

264

**Planning Obligation by Deed of Agreement
under Section 106 of the Town and Country
Planning Act 1990**

relating to the development of land at Axis
Business Park, Gilmooss, Liverpool

Dated :

15th May

2008

Liverpool City Council(1)

TJ Morris Limited (2)

Walton & Co
2 Queen Street
LEEDS
LS1 2TW

DATE

15th May

2008

PARTIES

- (1) LIVERPOOL CITY COUNCIL of Municipal Buildings, Dale Street, Liverpool, L2 2DH ("Council")
- (2) TJ MORRIS LIMITED (Company Number 01505036) of Portal Way, Axis Business Park, Gillmoss, Liverpool, L11 0JA ("Developer")

INTRODUCTION

- 1 The Council is the local planning authority for the purposes of the Act for the area in which the Site is situated.
- 2 The Developer is the freehold owner of the Site
- 3 The Developer 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 Condition 1 of the reserved matters approval 01RM/1265 forming part of the Existing Permission permits ancillary retailing in conjunction with the existing training facility on the Site.
- 5 The Council resolved on 15th January 2008 to grant the Planning Permission subject to the prior completion of this Deed.

NOW THIS DEED IS MADE IN PURSUANCE OF SECTION 106 OF THE TOWN AND COUNTRY PLANNING ACT 1990 AND 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 dated 17 th October 2007 submitted to the Council for the Development and allocated reference number 07F/2969
"Bringing Into Use"	commencing Retailing from the Retail Area which shall (for the avoidance of doubt) exclude occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations.
"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" shall be construed accordingly.
"Date of First Occupation"	means the date of first Occupation of the Training Centre as notified to the Council by the Developer pursuant to paragraph 1 of the Third Schedule to this Deed
"Date of Substantial Completion"	means the date the Distribution Warehouse is Substantially Completed as evidence by the issue of a certificate of practical completion by the Developer's architect or such other competent person authorised by the Developer
"Development"	the Development of the Site with warehouse extension to existing warehouse, conversion of existing etail/training area to distribution offices and amenity block, transport office extension, de kit baler and compactor area, vehicle maintenance unit, separate training research and development and retail centre, gatehouse along with external works, landscaped bund and landscaping as set out in the Application
"Distribution Warehouse"	the new extension to the existing distribution warehouse shown edged green on the Plan and which is to be constructed as part of the Development
"Existing Permission"	means outline planning permission 93P/2581 for Phase 1 Development – Class B8 distribution unit and all associated access, parking, servicing and landscape works together with reserved matters approval 01RM/1265 issued on 31 st July 2001
"Occupation" and "Occupied"	occupation of the Training Centre for the purposes permitted by the Planning Permission and this Deed but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and "Occupy" shall be construed accordingly.
"Operation"	means the operation of the Distribution Warehouse for the purposes permitted by the Planning Permission and this Deed but not including occupation by personnel 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 carrying drawing reference number 4397-84
"Planning Permission"	the full planning permission subject to conditions to be granted by the Council pursuant to the Application as set out in the Second Schedule.
"Report"	the written report which is to be submitted to the Council upon request and in accordance with paragraph 3 of the Third Schedule to this Deed

"Retail"	has the meaning given to it in Table 3 of Annex A of Planning Policy Statement 6 (Planning for Town Centres) (ODPM 2005) or any document superseding that document in force from time to time and "Retailing" shall be construed accordingly
"Retail Area"	that part of the Training Centre comprising the 9,700 sq. ft retail area as identified edged yellow and with the annotation "Retail Area" on Drawing 4397-085 attached to this Deed
"Site"	the land against which this Deed may be enforced as shown edged with a dashed red line on the Plan.
"Substantially Complete"	the completion of the construction of the the Distribution Warehouse including walls, warehouse floor slab and doors but all flashings to the cladding may not be complete and the doors may not be commissioned. The warehouse services will be installed but may not be commissioned. The service installation which forms part of the MHE installation will not be commenced and "Substantially Completed" shall be construed accordingly
"Training Centre"	the training, research and development centre shown edged blue on the Plan (including the Retail Area) and which is to be constructed 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 against each individually unless there is an express provision otherwise.
- 2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under 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 deriving title through or under that party and in the case of the Council the successors to its respective statutory functions.

3 LEGAL BASIS

- 3.1 This Deed is made pursuant to Section 106 of the Act Section 111 of the Local Government Act 1972 and Section 2 of the Local Government Act 2000 and all other enabling powers.
- 3.2 The covenants, restrictions and requirements imposed upon the Developer 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 Developer.

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 and 11 which shall come into effect immediately upon completion of this Deed.

5 THE DEVELOPER'S COVENANTS

- 5.1 The Developer covenants with the Council to observe the restrictions and to perform the obligations or activities as set out in the Second Schedule and the Third Schedule.

6 THE COUNCIL'S COVENANTS

- 6.1 The Council covenants with the Developer as set out in the Fourth Schedule.

7 MISCELLANEOUS

- 7.1 The Developer 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.

- 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 Developer 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 on behalf of:

- (i) the Council by the Planning Manager;

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 illegality 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 Developer 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 Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

7.9 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.

8 WAIVER

No waiver (whether expressed or implied) by the Council or Developer 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 (or Developer) from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

9 DETERMINATION OF DISPUTES

9.1 Subject to clause 9.7 if any dispute arises relating to or arising out of the terms of this Deed, either party may give to the other written notice requiring the dispute to be determined under this clause 9. The notice is to propose an appropriate Specialist and to specify the nature and substance of the dispute and the relief sought in relation to the dispute.

9.2 For the purposes of this clause 9 a "Specialist" is a person qualified to act as an expert in relation to the dispute having not less than ten years professional experience in relation to developments in the nature of the Development, property in the same locality of the site and the matters in dispute.

9.3 Any dispute over the type of Specialist appropriate to resolve the dispute may be referred at the request of either party to the President or next most senior available officer of the Law Society who will have the power, with the right to take such further advice as he may require, to determine the appropriate type of Specialist and to arrange his nomination under clause 9.4.

9.4 Any dispute over the identity of the Specialist is to be referred at the request of either party to the President or other most senior available officer of the organisation generally recognised as being responsible for the relevant type of Specialist who will have the power, with the right to take such further advice as he may require, to determine and nominate the appropriate Specialist or to arrange his nomination. If no such organisation exists, or the parties cannot agree the identity of the organisation, then the Specialist is to be nominated by the President or next most senior available officer of the Law Society.

9.5 The Specialist is to act as an independent expert and:

- (a) each party may make written representations within ten working days of his appointment and will copy the written representations to the other party;
- (b) each party is to have a further ten working days to make written comments on the other's representation and will copy the written comments to the other party;
- (c) the Specialist is to be at liberty to call for such written evidence from the parties and to seek such legal or other expert assistance as he or she may reasonably require;
- (d) the Specialist is to have regard to all representations and evidence before him when making his decision, which is to be in writing, and is to give reasons for his decision; and
- (e) the Specialist is to use all reasonable endeavours to publish his decision within 30 working days of his appointment.

9.6 Responsibility for the costs of referring a dispute to a Specialist under this clause 9, including costs connected with the appointment of the Specialist and the Specialist's own costs, but not the legal and other professional costs of any party in relation to a dispute, will be decided by the Specialist.

9.7 This clause 9 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.

10 **JURISDICTION**

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

11 **DELIVERY**

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

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

FIRST SCHEDULE

Details of the Developer's Title, and description of the Site

The freehold land shown edged red on the Plan being land on the North East side of Back Gilmoss Lane, Liverpool and which is registered at HM Land Registry under Title Number MS454410 and land lying to the north of the East Lancashire Road and which is registered at HM Land Registry under Title Number MS492851

SECOND SCHEDULE

Restrictions

The Developer covenants with the Council to observe the following restrictions on the use of the Site

Retail Area

1. Not to cause or permit the Bringing Into Use of the Training Centre until:
 - a. the Distribution Warehouse is Substantially Complete; and
 - b. Notice of the Date of Substantial Completion of the Distribution Warehouse has been served on the Council
2. From the Date of First Occupation of the Training Centre not to cause permit or suffer the use of the Retail Area for Retailing:
 - a. otherwise than in conjunction with or as ancillary to the operation of the Training Centre by TJ Morris and for the avoidance of doubt this paragraph 2 shall mean that the right to operate and use the Retail Area pursuant to the Planning Permission shall be personal to TJ Morris at all times; and
 - b. Unless the Report has been provided to the Council in accordance with paragraph 4 of the Third Schedule to this Deed;
 - c. Following the cessation of the use of the Training Centre by the Developer.
3. Not to continue to Occupy the Training Centre beyond the period of 12 months from the date of Bringing Into Use of the Retail Area unless the Distribution Warehouse has been brought into Operation.
4. Not to advertise the Retail Area in the national regional or local press, radio or television or through any other means or to cause permit or allow such advertisement.
5. Unless otherwise agreed in writing by the Council (acting reasonably) pursuant to this paragraph 5 and/or the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (SI 2007/783) (as the case may be) not to erect signage or cause or permit or allow any signage to be erected that promotes the Retail element of the Training Centre SAVE THAT to sign the Training Centre and Retail Area as the "Home Bargains National Training Centre" shall be permitted
6. Not to continue to Occupy the Training Centre in the event that the Developer has breached its obligations under the Third Schedule.

Existing Retail Rights

7. That from the date of Occupation of the Retail Area and notwithstanding condition 1 of the reserved matters approval 01RM/1265 which forms part of the Existing Permission the Developer shall not carry out Retailing on the Site pursuant to the Existing Permission.

THIRD SCHEDULE

The Developer's Covenants with the Council

The Developer covenants with the Council as follows:-

Retail Area

1. To inform the Council in writing of the Date of Substantial Completion of the Distribution Warehouse within 14 days of the Distribution Warehouse being Substantially Completed
2. To inform the Council in writing of the Date of First Occupation of the Training Centre within 14 days of first Occupation of the Training Centre
3. To inform the Council in writing of the date of Bringing Into Use of the Retail Area within 14 days of the Bringing Into Use of the Retail Area
4. On a six monthly basis beginning with the Date of First Occupation of the Training Centre to submit to the Council as soon as is reasonably practicable the Report providing information on:-
 - a. the number of staff trained in the Training Centre during the relevant six month period; ,
 - b. the numbers of trainees employed in the Retail Area during the relevant six month period; and
 - c. the identity of the store in the United Kingdom where each trainee that has trained at the Training Centre during the relevant six month period is currently located.and such other information in relation to the operation of the Training Centre as the Council, acting reasonably, may request of the Developer in writing .
5. As soon as is reasonably practicable following the cessation of the use of the Training Centre by the Developer to inform the Council in writing that such use has ceased

FOURTH SCHEDULE

Council's Covenants

Occupation

- 1 Within 14 days from receipt of the written notice submitted by the Developer pursuant to paragraph 1 or paragraph 2 or paragraph 3 of the Third Schedule to acknowledge receipt of the same in writing.

Report

- 2 Within 21 days from receipt of any Report submitted by the Developer pursuant to paragraph 4 of the Third Schedule to acknowledge receipt of the same in writing and to either:-
 - (a) confirm in writing that the Council (acting reasonably) is satisfied that the Report demonstrates that the use of the Retail Area is in accordance with the terms of this Deed; or
 - (b) confirm in writing why the Council reasonably considers that the use of the Retail Area is not in accordance with the terms of this Deed and provide an explanation as to why it considers that this is the case.

PROVIDED THAT if no such written confirmation is received from the Council within the 21 day period referred to in this paragraph 2 the Council shall be deemed to have confirmed its satisfaction with the Report as if it had done so pursuant to paragraph 2(a) above.

Cessation of Use

- 3 Within 14 days from receipt of any written notice submitted by the Developer pursuant to paragraph 5 of the Third Schedule to acknowledge receipt of the same in writing.