




MEMORANDUM

To : Roland Close – Principle Planning Officer – H31
C.C. : **Yvonne Coleman – Planning Obligations Manager – H31**
Steve Burgess – Head of Transportation and Access – H37
From : Tony Walker - Senior Legal Executive – Corporate – H9
Tel : 01432 260204 My Ref : TW/SB/000869
Date : 17th September, 2012 Your Ref :

RE: DEVELOPMENT AT BROMYARD ROAD, LEDBURY

PLANNING APPLICATION N12026/F

Please find attached a copy of the S106 Agreement dated 13th September, 2012.


TONY WALKER
SENIOR LEGAL EXECUTIVE – CORPORATE
LEGAL SERVICES

ENC.



Dated 13th September 2012

THE COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL

- and -

M E LANE, R E LANE and A H LANE

- and -

GALEBREAKER ENTERPRISES LLP

-and-

SAINSBURY'S SUPERMARKETS LTD

DEED OF PLANNING OBLIGATION

made under the provisions of
Section 106 Town and Country Planning Act 1990 (as amended)
relating to land on the west side of Bromyard Road Ledbury Herefordshire

The County of Herefordshire District Council,
Brockington,
35 Hafod Road,
Hereford, HR1 1SH.

THIS DEED dated 13th September

2012, is made BETWEEN:-

1. THE COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL of Brockington, 35 Hafod Road, Hereford, HR1 1SH ("the Council")
2. MOLLY ELIZABETH LANE, ROBERT EDWARD LANE and ANDREW HERBERT LANE of Old Court, Bosbury, Ledbury, Herefordshire HR8 1QT and care of Forsters LLP, 31 Hill Street, London W1J 5LS ("the Owner")
3. GALEBREAKER ENTERPRISES LLP (company number OC332212) of Galebreaker House, New Mills Industrial Estate, Ledbury, Herefordshire HR8 2SS ("the Developer")
3. SAINSBURY'S SUPERMARKETS LTD (company number 3261722) of 33 Holborn, London EC1N 2HT ("Sainsbury")

WHEREAS:-

1. The Council is empowered by Section 106 of the Town and Country Planning Act 1990 (as amended) ("the Act") to enter into an agreement with any person interested in land in its area for the purpose of restricting or regulating the development or use of that land.
2. The Owner is the registered proprietor with title absolute of land described in Schedule 1 ("the Land").
3. The Developer has by his agent submitted to the Council an application for planning permission as described in Schedule 2 to this deed ("the Application").
4. The Council has delegated authority to its officers for the grant of the Planning Permission subject to conditions and subject to the Owner entering into this deed with the Council for the purpose of restricting or regulating the development or use of the Land.
5. The Council is the local planning authority for the area in which the Land is situated and by whom the restrictions and obligations contained in this deed are enforceable.
6. Sainsbury has a beneficial interest in the Land by virtue of an agreement for sale dated 13 September 2011 made between the Owner and Sainsbury.

NOW THIS DEED is made pursuant to Section 106 of the Act and is a planning obligation for the purposes of that section; Section 111 of the Local Government Act 1972, Section 2 of the Local Government Act 2000 and all other powers enabling and enactments which may be relevant for the purpose of giving validity hereto or facilitating the enforcement of the obligations herein contained and WITNESSES as follows:-

1. Words and Expressions

In this Deed the following words and expressions shall where the context so admits have the following meanings:-

- 1.1 the expressions "the Council" and "the Owner" "the Developer" and "Sainsbury" shall include their respective successors in title and assigns.

- 1.2 words importing the singular number only include the plural number and vice versa and where there are two or more persons included in the expression "the Owner" covenants expressed or implied to be made by the Owner shall be deemed to be made by such persons jointly and severally.
- 1.3 words importing the one gender includes the other gender.
- 1.4 references in this deed to a person or persons shall include corporations unincorporated associations trust bodies and all other legal entities.
- 1.5 words denoting an obligation on a party to do any act include an obligation to procure that it be done.
- 1.6 words placing a party under a restriction include an obligation not to permit an infringement of that restriction.
- 1.7 references to any statute or statutory instrument shall except where otherwise specifically provided include reference to any statutory modification or re-enactment for the time being in force.
- 1.8 "Administration Fee" means the sum of £3,097.00 (three thousand and ninety seven pounds) being a contribution towards the monitoring of the obligations in this deed.
- 1.9 "Commence Development" and "Commencement of Development" mean to commence the Development pursuant to the Planning Permission by the carrying out of a material operation as defined in Section 56(4) of the Act and "Commence Development" and "Commencement of Development" shall be construed accordingly.
- 1.10 "Development" shall mean the development of the Land disclosed by the Application.
- 1.11 "Occupy" means occupation for the purposes permitted by the Planning Permission but excluding occupation by personnel engaged in construction fitting out or decoration or occupation for marketing or display or occupation in relation to security operations.
- 1.12 "Plan" means the plan annexed to this deed.
- 1.13 "Planning Permission" means the planning permission (subject to conditions) that the Council has resolved to grant pursuant to the Application.
- 1.14 "Transport Contribution" means the sum of £154,863.00 (one hundred and fifty four thousand eight hundred and sixty three pounds) index-linked in accordance with paragraph 6.10 of this deed as a contribution towards the following sustainable transport improvements:
- 1.14.1 widening of the footway between railway and Beggar's Ash to shared use standard and extension to the Development.
- 1.14.2 upgrading of footpaths with dropped kerbing to required standards between the Development and the town centre.



☐ Site boundary

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Project: Galebreakers
 Client: GBR Industries Ltd.
 Title: Site Location Plan
 Status: Preliminary
 Job No: SAIL2108 Draw No: 001 Revision: A
 Date: Jan 2012 Scale: 1:1250@A3 Author: AG

TURLEYASSOCIATES
www.turleyassociates.co.uk

0 10 20 30 40 50
 metres
 (1:1,250)

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P. C. L. L.
 Authorised Officer 5538



9. VAT

All consideration given in accordance with the terms of this deed shall be exclusive of any value added tax properly payable.

10. Interest

If any payment due under the terms of this deed is paid late interest calculated at the Council's standard rate of 1% above the Bank of England base rate from time to time will be payable from the date payment is due to the date payment is made.

11. Consent and Acknowledgement

The Developer and Sainsbury consent to the execution of this deed and acknowledge that the Land shall be bound by the restrictions and obligations contained in this deed and that their respective interests in the Land shall take effect subject to this deed.

12. Headings

The headings in this deed are for convenience only and shall not be taken into account in the construction and interpretation of the parts of this deed to which they relate.

13. Indemnity

In consideration of the Owner and the Developer entering into this Deed Sainsbury covenant with the Owner and the Developer to indemnify the Owner and the Developer against any claims demands proceedings damage losses costs expenses payments and/or other liability arising as a result of their entering into this Deed or as a result of a breach of this Deed and/or as a result of the Owner and the Developer being a party to this Deed.

IN WITNESS of which this instrument has been duly executed as a deed by the parties and delivered on the date set out above

SCHEDULE 1

(the Land)

The freehold land known as land on the west side of Bromyard Road Ledbury Herefordshire registered (with other land) under title number HE46274 and shown edged red on the Plan.

SCHEDULE 2

(the Application)

An application for planning permission validated by the Council on 6th March 2012 under reference number N120261/F for: 'proposed erection of light industrial building (Class B1(c)) with ancillary offices and storage, surface car parking, provision of new access, landscaping and associated works'.

SCHEDULE 3

(Owner's Covenants)

Not to Commence Development or cause or permit the Commencement of Development until the Transport Contribution has been paid to the Council.

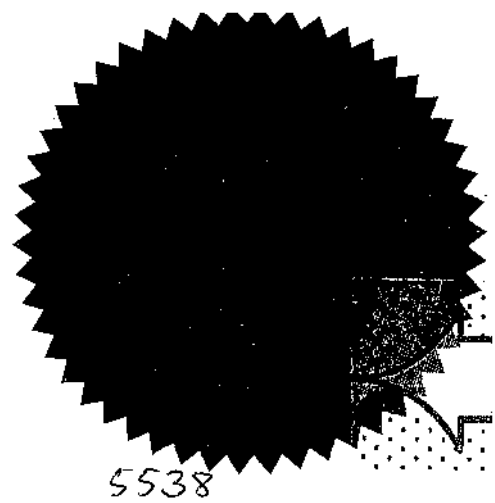
SCHEDULE 4

(Council's Covenants)

1. Upon receipt of the Transport Contribution the Council will place the same in an interest bearing account with interest calculated at 1% below the Bank of England base rate for the time being in force.
2. The Council shall apply the Transport Contribution towards the facilities specified in this deed or to such other facilities that the Council and the Owner consider appropriate as a result of the Development.
3. The Council agree that if any part of the Transport Contribution have not been expended or remains uncommitted following five years from the date of payment then such part of the Transport Contribution as may remain unspent or uncommitted together with interest accrued as aforesaid on the balance shall be returned to the Owner.
4. If so requested to provide the Owner with such evidence as shall be reasonably requested to confirm the expenditure of the Transport Contribution.
5. For the purposes of this Schedule "Owner" shall mean that person paying the Transport Contribution and not any successor in title to such person.

EXECUTED AS A DEED when
THE COMMON SEAL of
THE COUNTY OF HEREFORDSHIRE
DISTRICT COUNCIL
was hereunto affixed BY ORDER

[REDACTED]
Authorised Officer



SIGNED AS A DEED by
MOLLY ELIZABETH LANE
in the presence of

witness signature [REDACTED]

witness name (capitals)

address [REDACTED]

46 CRANK ROAD
BILWINGE
WNS 7EZ

SIGNED AS A DEED by
ROBERT EDWARD LANE
in the presence of

witness signature [REDACTED]

witness name (capitals)

address

SIGNED AS A DEED by
ANDREW HERBERT LANE
in the presence of



witness signature



witness name (capitals)

address

EXECUTED AS A DEED by GALEBREAKER
ENTERPRISES LLP
acting by two members

)
)
)

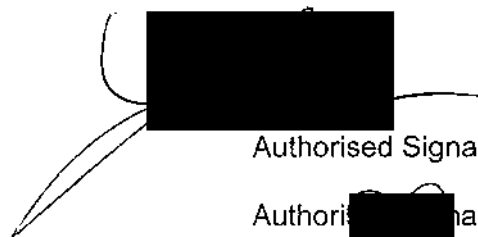
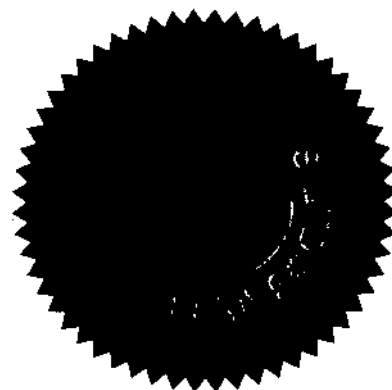


Member



Member

THE COMMON SEAL of
SAINSBURY'S SUPERMARKETS LTD
was affixed in the presence of



Authorised Signatory

Authorised Signatory



2. Covenant

The Owner for the purposes of Section 106 of Act and with the intention of binding himself and all persons deriving title under him to the Land and each and every part thereof hereby agrees and covenants with the Council to observe the restrictions and perform the obligations set out in Schedule 3.

3. Reservations

Nothing in this deed shall prevent the Council from exercising any of its statutory powers or functions in relation to the development of the Land.

4. Local Land Charge Provisions

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

5. Costs

5.1 on the date of this deed Sainsbury shall pay to the Council the reasonable and proper costs and disbursements incurred by the Council in the preparation and completion of this deed; and

5.2 before Commencement of Development Sainsbury shall pay the Administration Fee to the Council.

6. Declarations

IT IS HEREBY AGREED AND DECLARED that

6.1 The covenants restrictions and requirements imposed upon the Owner 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 Owner

6.2 neither the Owner nor the Developer shall be entitled to any costs or compensation whatsoever from the Council arising from the agreements restrictions and obligations in this deed

6.3 If any provision in this deed shall be held to be invalid illegal or unenforceable the validity legality or enforceability of the remaining provisions hereof shall not in any way be deemed to be affected or impaired

6.4 The provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this deed, therefore any person who is not a party to this deed cannot enforce any of its terms in their own right but this does not affect any right or remedy of a third party which exists or is available apart from such Act

6.5 No person shall be liable for a breach of covenant contained in this deed after he shall have parted with all interest in the Land or the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest

6.6 With the exception of paragraphs 4, 5, 6.10 and 8, delivery and any other relevant paragraphs of this deed which take effect on the date of this deed the agreements restrictions and obligations contained in this deed are conditional upon the issue of the Planning Permission by the Council

- 6.7 If the Planning Permission shall expire before the Commencement of Development or shall at any time be quashed revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure this deed shall determine and shall cease to have effect but without prejudice to the validity of anything done or payments or contributions made whilst this deed is in force
- 6.8 No waiver (whether express or implied) by or on behalf of the Council of any breach or default of the Owner in observing the restrictions or performing the obligations or other terms of this deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the restrictions obligations or other terms of this deed or from acting upon any subsequent breach
- 6.9 The provisions of section 196 of the Law of Property Act 1925 as amended by the Recorded Delivery Act 1962 shall apply to any notice to be served under or in connection with this deed and any notice:
- 6.9.1 to the Council shall be in writing and sent to the Planning Obligations Manager Planning Services Herefordshire Council Blueschool House Blueschool Street Hereford HR1 2ZB (quoting reference N120261/F);
- 6.9.2 to the Owner shall be in writing and sent to the address set out at the beginning of this deed; or
- 6.9.3 to either party at such other address as one party may notify in writing to the other at any time as its address for service;
- 6.9.4 the Owner shall give to the Planning Obligations Manager at least 14 days prior written notice of Commencement of Development
- 6.10 The Transport Contribution payable by the Owner in accordance with the obligation contained in Schedule 3 of this deed shall be uplifted by reference to:
- 6.10.1 any increase in the BCIS tender price index published by the Royal Institute of Chartered Surveyors occurring between the date of its publication prior to the date of this deed and the date that such sums are actually paid to the Council; or
- 6.10.2 an equivalent index that the Council may at their discretion select in the event that the BCIS tender price index shall cease to be published before such sums are paid
- 6.11 The Transport Contribution paid to the Council under the terms of this deed may at the Council's discretion be pooled with other contributions paid or intended for payment to secure such facilities for the benefit of the Development and for the wider public benefit

7. Warranty as to Title

The Owner hereby warrants to the Council that the title details referred to in recital 2 and in Schedule 1 are complete and accurate in every respect.

8. Jurisdiction

This deed is governed by and interpreted in accordance with the law of England.