
**ASHFIELD DISTRICT COUNCIL
MEMORANDUM**

TO: A.D.C LAND CHARGES

FROM: PLANNING TECHNICAL SUPPORT

**SUBJECT: FORMER SUMMIT COLLIERY SITE WELSHCROFT CLOSE
KIRKBY IN ASHFIELD**

DATE: 10/04/2013 **REF: V/2013/0006**

Would you please register the above Section 106 Agreement (Town & Country Planning Act 1990) between:

I. Bolsover Properties

and

II. Ashfield District Council

Please find signed Section 106 agreement on F:\Archive\Planning\Temporary Scans\20130006 Section 106.tif

Planning Technical Support

THIS AGREEMENT is made the 9th day of April 2013

BETWEEN:

(1) BOLSOVER PROPERTIES LIMITED (Company Registered Number: 00877920) whose registered office is at Portland Estate Office, Cavendish House, Welbeck, Worksop, Nottinghamshire, S80 3LL ('the Owner')

(2) ASHFIELD DISTRICT COUNCIL of Council Offices, Urban Road, Kirby-in-Ashfield, Nottinghamshire, NG17 8DA ('the Council')

1. Definitions

IN THIS AGREEMENT the following words and phrases shall have the following meaning:-

1.1 "the Act" means Town and Country Planning Act 1990 (as amended) and terms not otherwise defined in this Agreement have the meaning ascribed to them in the Act unless a contrary intention appears

1.2 "agreed" or "approved" means agreed or approved in writing and given for the purpose of this Agreement and where this Agreement requires any matter to be approved by the Council such approval shall not be unreasonably withheld or delayed

1.3 "the Application" means the Planning Application dated 9th January 2013 in respect of the Proposed Development to which has been allocated the Council's Planning Application Reference No. 2013/0006

1.4 "the Application Site" means the land for which planning permission is sought to carry out the Proposed Development and which is shown for the purposes of identification only edged red on the Plan

1.5 "Commencement of the Development" or cognate terms means the point at which the Owner has implemented the Planning Permission by carrying out a material operation as defined in Section 56(4) (a)-(d)

- of the Act provided that the carrying out of development comprising trial holes bore pits or other ground investigation works or any other works relating to archaeology, ground surveys, works of demolition or the erection of advertisement hoardings shall not constitute commencement of the Development
- 1.6 "Highway Authority" means Nottinghamshire County Council or such other Local Government Authority or public body as shall for the time being have the statutory duty to maintain the public highways within the area of Kirby-in-Asfield
- 1.7 "the Obligations" means the planning obligations contained or referred to in the First Schedule to this Agreement
- 1.8 "the Plan" means the plan attached to this Agreement
- 1.9 "the Planning Permission" means the grant of Planning Permission pursuant to the Application
- 1.10 "the Proposed Development" means the reclamation and development of the derelict colliery site to use as an industrial estate and open storage as more particularly described in the Application
- 1.11 "the Receptor Site" means the land shown hatched blue on the Plan
- 1.12 "the Translocation Plan" means the Phased Translocation Schedules for Orchids and Dingy Skipper by Baker Shepherd Gillespie LLP dated 30th November 2012 submitted by the Owner with the Application
- 1.13 "the Transport Assessment" means the Revised Transport Assessment numbered RT30553-9-01 by WYG Transport Planning dated December 2012 submitted by the Owner with the Application.
- 1.14 Any reference to any statutory body (other than the parties to this Agreement) shall include any body to which (whether before or after the making of this Agreement) the relevant powers or duties of that statutory body shall be transferred.

2. Recitals

WHEREAS:-

2.1 The Owner is seized of the Application Site and the Receptor Site for an estate in fee simple in possession

2.2 The Owner has submitted the Application

2.3 The Council is the Local Planning Authority for the purposes of the Act for the area in which the Application Site is situated

2.4 The Council acting through the delegated powers of its Head of Land and Property has resolved to grant the Planning Permission for the Proposed Development in accordance with the Application and subject to the terms of this Agreement without which the Planning Permission would not be granted

2.5 The Owner has agreed to enter into this Agreement for the purpose of procuring the issue of the Planning Permission

3. Enabling Powers

The parties hereto enter into this Agreement under and pursuant to Section 106 of the Act.

4. Planning Obligations

4.1 The Obligations are planning obligations for the purposes of Section 106 of the Act to the intent that the Obligations shall be binding and enforceable without time limit against the Owner and any persons deriving title from him in the manner specified in Section 106 of the Act.

4.2 The Council is the Authority entitled to enforce the Obligations.

5. Conditionality

The Obligations are conditional upon the issue of the Planning Permission.

6. Covenant

The Owner hereby covenants with the Council pursuant to Section 106 of the Act that the Application Site and the Receptor Site shall be subject to the Obligations and that the Owner will at his own expense duly carry out and perform the Obligations

7. Agreements and Declarations

It is agreed and declared as follows:

7.1 Any reference to a party to this Agreement shall where the context so admits include their successors in title and assigns

7.2 Words importing one gender shall be construed as importing any gender, and words importing the singular shall be construed as importing the plural and vice versa

7.3 No person shall be liable for breach of covenant contained in this Agreement after he shall have parted with all interest in such part or parts of the Application Site or the Receptor Site in respect of which such breach occurs but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest

7.4 If the Planning Permission having been granted shall expire before the Proposed Development is begun, or shall at any time be revoked, this Agreement shall forthwith determine and cease to have effect

7.5 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Application Site in accordance with a planning permission (other than the one relating to the Proposed Development as specified in the Application) granted after the date of this Agreement

7.6 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

7.7 The Agreement is a Local Land Charge and shall be registered as such

8. Costs

The Owner shall on the execution of this Agreement pay the Council's costs incurred in the preparation and settlement of this Agreement in the sum of £3,036.20

IN WITNESS whereof the parties have executed this Agreement as a Deed the day

and year first before written

[Faint, illegible text, possibly a signature or stamp]

FIRST SCHEDULE

THE OBLIGATIONS

Part 1 - Ecology

1. No Development shall be Commenced anywhere on the Application Site until the Owner shall have submitted to the Council and the Council shall have approved:

1.1 A Method Statement showing the means by which the ecology works schedule Phases 1 and 2 detailed in the Translocation Plan shall be carried out ("the Method Statement") and which shall include details of:

1.1.1 plant and machinery to be used,

1.1.2 all appropriate health and safety measures to be taken, routes

and means by which material is to be excavated from the

Application Site, transported and repositioned on the Receptor

Site,

1.1.3 the means of disposal of any timber, scrub or other material

removed from the Receptor Site

1.1.4 a timetable for the implementation of construction on the

Application Site pursuant to the Planning Permission which shall

facilitate the timely execution of all tasks in Phases 1 and 2 of

the ecology works in the Translocation Plan and

1.1.5 all such other matters as the Council may reasonably require to

ensure that Translocation Plan can be implemented timeously,

safely and without detriment to the amenity of the occupiers of

other properties in the vicinity.

1.2 A landscape maintenance plan setting out:

1.2.1 the ecological management to be undertaken

1.2.1.1 on the Receptor Site for the period of ten years from the

date upon which the first work is carried out on the

Receptor Site pursuant to the Translocation Plan,

1.2.2) expiry of the relevant ten year period.
(as the same may be amended from time to time in accordance with paragraph
satisfaction of the Council in accordance with the Landscape Maintenance Plan
site to which the Landscape Maintenance Plan applies to the reasonable
The Owner shall maintain the Receptor Site and those parts of the Application

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agreed by the Council.
execution of any steps thereby necessitated unless or to the extent otherwise
with all recommendations in any monitoring report and procure the timely
and submit them timeously to the Council for approval. The Owner shall comply
monitoring reports as required by Table 1 Item 24a of the Translocation Plan
Translocation Plan and shall further procure the preparation of annual
some other suitably qualified ecologist of the implementation of the
The Owner shall procure the monitoring by Baker Shepherd Gillespie LLP or

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the Council.
accordance with the Method Statement has been completed and approved by
carried out unless the equivalent stage of work on the Receptor Site in
the Method Statement and nor shall any such work on the Application Site be
Application Site pursuant to the Planning Permission except in accordance with
No excavation, construction or engineering work shall be carried out on the

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("the Landscape Maintenance Plan").
the ten year periods
for amendments to be agreed in respect of the remaining part of
the Council of the ecological management to be undertaken and
1.2.2 a mechanism for the joint periodical review by the Owner and
occupied,
date upon which the Proposed Development is first
Planning Permission for the period of ten years from the
the Council in accordance with condition 17 of the
management pursuant to the details to be approved by
designated as areas requiring continuing ecological
1.2.1.2 on those parts of the Application Site that are

Part 2 - Transport

5 In this Part 2 of this First Schedule

5.1 "Travel Plan" means a written plan to promote the use of sustainable transport in connection with the use and occupation of the Proposed Development as discussed in section 5 of the Transport Assessment which sets out:

5.1.1 final targets for the number of vehicles entering or leaving the

Application Site on a regular basis

5.1.2 the adoption of measures to reduce single occupancy car travel

to and from the Application Site

5.1.3 monitoring periods for the regular review of the operation of

Travel Plan and the preparation of Monitoring Reports.

5.2 "Monitoring Report" means a written report which proposes revised initiatives and measures where Travel Plan targets are not being met together with implementation dates therefor

6 The Proposed Development shall not be occupied or brought into use until the Owner has appointed a Travel Plan Coordinator approved by the Highway Authority ("the Travel Plan Coordinator"). The Owner shall continue to engage the Travel Plan Coordinator (or, in the event of the Travel Plan Coordinator terminating the appointment a suitable substitute approved by the Highway Authority) for a period of five years

7 The Owner shall procure that the Travel Plan Coordinator shall not later than three months after the first occupation of the Proposed Development produce and submit to the Highway Authority for approval the Travel Plan

8 As soon as the Highway Authority shall have approved the Travel Plan the Owner shall:

8.1 Implement the same in accordance with the timetable therein, and

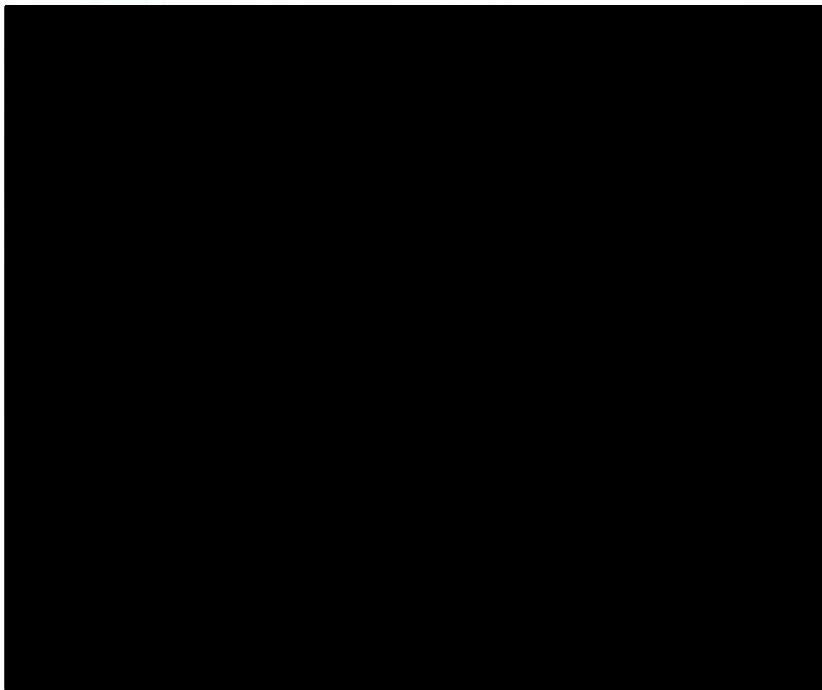
8.2 Procure that the Travel Plan Coordinator

- 8.2.1 updates the Travel Plan as often as may be necessary consistent with future travel initiatives;
- 8.2.2 Submits all such updates to the Highway Authority
- 8.2.3 submits reports to and updates the TRICS database in accordance with the standard assessment methodology or similar methodology approved by the Highway Authority
- 8.2.4 prepares and submits Monitoring Reports to the Highway Authority for approval as required by the Travel Plan

The Owner shall comply with all recommendations in any Monitoring Report and procure the timely implementation of any revised initiatives and measures therein proposed unless or to the extent otherwise agreed by the Highway Authority.

10 The Owner shall not occupy or cause or allow to be occupied any building on the Application Site until there has been paid to the Highway Authority the sum of FOUR THOUSAND FOUR HUNDRED POUNDS (£4,400) as a contribution to the cost of reviewing the Monitoring Reports and a receipt showing that the payment has been made has been provided to the Council.

WITNESSETH



EXECUTED AS A DEED by
ASHFIELD DISTRICT COUNCIL
having affixed its COMMON SEAL
to this deed in the presence of

D U P L I C A T E



EXECUTED AS A DEED by
BOLSOVER PROPERTIES LIMITED
having affixed its COMMON SEAL
to this deed in the presence of

SEAL NO. 184/1



email D.Riddovt 20.03.13 (12:53)

