

DATED 15 July 2016

Ref: LS/2051.556/FW

LIVERPOOL CITY COUNCIL

and

T.J MORRIS LIMITED

S.106 Agreement

RE: Planning Application Ref: 15F/3120

Land on the north side of East Lancashire Road, Liverpool

J McLoughlin

City Solicitor

Liverpool City Council

2016

July

day of

15

THIS DEED is made the

BETWEEN:

Parties

1. Liverpool City Council of Municipal Buildings, Dale Street, Liverpool, L2 2DH ("The Council")
2. T.J Morris Limited (company number: 01505036) whose registered office is at Portal Way, Axis Business Park, GillMoss, Liverpool, L11 0JA ("The Owner")

INTRODUCTION

1. The Council is the local planning authority for the purposes of the Act for the area in which the land is situated.
2. The Owner is the freehold owner of the Land registered with the Land Registry under title number MS467623.
3. The Owner has submitted the Application to the Council and the parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed.
4. The Council resolved on 19th April 2016 to grant the Planning Permission subject to the prior completion of this Deed.

NOW THIS DEED WITNESSES AS FOLLOWS:

OPERATIVE PART

1. DEFINITIONS

For the purposes of this Deed the following expressions shall have the following meanings:

"Act"

the Town and Country Planning Act 1990.

"Application"

the application for full planning permission registered by the Council on 23rd December 2015 and allocated reference number 15F/3120.

"Commencement of Development"

the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services,

erection of any temporary means of enclosure, the temporary display of site notices or advertisements and "Commence Development" and "Commence" shall be construed accordingly.

the development of the Land to:

(a) convert the Existing Training Centre (excepting the first floor which remain staff accommodation) to offices (within Use Class B1);

(b) convert the existing car hypermarket building on part of the Site to form the Training Centre and the Retail Units with associated external alterations and changes to site layout including revised parking and servicing, new access from Portal Way roundabout and external display area; and

(c) to carry out ancillary works including sprinkler tank and pumphouse

all as set out in the Application.

"Existing Training Centre" the Owner's existing training centre at Axis Business Park, Portal Way, Liverpool

"Index" all items index figure of the Index of Retail Prices published by the Office for National Statistics or any successor, Ministry or Department.

"Land" the land on the north side of East Lancashire Road, Liverpool registered at HM Land Registry under Title Number M5467623 against which this Deed may be enforced shown for identification edged in thick black on the attached Plan.

"Occupation" and "Occupied" occupation for the purposes permitted by the Planning Permission but not including occupation by persons engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations.

"Plan" the plan attached to this Deed at the Third Schedule.

"Planning Permission" the planning permission to be granted pursuant to the Application in the draft form annexed to this Deed in the Fourth Schedule.

"Retail Area" that part of the Training Centre comprising the retail area as identified hatched yellow on the Plan.

the retail units identified "Unit A" and "Unit B" on the Plan

"Site"

the land against which this Deed may be enforced as shown edged red on the Plan

"TJM"

T. J. Morris Limited (company number 01505036) or a group company of them operating the distribution centre neighbouring the Site for the Home Bargains brand

"Training Centre"

the training, research and development centre shown marked "Training Centre" on the Plan (including the Retail Area) and which is to be construed as part of the Development

2. CONSTRUCTION OF THIS DEED

2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.

2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.

2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.

2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and severally unless there is an express provision otherwise.

2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.

2.6 References to any party to this Deed shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the Council the successors to their respective statutory functions.

2.7 The headings are for reference only and shall not affect construction.

3. LEGAL BASIS

3.1 This Deed is made pursuant to Section 106 of the Act and section 111 of the Local Government Act 1972.

3.2	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.	
4.	CONDITIONALITY This Deed is conditional upon: (i) the grant of the Planning Permission; and (ii) the Commencement of Development save for the provisions of Clauses 7.1, 10, 11, 12 and 13 which shall come into effect immediately upon completion of this Deed.	
5.	THE OWNER'S COVENANTS The Owner covenants with the Council as set out in the First Schedule.	
6.	THE COUNCIL'S COVENANTS The Council covenants with the Owner as set out in the Second Schedule.	
7.	MISCELLANEOUS 7.1 The Owner shall pay to the Council on completion of this Deed the reasonable legal costs of the Council incurred in the negotiation, preparation and execution of this Deed in the sum of £1,000 (ONE THOUSAND POUNDS). 7.2 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999. 7.3 This Deed shall be registrable as a local land charge by the Council. 7.4 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction shall be given by the Head of Planning or designated Council Officer and any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party. 7.5 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed. 7.6 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.	

7.7	This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development.
7.8	No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Land but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
7.9	This Deed shall not be enforceable against owner-occupiers or tenants of dwellings constructed pursuant to the Planning Permission nor against those deriving title from them.
7.10	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 the Planning Permission) granted (whether or not on appeal) after the date of this Deed.
7.11	Nothing contained or implied in this Deed shall prejudice or affect the rights discretions powers duties and obligations of the Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority.
7.12	The Owner shall give to the Council not less than 14 days prior written notice of the intended Commencement of the Development.
7.13	The Owner shall give to the Council not less than 14 days prior written notice of the intended Occupation of the Training Centre and/or the Retail Area .
8.	WAIVER
8.1	No waiver (whether expressed or implied) by the Council of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.
9.	CHANGE IN OWNERSHIP
9.1	The Owner agrees with the Council to give the Council written notice of any change in ownership of the Owners freehold interest or of the grant of a leasehold interest exceeding 25 years of Term in the Site which occurs before all the obligations on the part of the Owner contained in this Deed have been discharged within 30 days of such change in ownership completing so that the local authority can trace successors in title. The written notice should give details of the transferee's or lessees name and address, together with details of the land or unit to which the interest applies.
10.	NOTICES
10.1	Any notice, demand or any other communication served under this Deed will be effective only if delivered by hand or sent by pre-paid first class post, or recorded delivery.

10.2	Any notice, demand or any other communication served is to be sent to the address of the relevant party set out at the beginning of this Deed or to such other address as one party may notify in writing to the others at any time as its address for service.
10.3	Any notice, demand or any other communication to be served on the Council is to be sent for the attention of the Head of Planning or designated Council Officer at Municipal Buildings, Dale Street, Liverpool L2 2DH quoting the Planning Application reference.
10.4	Where proceedings have been issued in the Courts of England and Wales, the provisions of the Civil Procedure Rules must be complied with in respect of the service of documents in connections with those proceedings.
11.	DISPUTE PROVISIONS
11.1	In the event of any dispute or difference arising between the parties to this Deed in respect of any matter contained in this Deed, at the agreement of all parties, such dispute or difference shall be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in England with such matters as may be in dispute and such person shall act as an expert whose decision shall be final and binding on the parties in the absence of manifest error and any costs shall be payable by the parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the parties in equal shares.
11.2	In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to Clause 13.1 or as to the appropriateness of the professional body then such question may be referred by either part to the president for the time being of the Law Society for him to appoint a solicitor to determine the dispute such solicitor acting as an expert and his decision shall be final and binding on all parties in the absence of manifest error and his costs shall be payable by the parties in equal shares.
11.3	Any expert howsoever appointed shall be subject to the express requirement that a decision was reached and communicated to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty-eight working days after he has received any file or written representation.
11.4	The expert shall be required to give notice to each of the said parties requiring them to submit to him within ten working days of notification of his appointment written submissions and supporting material and the other party will be entitled to make a counter written submission within a further ten working days.
11.5	This clause 13 does not apply to disputes in relation to matters of law or the construction or interpretation of this Deed which will be subject to the jurisdiction of the courts.

12.	JURISDICTION	12.1 This Deed is to be governed by and interpreted in accordance with the law of England and Wales.
13.	DELIVERY	13.1 The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated. IN WITNESS whereof the parties hereto have executed this Deed on the day and year first before written.

First Schedule

The Owner's Covenants with the Council

1. To ensure that the Training Centre does not become operational until after such time as the Existing Training Centre ceases to operate (excluding the existing first floor staff accommodation of the Existing Training Centre, which is to be retained for the accommodation of staff in association with the Training Centre).
2. To ensure that the Retail Units do not become operational until after the Training Centre has become operational.
3. To ensure that the Retail Area is only used in conjunction with the operation of the Training Centre.
4. To ensure that the Retail Area is operated by and personal to TJM and that in the event that training ceases, or the head office or distribution centre of TJM associated with the Training Centre ceases to operate from the neighbouring site, the use of the Retail Area shall also cease.
5. To provide to the Council on a six monthly basis (commencing on 1st January or 1st July (whichever is earlier) following initial occupation of the Training Centre) such detailed information as is reasonably requested by the Council in relation to training including for example numbers trained, number of trainees employed in the Retail Area and identity of stores where trainees have passed through the Training Centre are located to (and for the avoidance of doubt this list is not exhaustive).
6. Not to advertise the Retail Area in any national, regional or local press, nor on television or radio or through any other means nor for any signage to be erected that promotes the Retail Area as a retail store.

Second Schedule

Council's Covenants

1. The Council covenants with the Owner to acknowledge receipt of any notice given to it by the Owner under the terms of this Deed within 14 days of service of such notice.

Ward:	Fazakerley
Site:	Former Carcraft Site and TJM Training Centre Portal Way Liverpool 11
Proposal:	To convert existing training centre to offices (within Use Class B1); to convert existing car hypermarket building to form retail training centre with associated accommodation at first and second floor levels and 2 no. retail units (within Class A1) for bulky goods with associated external alterations and changes to site layout including revised parking and servicing, new access from Portal Way roundabout and external display area; and to carry out ancillary works including sprinkler tank and pumphouse.
Applicant:	T J Morris Limited
Application No.:	15F/3120
D.C. Team:	City North
Recommendation:	Approve with Conditions

Case Officer Report

Site Description

The application site is on Axis Business Park situated on the A580, East Lancashire Road. There are two elements to the application site situated to either side of Portal Way, the only access on to the Park. To the east is the existing Home Bargain Head Office and Training Centre and associated accommodation. The Training Centre takes the form of a retail unit and is open to the public but is used to train staff, including managers, and to trial new ways of working. To the west is the former Carcraft building (a sui generis use) set within its own grounds, which has been vacant since April 2014.

The wider Axis Park is occupied in part by DHL but primarily consists of the regional distribution centre for TJ Morris. They are currently in the process of expanding their operations, including the construction of an additional building, vehicle maintenance unit and staff gym at the rear of the wider site. Beyond this to the north are residential properties situated within the Knowsley MBC boundary, which extends to the east of the site also. Beyond this is the M57 motorway and the south, to the other side of the East Lancashire Road, is a primarily residential area as allocated in the adopted Unitary Development Plan (2002). This is where the closest residential properties to the applications site are situated and these are some 75 metres way. To the east is a bus depot relating to Stagecoach.

The application site is allocated for industrial development in the adopted Unitary Development Plan (2002).

The Proposal

The application proposes 3 elements as follows:

- The conversion of the existing training centre in to offices
- The change of use of the existing Carcraft building to provide 3 units comprising:
 - A training centre with associated accommodation at first and second floor levels and external garden centre area (ground floor area of 3,657sqm plus 929sqm for the garden centre)
 - 2 bulky goods retail units (2,035sqm and 2,062sqm for units A and B respectively)
- External alterations to the building fabric
- New access from Portal Way

Relevant Site History

There are many planning applications associated with the site but those of most relevance are as follows:

- 02F/1611 To erect car hypermarket and associated facilities. Grant with conditions.
- 03O/2036 To develop land for storage and distribution. Approved subject to conditions
- 04F/0975 To erect 2 storey building including retail training facility and associated parking and landscaping. Refused on the basis of insufficient justification for out of centre retailing.
- 07F/2969 To erect retail training area, offices, vehicular maintenance unit and ancillary works. Grant subject to conditions.
- 09F/0833 New vehicular access to the site. Approve with conditions.

Response to Consultations

Neighbours
The application was advertised by means of neighbour notification letter, site notice and press notice. No representations were received as a result.

Highways Manager
No objections subject to conditions (see detailed section below)

Environmental Health
No objections subject to conditions

Merseytravel
No objections subject to conditions

Environment Agency
No objection

Knowsley MBC
A representation has been made by Knowsley MBC on the basis of the technical elements of the sequential assessment and the potential impact on the Kirkby.

Planning Policy

Development should be carried out in accordance with the development plan unless material considerations indicate otherwise. The development plan comprises the Liverpool Unitary Development Plan (UDP) adopted 2002.

National Planning Policy Framework - This Framework came into effect on 27th March 2012 and sets out the Government's planning policies for England and how these are expected to be applied. The Framework re-iterates that planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.

UDP Policies - The following saved UDP policies are particularly relevant to the determination of this application and are considered to align with the principles, aims and objectives of the NPPF and therefore they are considered to carry significant weight:

GEN1: Economic Regeneration
E1: Primarily Industrial Areas
S12: Out of Centre Retailing
EP11: Pollution
T12: Car Parking in New Development
HD18: General Design Requirements
HD23: New Trees and Landscaping

Issues

The primary issues for consideration in the determination of this application are as follows:

- The Principal of Development
- Visual Amenity
- Residential Amenity
- Highway Safety

Officer Assessment

Principle of Development

The application site is within an area allocated for industrial purposes within the Liverpool Unitary Development Plan. As such, "saved" Policy E1 applies. This allocates the site for industrial and business uses together with small scale ancillary uses which can complement the main uses, particularly on main road frontages.

It is considered the principle of change of use from training facility to office accommodation to support the existing Head Office is acceptable in this location and is in accordance with national and local policy.

It is important to note that there is no requirement within the NPPF to disaggregate the proposed uses and it is accepted that the retail training centre, which would be open to the public, would clearly complement the activities associated with the Head Office and the principle of this has been accepted previously on the site providing training for managers and staff across the country within a "live" retail environment. This is facilitated by means of on-site overnight accommodation. There are specific and unique circumstances that

link the development to the Head Office and distribution centre within the expanding business.

The issue of principle has been considered in terms of out of centre retailing and the impact on the vitality and viability of Local/District Centres. The application has been accompanied by a detailed Planning and Retail Assessment, which has been supplemented by additional information based on queries raised during the course of the application. Matters have been assessed in detail including the identification of possible alternative sites and the potential impact on district and local centres both within this Authority and that of the neighbour, Knowsley.

Overall the impact of the scheme individually and cumulatively (both convenience and comparison) has been assessed. It would appear that the most significant potential impact in terms of percentage diversion from a centre would be at Walton Vale, which would be approximately 7.5% based on sensitivity and cumulative basis. The latest vitality and viability assessment of this centre considers that Walton Vale is generally healthy and includes a good range of units, incidentally including a Home Bargains. As such this level of impact could not be considered significant. The diversion from other centres is lower, including that on Kirby (as raised by Knowsley MBC) at 3.6%. Overall, therefore, none of the impacts can be considered significant.

The potential impact of the proposed retail facility on nearby centres has been fully considered and in practical terms, given the site location on a major route into the City with significant levels of customer car parking, the Head of Planning considers that the facility is likely to encourage travel by car and attract shoppers from a relatively wide catchment area. It is probable therefore that only limited trade will be diverted from existing established centres.

The Head of Planning therefore considers that the proposed development is justified in accordance with national and local planning policy and any impact would be limited. In addition, the Head of Planning recognises that the development would bring back in to use a large, vacant unit (former Carcraft) on a primary arterial route in to the city and would result in the creation of an additional 30 new jobs and 70 retained. As such it is considered that the proposal would bring significant economic and wider regeneration benefits to the area. This is of particular importance given the area has been identified as one of five regeneration areas given priority and where resources will be concentrated under Policy GEN1. The Head of Planning also notes that no objections have been lodged by any local traders or businesses.

The Head of Planning considers that an appropriate sequential approach has been taken in relation to the application with suitable assessment of the vitality and viability of existing centre. Taking all factors into account, he considers that, on balance, there are significant economic and regeneration benefits associated with the proposal. The development accords with planning policy, subject to conditions and a Section 106 agreement, and is unique due to its links to the existing Head Office and Distribution Centre. As such the application does not set a precedent for any similar retailing in this or any other part of the City with any future 'out-of-centre' retail applications being considered on their own merits.