, when the court would adjudicate and decide, in the light of the evidence, whether those reasons were justified.
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- H If this were the case the result would be most unfortunate and one which the original parties to the deed of mutual covenant are most unlikely to have intended. Control would be removed from the committee and vested ultimately in the court, which would be called upon to adjudicate, presumably on the basis of expert evidence, on the very question which the parties had created their own domestic tribunal to decide. The committee, whose members are voluntary and unpaid, and with no resources of its own, would be forced to seek professional advice and incur substantial expense in seeking to uphold its own decisions. It was submitted to me that the threat of litigation could be used as a means of bringing pressure on the committee to grant approval which they would otherwise refuse. I doubt that, if only for this reason: if a term is to be implied that approval is not to be unreasonably refused, then, in the

- A circumstances of the present case, a corresponding term must be implied that it is not to be unreasonably granted, with the consequence that a neighbour with the benefit of the covenant could challenge any unreasonable grant of approval.

- B In my judgment, the mutual covenants are equally bound by the decision of the committee, whether it be a decision to grant or refuse approval, and they are so bound, provided only that it is given honestly and in good faith and not for some improper purpose. Where the required consent is that of an individual who is free to consult his own interests exclusively, a provision that such consent must not be unreasonably refused is often included in order to prevent consent being withheld arbitrarily, or capriciously, or from improper motives. If that is the only effect of including such a provision, its implication in the present case is unnecessary; while, if it goes beyond that, it produces consequences which are unlikely to have been intended by the parties and is an implication which, in my judgment, ought not to be made.

Consequently, I answer the first question in the negative.

- D The answer to the second question really follows from the first. In In re Londonderry's Settlement, 1965 Ch 918 at his judgment Lord Justice Salmon said: "The settlement gave the absolute discretion to appoint to the trustees and not to the courts. So long as the trustees exercise this power with the consent of persons called appointors under the settlement and exercise it bona fide with no improper motive, their exercise of the power cannot be challenged in the courts -- and their reasons for acting as they did are, accordingly, immaterial. This is one of the grounds for the rule that trustees are not obliged to disclose to beneficiaries their reasons for exercising a discretionary power."

- F That applies with equal force to the present case. Moreover, the committee are a domestic body with a general discretion to exercise and no clearly defined issue to determine. In any given case there may be several different reasons which lead different members of the committee to the same conclusion. The majority of the committee may not all agree for the same reasons, and no single reason may command majority support. If the committee were bound to give reasons, they would in practice have two decisions to make, first, whether to grant or refuse approval, and, secondly, what reasons to give; and they would be well advised to take legal advice before making the second decision.

- G It may be appropriate, and will normally be convenient, for the committee to give reasons for their decision, if only because a failure to give any reason at all may lead to the inference that there is no good reason to give. But even a landlord who is not entitled to refuse consent unreasonably is not bound to give reasons for his refusal, and I cannot find that there is any legal duty on the committee to do so.

Accordingly, I answer the second question also in the negative.

- H In my judgment, the remedy of a disappointed owner, who does not challenge the honesty or good faith of the committee, but who wishes to challenge their decision, is not to invoke the jurisdiction of the court but to requisition a general meeting of the mutual covenants under clause 3 of the deed and to seek to persuade a majority of them either to pass a vote of no confidence in the committee or to reverse the committee's decision.

A

MISS CAMERON: In those circumstances , my lord, I ask for costs against the plaintiffs.

MR.HENRY: My lord, I cannot resist that.

B

MR.JUSTICE MILLETT: No. Very well. I will make the declaration in the way in which I did. I did slightly modify the terms of the second question when I read it out, deliberately -- I think I discussed it in the course of argument -- and I think the declaration should follow the form of the words that I read in my judgment rather than those of the actual question.

MISS CAMERON: I would be very content with that , my lord.

C

MR.JUSTICE MILLETT: Yes. I will make a declaration accordingly and award costs.

MR.HENRY: My lord, there is another matter which I have discussed with my learned friend and that is whether it would be possible -- there is no question of there being an appeal here, but my clients would perhaps like to try to get hold of the transcript and there are difficulties. I do not know whether your lordship can assist.

D

MR.JUSTICE MILLETT: I understand the transcript is required by some other parties for another purpose anyway. I am sure that if application is made to the Mechanical Recording Department it will be attended to fairly expeditiously and, if there is a good reason for having it very quickly, I am sure that can be arranged.

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MR.HENRY: I am obliged, my lord.

MISS CAMERON: I am most grateful, my lord.

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