

111899/10

**Taylor, Ann**

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**From:** Close, Roland  
**Sent:** 29 November 2012 06:14  
**To:** Taylor, Ann  
**Subject:** FW: Porthouse Farm appeal - APP/W1850/A/12/2177220/NWF  
**Attachments:** Unilateral Undertaking (Polytec) clean doc 2 28\_11\_12.doc.doc; Unilateral Undertaking (Council) clean doc 1 28\_11\_12.doc.doc

Please publish this e-mail & attachments on the website also. Thanks - Roland

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**From:** John Wilson [<mailto:j.wilson1@tyler-parkes.co.uk>]  
**Sent:** 28 November 2012 16:45  
**To:** [laura.cook@pins.gsi.gov.uk](mailto:laura.cook@pins.gsi.gov.uk)  
**Cc:** Close, Roland  
**Subject:** Porthouse Farm appeal - APP/W1850/A/12/2177220/NWF

Dear Laura.

I am now pleased to be able to provide copies of the final drafts of separate unilateral undertakings referred to in my written statement forwarded to you earlier today.

Could you arrange to provide the Inspector with copies, and advise her that we expect to be able to present the signed copies at the hearing.

Regards,

John.

**John K Wilson** MA(Oxon) DipTP MRTPI  
Director  
[j.wilson1@tyler-parkes.co.uk](mailto:j.wilson1@tyler-parkes.co.uk)

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**tyler-parkes.co.uk**  
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**THIS DEED OF UNDERTAKING** dated  
is given by

2012

MARSTEN DEVELOPMENTS (WORCESTER) LIMITED (Company Number 01179455) whose registered office is at 75 The Porthouse, Lowesmoor, Worcester, WR1 2RS ("Marsten")

to:-

POLYTEC CAR STYLING BROMYARD LIMITED of Porthouse Industrial Estate, Bromyard, Herefordshire, HR7 4NS ("Polytec").

#### BACKGROUND

1. The County of Herefordshire District Council (the Council) is the local planning authority for the purposes of this Deed for the area within which the land described in the First Schedule ("the Land") is situated and by whom the restrictions and obligations contained in this Deed are enforceable.
2. Marsten is the registered proprietor with title absolute free from encumbrances of the Land.
3. Marsten has by its agent submitted to the Council the application for planning permission described in the Second Schedule to this deed ("the Application") to develop the Land and adjoining land
4. By a notice of refusal dated 4<sup>th</sup> April 2012 ("the Refusal") the Council refused planning permission for the reasons set out therein and on 31<sup>st</sup> May 2012 Marsten appealed to the Secretary of State against the refusal and enters this deed with the intention that certain objections by the Council to the grant of planning permission are overcome.
5. Polytec are the owners of the Factory Site and which is affected by the Noise Attenuation Measures

THIS DEED 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 "Marsten" and "Polytec" 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 parties to this Deed the obligations shall be enforceable against all of them jointly and severally unless there is an express provision otherwise.
- 1.3 words importing the one gender include 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 "Noise Attenuation Measures" means the works referred to in the Third Schedule
- 1.9 "the Factory Site" means the factory site adjoining the Land operated by Polytec and which is shown for identification edges blue on the Plan
- 1.10 "Commence Development" and "Commencement of Development" means 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 Town and Country Planning Act 1990 (as amended) and "Commence Development" and "Commencement of Development" shall be construed accordingly.
- 1.11 "Development" shall mean the development of the Land and adjoining land as disclosed by the Application
- 1.12 "First Occupation" means the first occupation of any dwelling constructed on the Land and adjoining land pursuant to the terms of the Planning Permission
- 1.13 "the Plan" means the plan annexed to this Deed.
- 1.14 "the Planning Permission" means a planning permission that may be granted pursuant to the Application.

2. Marsten's obligations

Marsten undertakes to observe the restriction and perform the obligations specified in the Third Schedule to this Deed.

3. Warranty

Marsten warrants that the title information given in this Deed is correct and that no other person or body has or owns any interest legal equitable or otherwise in the Land.

4. Notices and Notice of Commencement of Development

A notice under this deed is valid only if: -

- 4.1 it is given by hand sent by recorded delivery or document exchange or sent by fax provided that a confirmatory copy is given by hand or sent by recorded delivery or document exchange on the same day and it is served at the



address shown in this deed for the receiving party (and in the case of the Council is marked for the attention of the Planning Obligations Manager Planning Services, quoting reference) or at any address specified in a notice given by that party to the other parties.

4.2 A notice

- 4.2.1 sent by recorded delivery is to be treated as served on the second working day after posting if sent by first class post and on the third working day after posting if sent by second class post
- 4.2.2 sent through a document exchange is to be treated as served on the first working day after the day on which it would normally be available for collection by the recipient
- 4.2.3 sent by fax is to be treated as served on the day on which it is successfully sent or the next working day where the fax is sent successfully after 1600 hours or on a day that is not a working day whenever and whether or not the confirmatory copy is received unless the confirmatory copy is returned through the Royal Mail or the document exchange undelivered.

5. Declarations

It is declared as follows:

- 5.1 No person shall be liable for breach of the restrictions and obligations 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 prior to parting with such interest.
- 5.2 With the exceptions of paragraphs 5.4; 5.6 and 5.7 and the delivery clause which take effect on the date of this Deed the declarations restrictions and obligations in this Deed shall take effect upon the grant of the Planning Permission.
- 5.3 If the Planning Permission shall expire before Commencement of Development or shall at any time be revoked this Deed shall forthwith determine and cease to have effect but without prejudice to the validity of anything done or payments or contributions made or expended whilst this Deed is in force.
- 5.4 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Deed and no person other than the Owner or the Council (and any successors in title or assigns or successor bodies) shall have any rights under or be able to enforce the provisions of this Deed.
- 5.5 If any payment due under the terms of this Deed is paid late interest calculated at the rate of 4% 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.

5.6 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.

5.7 This Deed is governed by and interpreted in accordance with the law of England

IN WITNESS this undertaking is duly executed as a Deed and delivered by Marsten on the date stated at the beginning of this Deed.

#### FIRST SCHEDULE (the Land)

Land at Porthouse Farm, Tenbury Road, Bromyard, Herefordshire, HR7 4LW registered at the Land Registry under title number HE12943 shown for identification edged red on the Plan.

#### SECOND SCHEDULE (the Application)

An application for outline planning permission to develop the Land and adjoining land validated by the Council on 14<sup>th</sup> July 2011 and bearing the Council's reference number N111899/O for the erection of up to 127 dwellings.

#### THIRD SCHEDULE (the Owner's Restriction and Obligation)

1.1 To pay for and install (prior to the First Occupation of any dwelling on the Land) the following Noise Attenuation Measures at the Factory Site to the reasonable satisfaction of the Council:

- Digester Fan -Acoustic Louvre Alr -In and Out, Blockwork Enclosure
- Paint Dryer Fan -Acoustic Louvre Enclosure End Intake -2 sides & Top Acoustic Panel Enclosure
- Extract next to Paint Dryer -Exhaust attenuator upgrade
- Compressor House 'A' -Acoustic Louvre's & Acoustic Louvre Door
- Compressor House 'B' -Acoustic Louvre's & Acoustic Louvre Door
- Chemical Mixer Extract -Exhaust Attenuator
- Dust Extractor -Acoustic Panel Surround \* Exhaust Attenuator

- 1.2 To provide funds of £50,000 sufficient to ensure that the above works are maintained by the owners for the time being of the Factory Site
- 2.1 To pay for all forklift trucks on the Factory Site to be fitted with white noise reversing alarms/warning systems to the reasonable satisfaction of the Council.
- 2.2 To provide £20,000 sufficient to ensure that all forklift trucks on the Factory Site are subsequently maintained with white noise reversing alarms/warning systems

EXECUTED AS A DEED  
By Marsten Developments  
(Worcester) Limited

Acting by:

Stennard Harrison

In the presence of:

Dated

2012

MARSTEN DEVELOPMENTS (WORCESTER) LIMITED

- to -

POLYTEC CAR STYLING BROMYARD LIMITED

UNILATERAL UNDERTAKING

relating to  
land and premises known as  
Land at Porthouse Farm, Tenbury Road, Bromyard, Herefordshire, HR7 4LW



**THIS DEED OF UNDERTAKING** dated  
is given by

2012

MARSTEN DEVELOPMENTS (WORCESTER) LIMITED (Company Number 01179455) whose registered office is at 75 The Porthouse, Lowesmoor, Worcester, WR1 2RS ("the Owner")

to:-

THE COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL of Brockington 35 Hafod Road Hereford HR1 1SH ("the Council").

#### BACKGROUND

1. The Council is the local planning authority for the purposes of this Deed for the area within which the land described in the First Schedule ("the Land") is situated and by whom the restrictions and obligations contained in this Deed are enforceable.
2. The Owner is the registered proprietor with title absolute free from encumbrances of the Land.
3. The Owner has by its agent submitted to the Council the application for planning permission described in the Second Schedule to this deed ("the Application") to develop the Land and adjoining land
4. By a notice of refusal dated 4<sup>th</sup> April 2012 ("the refusal") the Council refused planning permission for the reasons set out therein and on 31<sup>st</sup> May 2012 the Owner appealed to the Secretary of State against the refusal and enters this deed with the intention that certain objections by the Council to the grant of planning permission are overcome.

THIS DEED is made pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended) ("the Act") and is a planning obligation for the purposes of that section enforceable by the Council; Section 111 of the Local Government Act 1972; Section 1 of the Localism Act 2011 and all other enabling powers 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 Owner" and "the Council" 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 parties to this Deed the obligations shall be enforceable against all of them jointly and severally unless there is an express provision otherwise.
- 1.3 words importing the one gender include 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 'The Application Site' the Land and other property comprised in the Application
- 1.9 "Acoustic Barrier" a continuous and imperforate six metre high timber acoustic fence sealed at the base with a density of at least 15kg/m<sup>2</sup> along the alignment shown on the attached drawing number 2589/027 Revision A dated 19<sup>th</sup> March 2012
- 1.10 "Commutated Sum" shall mean the payment referred to in the Third Schedule
- 1.11 "Commence Development" and "Commencement of Development" means 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.
- 1.12 "Development" shall mean the development of the Land and adjoining land as disclosed by the Application
- 1.13 "First Occupation" means the first occupation of any dwelling constructed on the Land pursuant to the terms of the Planning Permission
- 1.14 "Index Linked" means Index Linked in accordance with the increase (if any) in the all items retail prices index assessed from the date of this Deed to the date of payment in full provided that if the basis of computation of such index shall change any official reconciliation between the two bases of computation published by the Office of National Statistics (or any Government Department upon which duties in connection with compilation and maintenance of the index have devolved) shall be binding upon the parties hereto and shall be applied in adjusting the application of the index and in the absence of such official reconciliation such adjustments shall be made to the figures of the index as to make it correspond as nearly as possible to the previous method of computation and such adjusted figures shall be used to the exclusion of the actual published figures (until officially reconciled figures are published) and in the event of a dispute regarding such adjustments the decision of the Council shall be final
- 1.15 "the Plan" means the plan annexed to this Deed.
- 1.16 "the Planning Permission" means a planning permission that may be granted pursuant to the Application.



2. Planning obligations

The Owner for the purposes of Section 106 of the Act undertakes to observe the restriction and perform the obligations specified in the Third Schedule to this Deed.

3. Warranty

The Owner warrants that the title information given in this Deed is correct and that no other person or body has or owns any interest legal equitable or otherwise in the Land.

4. Notices and Notice of Commencement of Development

A notice under this deed is valid only if: -

4.1 it is given by hand sent by recorded delivery or document exchange or sent by fax provided that a confirmatory copy is given by hand or sent by recorded delivery or document exchange on the same day and it is served at the address shown in this deed for the receiving party (and in the case of the Council is marked for the attention of the Planning Obligations Manager Planning Services, quoting reference) or at any address specified in a notice given by that party to the other parties.

4.2 A notice

4.2.1 sent by recorded delivery is to be treated as served on the second working day after posting if sent by first class post and on the third working day after posting if sent by second class post

4.2.2 sent through a document exchange is to be treated as served on the first working day after the day on which it would normally be available for collection by the recipient

4.2.3 sent by fax is to be treated as served on the day on which it is successfully sent or the next working day where the fax is sent successfully after 1600 hours or on a day that is not a working day whenever and whether or not the confirmatory copy is received unless the confirmatory copy is returned through the Royal Mail or the document exchange undelivered.

4.3 Not less than 28 days notice of Commencement of Development shall be given to the Council's Planning Obligations Manager, Planning Management Team, Herefordshire Council, Blue School House, Blue School Street, Hereford HR1 2ZB.

5. Declarations

It is declared as follows:

5.1 The restrictions and obligation in the Third Schedule to this Deed are planning obligations enforceable by the Council against the Owner and his successors in title to the Land in accordance with the provisions of section 106(3) of the Act



- 5.2 No person shall be liable for breach of the restrictions and obligations 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 prior to parting with such interest.
- 5.3 With the exceptions of paragraphs 5.6; 5.7; 5.9; 5.13 and the delivery clause which take effect on the date of this Deed the declarations restrictions and obligations in this Deed shall take effect upon the grant of the Planning Permission.
- 5.4 If the Planning Permission shall expire before Commencement of Development or shall at any time be revoked this Deed shall forthwith determine and cease to have effect but without prejudice to the validity of anything done or payments or contributions made or expended whilst this Deed is in force.
- 5.5 Nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than one relating to the Development as specified in the Application) granted (whether or not on appeal) after the date of this Deed.
- 5.6 This Deed is a local land charge and shall be registered as such.
- 5.7 Within 28 days of completion of the Deed the Owner shall apply to the Land Registry to secure a notice of this Deed against the registered title referred to in the First Schedule and shall use all reasonable endeavours to ensure the registration of such notice
- 5.8 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Deed and no person other than the Owner or the Council (and any successors in title or assigns or successor bodies) shall have any rights under or be able to enforce the provisions of this Deed.
- 5.9 All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.
- 5.10 If any payment due under the terms of this Deed is paid late interest calculated at the Council's standard rate of 4% 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.
- 5.11 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.
- 5.12 This Deed is governed by and interpreted in accordance with the law of England
- 5.13 This Undertaking is given on the basis that if accepted by the Council the Council will comply with the Obligations referred to in the Fourth Schedule



IN WITNESS this undertaking is duly executed as a Deed and delivered by the Owner on the date stated at the beginning of this Deed.

FIRST SCHEDULE  
(the Land)

Land at Porthouse Farm, Tenbury Road, Bromyard, Herefordshire, HR7 4LW registered at the Land Registry under title number HE12943 shown for identification edged red on the Plan.

SECOND SCHEDULE  
(the Application)

An application for outline planning permission to develop the Application Site validated by the Council on 14<sup>th</sup> July 2011 and bearing the Council's reference number N111899/O for the erection of up to 127 dwellings.

THIRD SCHEDULE  
(the Owner's Restriction and Obligation)

Following construction of the Acoustic Barrier and prior to the First Occupation of any dwelling constructed on the Application Site to pay the Commuted Sum of £80,000.00 (index linked), such sum being utilised by the Council for the maintenance and/or replacement of the Acoustic Barrier for a period of up to 50 years from the date of payment of the Commuted Sum

FOURTH SCHEDULE  
(the Councils Obligations)

- 1.1 To use the Commuted Sum only for the maintenance and/or replacement of the Acoustic Barrier for a period of 50 years from the date of payment by the Owner.
- 1.2 To pay the Commuted Sum into an interest bearing account or accounts within 5 working days of its receipt and to keep it there until either it is expended or is repaid pursuant to the provisions of paragraph 3 of this Schedule and for the avoidance of doubt all interest accruing on the said account shall (unless refunded to the Owner) accrue for the benefit of the Council and shall be expended on maintenance or replacement of the Acoustic Barrier.
- 1.3 To refund to the payee of the Commuted Sum to the Council such balance of the Commuted Sum as shall still be held on the earlier of the following events:



(i) On the fiftieth anniversary of the date of payment of the Commuted Sum or;

(ii) Or earlier in the event that at any time it is demonstrated to the reasonable satisfaction of the Council that the Acoustic Barrier is no longer reasonably required as a noise mitigation measure.

Together with interest thereon at a rate equivalent to 1% above the Bank of England base rate from time to time in force.

EXECUTED AS A DEED  
By Marsten Developments  
(Worcester) Limited

Acting by:

Stennard Harrison

In the presence of:



Dated

2012

MARSTEN DEVELOPMENTS (WORCESTER) LIMITED

- to -

THE COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL

UNILATERAL UNDERTAKING

Given under the provisions of  
Section 106 of the Town and Country  
Planning Act 1990 (as amended)

relating to

land and premises known as

Land at Porthouse Farm, Tenbury Road, Bromyard, Herefordshire, HR7 4LW

Herefordshire Council,  
Brockington,  
35 Hafod Road,  
Hereford, HR1 1SH.