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- email: planning.admin@ashfield.gov.uk
- telephone: 01623 457 388

5106/445

J.Lester

From: R.Illsley
Sent: 07 May 2014 12:50
To: J.Lester
Subject: Land at thr rear of 50 Columbia Ave Huthwaite
Attachments: Slpc_austri14050712390.pdf

Hi Jane,

I attach a copy of the completed deed in this matter for your attention.

Kind regards

Rob

-----Original Message-----

From: ithelpdesk@ashfield-dc.gov.uk [<mailto:ithelpdesk@ashfield-dc.gov.uk>]
Sent: 07 May 2014 12:40
To: R.Illsley
Subject: Message from lpc_austria

J.Lester

From: landcharges
Sent: 08 May 2014 10:35
To: R.Illsley
Subject: Section 106 Agreements - Land Rear of 50 Columbia Street Huthwaite (V/2013/0336) & Land at John Davies Workshops Main Street Huthwaite (V/2013/0334)

Hi Rob,

I can confirm that the above Agreements have been registered as Local Land Charges with effect from today 08/05/2014.

Kind regards

Jane Lester
Local Land Charges Assistant
Ashfield District Council
Tel 01623 457313

DATED

7 March

2014

ASHFIELD DISTRICT COUNCIL

And

MATTHEW WOOD

AGREEMENT

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

Residential Development of Land to the
Rear of Number 50 Columbia Street
Huthwaite Sutton in Ashfield
Nottingham NG17 2JA

P.G. Marshall
Chief Executive,
Ashfield District Council

THIS AGREEMENT is made the 7 day of March 2014

BETWEEN:

- (1) ASHFIELD DISTRICT COUNCIL of Urban Road Kirkby in Ashfield Nottinghamshire NG17 8DA ("the Council")
- (2) MATTHEW WOOD C/O Waterside Derby Road Swanwick Alfreton Derbyshire DE55 1AD ("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 which is registered at the Land Registry with Title Absolute under Title Numbers NT391276 and NT404553 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 the provision of an age restriction on occupation of any Residential Unit Highway Provisions and Off Site Open Space Contribution
- 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 his successors in title and assigns and with the intention that this Agreement shall bind the owner and occupiers of the Site other than any service authority and/or utility company
- 6) In this Agreement the following terms shall have the following meanings:

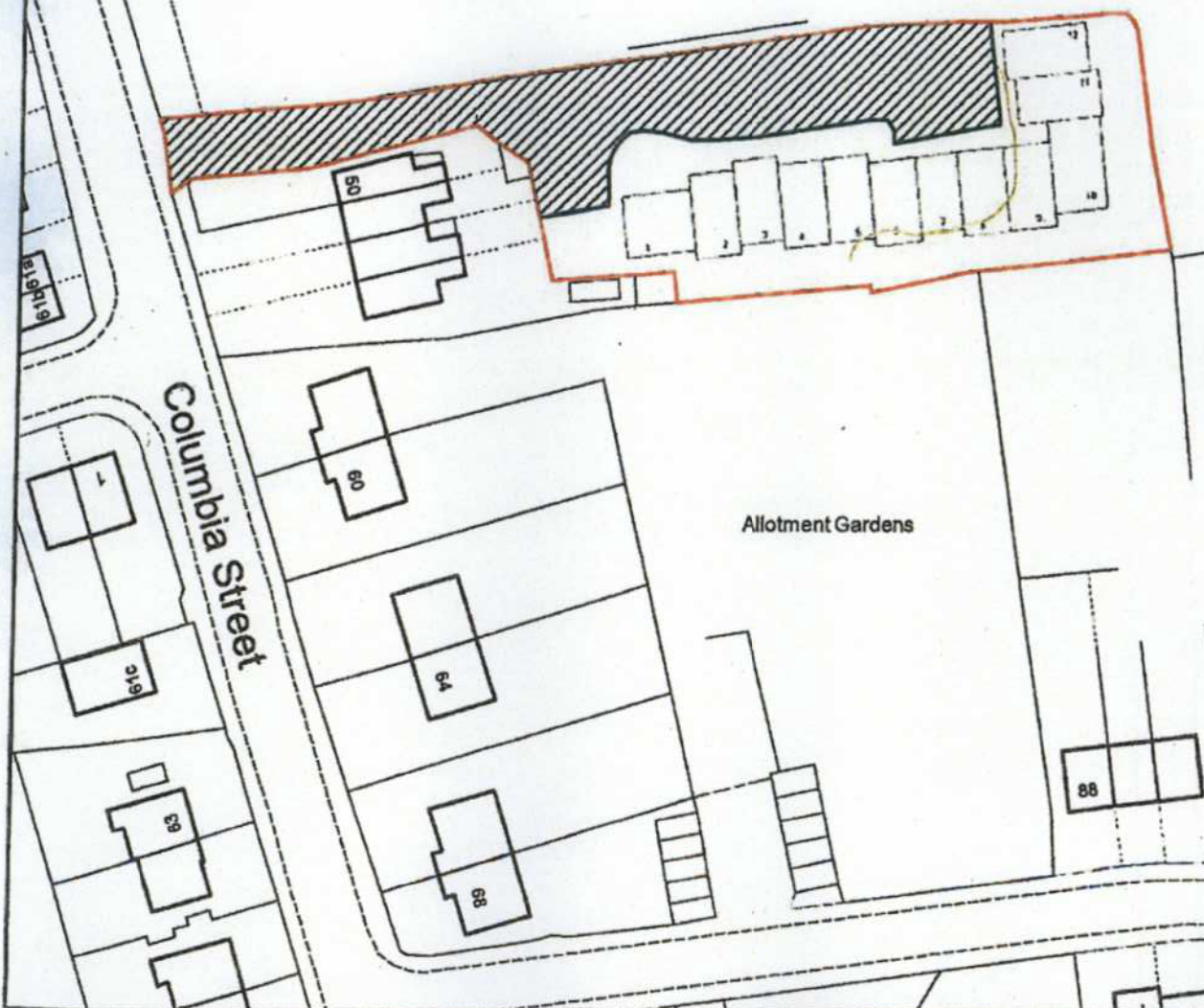
"Act"

the Town and Country Planning Act
1990 (as amended)

"Application"	the Application for planning permission made under the Council's reference V/2013/0336
"Commencement Date"	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 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, diversion and - temporary means of enclosure, the temporary display of site notices or advertisements.
"Completed and Complete"	means a Dwelling which has been plastered out and is capable of being occupied with the minimum amount of finishing required including the final fix of bathroom and kitchen

"Development"	means the development of the Site for housing as set out in the Planning Permission
"Highway Scheme"	means a scheme approved by the Council in writing detailing the construction draining lighting signage and future maintenance and management of the Highway
"Highway"	means that part of the Site hatched and edged green on the Plan on which the roadway is to be constructed in accordance with the Highway Scheme
"Interest Rate"	means 8% per annum above the Bank of England Base Rate for the time being in force
"Off Site Open Space Contribution"	means the sum of £6000.00 payable in accordance with the provisions of the Third Schedule
"Plan"	the Plan annexed hereto
"Planning Permission"	means the planning permission which may be granted pursuant to the Application
"Qualifying Person"	means a person who is aged 55 years or above

AUTHORISED OFFICER



— Planning application boundary



Area hatched green to be be privately managed/maintained as stipulated in the associated S106 agreement



Ashfield

Scale: 1 to 750

Date: 27 Dec 2013



"Qualifying Age"	means 55 years or above
Residential Unit"	means a dwelling (including a house flat apartment or maisonette) to be constructed on the Site pursuant to the Planning Permission together with the curtilage of such dwelling.
"Repayment Interest"	means the LIBOR RATE for the time being in force
"Site"	ALL THAT freehold property as Land to the rear of 50 Columbia Street Huthwaite Sutton in Ashfield Nottinghamshire NG17 2JA 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 his successors in title and assigns and all persons deriving title under him except as stated in paragraph 5) of the provisions of this Agreement headed Background and in clause 6 of the provisions of this Agreement headed Operative Clauses 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 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.
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 that part of the Site hatched and edged green on the Plan and each and every part thereof to carry out and comply with the covenants restrictions liabilities and obligations on the part of the Owner contained mentioned or referred to in the First Schedule
5. 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 Second and Third 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. The owners tenants or occupiers of any part of the Site shall not be liable for any breach of the covenants, restrictions liabilities or obligations contained in the First Schedule and the Second and Third Schedule to this Agreement occurring on any other part of the Site
8. 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
9. 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 as appropriate.
10. Any approval or consent required pursuant to this Agreement must not be unreasonably withheld or delayed
11. Anything in this Agreement which has to be done to the Council's satisfaction must be done to the Council's reasonable satisfaction

12. 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
13. This Agreement shall be registered as a Local Land Charge
14. 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
15. 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
16. 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
17. Any dispute under or arising out of the operation of this Agreement may be referred to a single arbitrator who shall be appointed jointly by the Council and the Owner and in default of agreement as to the appointment within fourteen days 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
18. All consideration given in accordance with the terms of this Agreement shall be exclusive of any value added tax properly payable
19. 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 Council covenants with the Owner that the Council will:
 - 21.1 carry out and comply with the obligations on the part of the Council contained in the First Schedule; and
 - 21.2 carry out and comply with the obligations on the part of the Council contained in the Fourth Schedule
22. 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
23. 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
24. If the Owner fails to make any payment due to any party under this Deed by the due date for payment then without limiting the other party's other remedies the Owner shall pay Interest on the overdue amount at the Interest Rate such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount whether before or after judgement and no further Residential Units to be built on the Site shall be completed beyond the relevant trigger point for any further payment whilst such sum(s) or any part thereof (including interest as aforesaid) remains unpaid. The Owner shall pay interest together with the overdue amount. For the avoidance of doubt the due date for payment is set out in the Third Schedule of this Agreement

THE FIRST SCHEDULE

Maintenance of the Highway

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; and
 - 1.2 notify the Council in writing of the total number of the Residential Units comprised in the Development that have been Completed on or before the end of each and every month during the period commencing on the day on which the first Residential Unit on the Site is Completed and ending at the end of the month during which the last of the Residential Units on the Site shall be Completed
2. The Owner shall
 - 2.1. Prior to the Commencement of Development submit to the Council for approval in writing the Highway Scheme
 - 2.2. Not Commence the Development until the Highway Scheme has been approved in writing by the Council
 - 2.3 Complete the construction and laying out of the roadway on the Highway in accordance with the Highway Scheme and to the reasonable satisfaction of the Council prior to the date on which the first of the Residential Units to be constructed on the Site has been Completed
 - 2.4 Maintain the Highway for a minimum period of 12 months after the completion of the laying out and construction of the Highway under the Highway Scheme and carry out all necessary repairs during this period as necessary

- 2.5 At the end of the maintenance period of 12 months the Council shall procure that the Council's Surveyor (or independent equivalent appointed by the Council) shall with all reasonable diligence make his inspection and either;
- 2.5.1 give his written certificate that the Highway has been constructed in accordance with the Highway Scheme; or
- 2.5.2 make a written report setting out any aspects in which the specifications and conditions of the Highway Scheme have not yet being complied with and the steps which the Owner must make to rectify such omissions and
- serve on the Owner within 14 days after such inspection his certificate pursuant to paragraph 2.5.1 of this Schedule or his report pursuant to paragraph 2.5.2 of this Schedule (as the case may be)
3. If the Council's surveyor or other appointee shall have given a report pursuant to paragraph 2.5.2 of this Schedule then the Owner shall comply with the requirements of the report and invite the Council in writing to make a further inspection of the Highway whereupon the Council shall as soon as practical therefore after arrange for such further inspection to be made by the Council's surveyor or appointee and so on as often as is necessary until the Councils surveyor or appointee shall give his certificate pursuant to paragraph 2.5.1 of this Schedule
4. For the avoidance of doubt the Council's surveyor or appointee shall act as expert and not an arbitrator and his opinion shall be binding on the parties.
5. The Owner shall pay as a debt to the Council the reasonable costs of the Council's surveyor or appointee incurred in making any inspection of the Highway (as and often as may be necessary in the case of re-inspection), such costs paid (exclusive of VAT) not later than 14 days

after the presentation to the Owner by the Council of a copy of the Council's surveyor's or appointee's invoice.

6. Following the issue of the Council's certificate pursuant to paragraph 2.5.1 of this Schedule the Highway shall be kept by the Owner in repair in accordance with the Highway Scheme. And the Owner shall allow the Council to enter the Site to inspect the Highway at all reasonable times to ensure the Highway is properly maintained in accordance with the Highway Scheme, if the Highway has not been maintained in accordance with the Highway Scheme the Council shall serve a notice on the Owner requesting that all repairs and defects are made good and the Owner will carry out such works and make good any such defects.
7. IT IS HEREBY agreed and declared by the Owner and the Council that:
 - 7.1 the Highway created as a consequence of the provisions of this Agreement is a private road not maintainable at public expense; and
 - 7.2 following the issue of the Council's certificate pursuant to paragraph 2.5.1 of this Schedule the Highway will be a private street which is not maintainable at public expense; and
 - 7.3 the Highway is not designed or intended to be designed to a standard suitable for highway adoption pursuant to Section 38 of Part XI Highways Act 1980 and is thereby exempt from the Advance Payments Code under Section 219(e) Highways Act 1980; and
 - 7.4 neither the Owner nor the Council will apply or arrange with the Nottinghamshire County Council to have the Highway adopted as a public highway under the Highways Act 1980

8. The Owner shall not transfer the Highway or any part of the Highway without procuring that the transfer contains a covenant by the transferee with the Council that the transferee shall:
 - 8.1 henceforth observe and perform the obligations on the part of the Owner contained in this Schedule (including this paragraph 8) insofar as the same relate to or affect the highway or such part of the Highway as is transferred to the transferee; and
 - 8.2 submit with the application to the Land Registry to register such transfer an application to the Chief Land Registrar to register the following restriction in the Register of the title to the Highway or such part of the Highway as is transferred by such transfer in priority to any subsequent disposition entered into by the transferee:

"No transfer of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge is to be registered without a certificate signed by a conveyance for the time being of the Council that the provisions of paragraph 8 of the First Schedule to an Agreement dated 17 day of March 2014 and made under Section 106 of the Town and Country Planning Act 1990 between Ashfield District Council (1) and Matthew Wood (2) have been complied with"

THE SECOND SCHEDULE

Restrictions on Occupation

- 1 The Residential Units to be built as part of the Proposed Development may not be occupied save in accordance with the following provisions of this Schedule
- 2 The Owner shall not occupy or permit the occupation of any of the Residential Units otherwise than by a Qualifying Person or Qualifying

Persons who has or have (as the case may be) attained the Qualifying Age provided that:

- 2.1 this provision shall not prevent a married couple and civil partners for the purposes of the Civil Partnership Act 2004 (as the case may be) from occupying a Residential Unit where one of whom is a Qualifying Person and his or her spouse or civil partner (as the case may be) is not a Qualifying Person when they both first occupy the Residential Unit together;
- 2.2 where a Residential Unit is occupied in accordance with the provisions of paragraph 2.1 of this Schedule and the person who was a Qualifying Person when the Qualifying Person and his or her spouse or civil partner (as the case may be) first occupied the Residential Unit dies the provisions of this paragraph 2 shall not prevent the continued occupation of the Residential Unit by the survivor even if the survivor is not then a Qualifying Person;
- 2.3 For the purpose of paragraphs 2.1 and 2.2 of this Schedule reference to "a married couple and civil partners" includes persons living together as husband and wife and persons of the same sex who are living together as a married couple or as civil partners for the purposes of the Civil Partnership Act 2004 (as the case may be)
- 2.4 nothing in the provisions of this paragraph 2 shall prevent a family member who is not a Qualifying Person from residing in a Residential Unit with a Qualifying Person and that family member may continue to reside in such Residential Unit after the death of that Qualifying Person provided that such family member resided with that Qualifying Person at the time of death for a period of six months immediately before that Qualifying Person's death

- 2.5 For the purpose of paragraph 2.4 of this Schedule a person is a family member of a Qualifying Person if that person is the child stepchild brother or sister of the Qualifying Person
3. The Owner shall not transfer or grant a lease of any of the Residential Units without including within the relevant documentation such provisions as may be necessary to give effect to the restrictions on occupation contained in paragraph 2 of this Schedule
4. The Owner shall not enter into any transfer or lease of any of the Residential Units without including a covenant by the transferee lessee or tenant (as the case may be) directly with the Council that the transferee lessee or tenant (as the case may be) will observe and perform the provisions in this Schedule insofar as they affect the relevant Residential Unit
5. The first transfer by the Owner of any Residential Unit shall contain a covenant binding on the transferee and all subsequent transferees for a period of eighty years from the date of the first transfer by the Owner that the transferee and any future transferees of the relevant Residential Unit will on each transfer of the relevant Residential Unit apply to the Chief Land Registrar for the following restriction to be entered in the Register of the title to the relevant Residential Unit

"No transfer or grant of a lease of the registered estate by the proprietor of the registered estate or by the proprietor of a registered charge is to be registered without a certificate signed by the applicant for registration or their conveyancer that the provisions of paragraphs 2 3 4 and 5 of the Second Schedule to an Agreement dated 17 day of March. 2014 and made under Section 106 of the Town and Country Planning Act 1990 between Ashfield District Council (1) and Matthew Wood (2) have been complied with"

THE THIRD SCHEDULE

Off Site Contribution

The Owner shall not allow any Residential Unit constructed on the Site to be occupied until he has paid the sum of £500.00 in respect of the relevant Dwelling to the Council towards the Off Site Open Space Contribution

THE FOURTH SCHEDULE

Council's Obligations

The Council will:

- 1 use the Off Site Open Space Contribution towards improvements to Huthwaite Welfare Park to include "inter alia" the entrance and footpath improvements seating and general landscape works
- 2 provide to the Owner on request evidence as to how much of and how the Off Site Open Space Contribution has been spent expended or allocated
- 3 refund the Owner (here meaning the said Matthew Wood or his successor in title the real or corporate person who has paid the Off Site Open Space Contribution to the Council) such part of the Off Site Open Space Contribution as has not been allocated committed or expended in accordance with paragraph 1 of this Schedule within 5 years from the date of receipt by the Council of the entire Off Site Open Space Contribution together with the Repayment Interest for the period from the date of payment to the date of refund

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

