

5106/461

ASHFIELD DISTRICT COUNCIL
MEMORANDUM

TO: LOCAL LAND CHARGES
FROM: LEGAL DEPARTMENT
SUBJECT: The Harriers Public House Site Hucknall
DATED: 23 January 2015

Would you please register the above Sec 106 Agreement

between:

- 1 Ashfield District Council
 - 2 Chevron Aerospace Limited
- AS A LOCAL LAND CHARGE.

I enclose a copy of the deed for your attention.

Robert Illsley Legal Executive
Legal Department

RECEIVED ON
23 JAN 2015 (9.15AM)
LAND CHARGES

THIS AGREEMENT is made the 23 day of January 2015
BETWEEN:

(1) ASHFIELD DISTRICT COUNCIL of Council Offices Urban Road
Kirkby in Ashfield Notts NG17 8DA ("the Council")

(2) CHEVRON AEROSPACE LIMITED (Company Registration Number
04708776) of 2 The Paddock Attenborough Beeston Nottingham NG9
6AR ("the Owner")

BACKGROUND

- 1) The Council is the local planning authority for the purposes of the Act for the area within which the Site is located
- 2) The Owner is the freehold owner of the Site registered with Title Absolute in part under Title Number NT443174 and in part under Title Number NT453332 and in part under Title Number NT444963 free from incumbrances
- 3) The Owner has submitted the Application to the Council and the Council has agreed to grant the Planning Permission subject to the completion of this Agreement
- 4) The Council requires and it is the purpose of this Agreement to secure contributions towards off-site open space and education without which the Planning Permission will not be granted
- 5) The parties have agreed to enter into this Agreement with the intention that the obligations contained in this Agreement may be enforced by the Council against the Owner and (subject as mentioned) its successors in title and assigns and with the intention that this Agreement shall bind the owners and occupiers of the Site other than the owners or occupiers of any Residential Units and any service authority and/or utility company
- 6) In this Agreement the following terms shall have the following meanings:
"the Act" means the Town and Country Planning Act 1990 (as amended)

“the Application”

means the Application for full planning permission made under the Council’s reference V/2014/0432 for the demolition of the former Harriers Public House and construction of 10 dwellings, access road and associated landscaping

“the Commencement Date”

means the date upon which the Development shall be commenced by the carrying out on the Site pursuant to the Planning Permission of a material operation as specified in Section 56 of the Act excluding (for the purposes of this Agreement and for no other purpose) any operations relating to the demolition of any existing buildings or clearance of the Site, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions -temporary means of enclosure, the temporary display of site notices or advertisements.

“Development”

means the development of the Site for housing as set out in the Planning Permission

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V/2014/0432

The Harrier, Christchurch Road, Hucknall

Scale: 1 to 750

Date: 29 Dec 2014



Ashfield



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"Education 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 provide compulsory state education within the district of Ashfield

"Education Contribution"

means the sum of £22,910.00 index linked

"Education Need"

means the provision of primary places at the Edgewood Primary School necessitated by the Proposed Development

"Index"

means the All Items Retail Prices Index published by the Office for National Statistics contained in the monthly Digest of Statistics (or contained in any official publication substituted therefor) or such other index as may from time to time be published in substitution therefor or in the case of Education Contribution means Public Tender Price Index as published by the Department of Business Enterprise and Regulatory Reform or such other index as may from time to time be published in substitution thereof

"Index Linked"

means such increase or decrease to sums payable to the Council under

this Agreement on an annual basis or pro rata per diem from the date of grant of the Planning Permission until such time that payment of any sums in this Agreement is made such index linking to be equivalent to any inflationary increase or decrease on such sums in proportion to the increase or decrease taking as the measure of inflation the Index last published before the date of the Agreement or any publication substituted for it

“Interest”

means the Interest Rate referred to in Clause 22

“Occupation”

Occupation for the purposes permitted by the Planning Permission 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. Occupy and Occupied shall be construed accordingly.

“the Open Space Contribution”

means £3,000.00 (three thousand pounds) Index Linked per Residential Dwelling constructed in accordance with the Planning Permission as a contribution to the off-site open space and Public Realm works in the vicinity of the Development as set out in the Second Schedule

“the Plan”

means the Plan annexed hereto

“the Planning Permission”

means the planning permission granted pursuant to the Application a draft of which is attached to this Agreement in the Third Schedule

“Public Realm Provisions”

means provisions in relation to any and all publicly owned street and roads and any public and civic owned buildings

“Repayment Interest”

means the Labor Rate for the time being in force

“Residential Unit”

means a dwelling (including a house flat or maisonette) to be constructed on the Site pursuant to the Planning Permission

“the Site”

means ALL THAT freehold property registered in part under title number NT443174 and in part under Title Number NT453332 and in part under Title Number NT444963 situate at the Former Harrier House Site Hucknall Nottingham as shown edged red on the Plan

7) Where the context so admits:-

- (a) the masculine feminine and neuter genders include each of the other genders and the singular includes the plural and vice versa;
- (b) save as expressly provided in this Agreement or where to construe otherwise would be inconsistent with the requirements or provisions of

the same covenants, restrictions, liabilities, obligations and liabilities of a party comprising more than one person are obligations of such persons jointly and severally;

- (c) reference to "the Owner" in this Agreement shall include its successors in title and assigns and all persons deriving title under them except as stated in paragraph (5) and in operative clause 6 and where otherwise expressly provided;
- (d) a covenant, restriction, liability or obligation by any party to this Agreement not to do something shall be construed as including a covenant, restriction or obligation not to permit or knowingly suffer it to be done by a third party;
- (e) reference to any statutory or other body or to the Head of Planning and Regulatory Services or Group Manager Planning shall include reference to its successors in function;
- (f) reference to a clause or schedule is a reference to a clause or schedule contained in this Agreement;
- (g) reference to Statutes Acts Orders Directions Regulations and Instruments includes (where appropriate) reference to their amendments and replacements

OPERATIVE CLAUSES

1. This Agreement is made pursuant to Section 106 of the Act and this Agreement and the covenants restrictions liabilities and obligations contained in this Agreement or agreed or completed pursuant to it are planning obligations for the purposes of that section which are enforceable by the Council.
2. In so far as any of the covenants, restrictions, liabilities and obligations contained in this Agreement are not planning obligations within the meaning of the Act they are entered into pursuant to the powers contained in Sections 111 and 120 of the Local Government Act 1972, Section 2 of the Local Government Act 2000, Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 and all other powers enabling the parties hereto to enter into the Agreement and in consideration of the covenants, restrictions, liabilities and obligations hereinafter contained

3. The covenants, restrictions, liabilities and obligations in this Agreement shall only come into effect on the Commencement Date unless otherwise specifically indicated in this Agreement or to construe otherwise would be inconsistent with the requirements of any such covenants
4. The Owner covenants with the Council so as to bind the Site and each and every part thereof to carry out and comply with the covenants restrictions liabilities and obligations contained mentioned or referred to in the First Schedule
5. The Council covenant with the Owner to comply with their respective obligations set out in the Second Schedule
6. No person shall be liable for any breach of the covenants, restrictions, liabilities or obligations contained in this Agreement occurring after they have parted with all of their interest in the Site or the part of the Site in respect of which such breach occurs but without prejudice to their liability for any subsisting breach prior to parting with such interest
7. For the avoidance of doubt it is agreed and declared that if the Planning Permission shall expire before the Commencement Date or be quashed as a result of legal proceedings, then this Agreement shall forthwith determine and cease to have effect
8. All notices, approvals, consents or other documents to be served on or by the Council under the provisions of this Agreement shall as appropriate be issued by or served on the Head of Planning or Group Manager Planning of the Council as appropriate.
9. Any approval required pursuant to this Agreement must not be unreasonably withheld or delayed
10. Anything in this Agreement which has to be done to the Council's satisfaction must be done to the Council's reasonable satisfaction and in the case of any provision of this Agreement which requires confirmation (by whatever name) of such satisfaction (or reasonable satisfaction) by the Council the parties agree that the same shall not be unreasonably delayed or refused
11. Nothing in this Agreement shall be construed or implied so as to prejudice or affect the rights, discretions, powers, duties and obligations

of the Council under all Statutes Byelaws Statutory Instruments Orders or Regulations or in the exercise of their statutory functions

12. This Agreement shall be registered as a Local Land Charge by the Council

13. Unless expressly stated otherwise, nothing in this Agreement will create any rights in favour of any person pursuant to the Contracts (Rights of Third Parties) Act 1999

14. Unless otherwise specifically indicated in this Agreement or to construe otherwise would be inconsistent with the requirements of this Agreement, nothing in this Agreement 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 Agreement

15. No waiver (whether expressed or implied) by the Council or the Owner of any breach or default in performing or observing any of the covenants terms or conditions of this Agreement shall constitute a continuing waiver and no such waiver shall prevent the Council or the Owner from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default

16. Any dispute under or arising out of the operation of this Agreement may be referred to a single arbitrator if both parties shall agree on one or in default of agreement to a single arbitrator to be nominated (upon the application of any party to the dispute) by the President for the time being of the Law Society in accordance with and subject to the provisions of the Arbitration Act 1996

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

18. It is hereby agreed that none of the terms obligations and covenants in this Agreement shall to any degree be binding upon or enforceable against:-

- a) any owner of an interest in any part of the Site who occupies that part as a Residential Unit; and or
- b) any owner of an electricity sub-station and or gas governor site and or pumping station or other service supply installation

and such persons are not to be treated as a person deriving title from the Owner for the purposes of Section 106(3) of the Act

19. Any variations of the terms of this Agreement (other than minor amendments or variations of a transitory nature not affecting the nature or extent of liability hereunder) may be evidenced only by a supplemental deed executed as a deed of variation by the parties unless the Council otherwise indicates in writing and a copy of any supplemental agreement shall be sent to the Council for the purpose of amending the Local Land Charges Register
20. This Agreement is governed by and interpreted in accordance with the law of England and Wales
21. The provisions of this Agreement (other than this clause which shall be of immediate effect) shall be of no effect until this Agreement has been dated
22. If the owner fails to make any payment due to any other party under this deed by the due date for payment then without limiting such other party's remedies the Owner shall pay interest on the overdue amount at the rate of 8% per annum, such interest rate shall accrue on a daily basis from the due date of actual payment of the overdue amount before or after judgement. The Owner shall pay the interest together with the overdue amount. For the avoidance of doubt the due dates for payment are set out in the First Schedule of this deed

THE FIRST SCHEDULE

The Owners Obligations

1. For the purposes of monitoring compliance with this Agreement the Owner shall:
 - 1.1 give the Council notice in writing within 14 days of the Commencement Date that Development has commenced on the Site
 - 1.2 notify the Council in writing of the total number of the Occupied Residential Units comprised in the Development in respect of any part of the Site in its ownership each and every month from the first Occupied Residential Unit on the Site until the Open Space and Education Contributions have been paid in full

2. The Owner shall pay to the Council on completion of this Agreement the Council's reasonable legal costs and disbursements in connection with the negotiation, preparation and completion of this Agreement amounting to £495.00

3. The Owner shall:

3.1 not Occupy or cause or permit to be Occupied (disregarding any show houses or sales offices) more than 50% (fifty percent) of the Residential Units to be built in accordance with the Planning Permission unless payment has first been made to the Council of 50% of the Open Space Contribution in accordance with paragraph 3.2

3.2 pay 50% of the Open Space Contribution to the Council prior to the Occupation of 50% (fifty percent) of the Residential Unit on the Site in accordance with the Planning Permission

3.3 pay the remaining 50% of the Open Space Contribution on the Occupation of 80% of the Residential Units

4. The Owner shall:

4.1 not Occupy or cause or permit to be Occupied (disregarding any show houses or sales offices) more than 50% of the Residential Units to be built in accordance with the Planning Permission unless payment has been made to the Council of 50% of the Education Contribution in accordance with paragraph 4.2

4.2 pay 50% of the Education Contribution to the Council prior to the Occupation of 50% Residential Unit on the Site in accordance with the planning permission

4.3 pay the remaining 50% of the Open Space Contribution on the Occupation of 80% of the residential units

THE SECOND SCHEDULE

The Council's Obligations

1.1.1 To use the Open Space Contribution towards improvement to public open space and Public Realm Works in the District of Hucknall

1.1.2 To provide to the Owner on request evidence as to how much of and how the Open Space Contribution has been spent expended or allocated

1.1.3 To refund the Owner (or otherwise the real or corporate person who has paid the Open Space Contribution to the Council) such part of the Open Space Contribution as has not been allocated committed or expended in accordance with paragraph 1.1.1 above within 5 years from the date of receipt by the Council of the final instalment together with Interest for the period from the date of payment to the date of refund

1.2 At the written request of the Owner the Council shall provide written confirmation of the discharge of the obligations on the part of the Owner contained in this Agreement subject to such obligations having been duly discharged and shall remove this Agreement from the Local Land Charges Register.

THE THIRD SCHEDULE

Where in this Agreement reference is made to the Education Contribution the following provisions shall apply to such payment:-

1. Any Education Contribution received by the Council shall be ring fenced and be spent only in accordance with the National Planning Policy Framework following provisions of this Schedule
2. The Council will work in Conjunction with the Education Authority to procure that capital expenditure is undertaken by the Education Authority to make provision for the Education Need. The Council at its sole discretion will agree with the Education Authority a programme of works to address the Education Need but will, if at any time requested by the owner in writing, advise the Owner of any works agreed pursuant to this paragraph
3. As soon as the Council is satisfied that the Education Authority has let a contract for work to meet the Education Need or has otherwise entered into a binding commitment to meet it the Council may in its absolute discretion release to the Education Authority a sum from the amounts(s) ring fenced by the Council to meet the Education Need up to an amount which the Council in its absolute discretion is satisfied that the Education Authority has committed to meet the Education Need

4. Where the Council has received more than one Education Contribution in respect of the same Education Need, whether from the Owner or the other owners of sites which also give rise to the same Education Need, the Education Contributions received by the Council shall be applied by them in payment to the Education Authority in the order in which they were received by the Council

5. If any Education Contribution has not been paid by the Council to the Education Authority by the fifth anniversary of the date on which the Education Contribution was made then upon receipt by the Council of written notice of the Owner requiring the Education Contribution to be paid the Council shall repay it with Repayable Interest to the Owner (which for the purposes of this and the next following paragraph only shall mean the owner by whom the Education Contribution is made and not its successors it title). For the avoidance of doubt, any sum paid out of an Education Contribution by the Council to the Education Authority after the fifth anniversary of its payment but before the Council is served with written notice pursuant to this paragraph, any amount actually paid by the Council to the Education Authority before receipt of such notice shall not have to be repaid to the Owner

6. At any time prior to the fifth anniversary of the making of the final instalment of the Education Contribution the Council shall upon written request by the Owner supply to the Owner reasonable short particulars of any payments made by the Council to the Education Authority from that Education Contribution pursuant to the provisions of this Schedule provided that the Council shall be under no further obligation to any such request after they have given sufficient particulars pursuant to this paragraph showing that the whole of the Education Contribution has been expended

THE FOURTH SCHEDULE

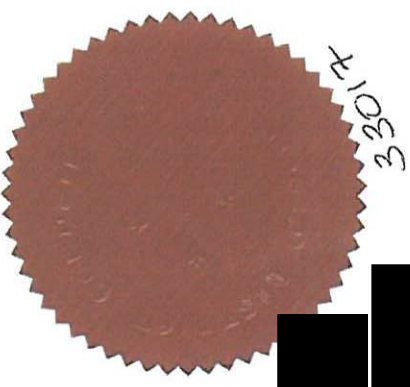
Draft Form of Notice of Planning Permission

Planning Permission reference V/2014/0432 in the draft form annexed to this Agreement to be issued pursuant to the Application

IN WITNESS WHEREOF these presents have been duly executed as a Deed
by the Parties hereto the day and year first before written

THE COMMON SEAL of ASHFIELD)

DISTRICT COUNCIL was hereunto affixed
in the presence of:-



EXECUTED as a DEED by
CHEVRON AEROSPACE
acting by two Directors or a Director
and its Secretary:



Director

Director/Secretary

DATED 23 January 2015

ASHFIELD DISTRICT COUNCIL

and

CHEVRON AEROSPACE LIMITED

AGREEMENT

(under S106 of the Town and Country Planning Act 1990)

(under S106 of the Town and County Planning Act 1990)
re Residential Development at The Former Site of The Harriers Public House
Hucknall Nottingham

Ruth Dennis
Ashfield District Council
Civic Centre
Chesterfield Road South
Mansfield
Notts
NG19 7BH