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

S106/449

J.Lester

From: G.Bradley
Sent: 16 July 2014 10:30
To: J.Lester
Subject: Pilot.NEW 106
Attachments: Pilot.pdf

RECEIVED ON

16 JUL 2014

LAND CHARGES

THIS AGREEMENT is made the 25th day of February 2014.

BETWEEN:

- (1) **ROWAN DEVELOPMENTS (NOTTINGHAM) LIMITED** (Company Registered Number 06983082) of Rowan Lodge, Thurlby Lane, Stanton-on-the-Wolds, Nottingham, Nottinghamshire, NG12 5BS ("the Owner")
- (2) **ASHFIELD DISTRICT COUNCIL** of Council Offices, Urban Road, Kirkby-in-Ashfield, Nottinghamshire, NG17 8DA ('the Council')
- (3) **CLARE FRANCES BHABRA** of Brook Lodge, Main Street, Widmerpool, Nottingham NG12 5PY ("the Lender")

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 4th December 2013 in respect of the Proposed Development to which has been allocated the Council's Planning Application Reference No. 2013/0641
- 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 "the Blue Land" means that part of the Application Site for the purposes of identification shaded blue on the Plan and being part of the land comprised in title number NT79006
- 1.6 "the Brown Land" means that part of the Application Site for the purposes of identification shaded brown on the Plan and being part of the land comprised in title number NT298544
- 1.7 "Commencement of the Proposed Development" or cognate terms means the point at which the Owner has implemented the Planning Permission (or as the case may be the detailed consent pursuant to a Subsequent Application) 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 Proposed Development and reference to "Commence" shall be construed accordingly
- 1.8 "Dwelling(s)" means separate residential unit(s)
- 1.9 "the Green Land" means that part of the Application Site for the purposes of identification shaded green on the Plan and being part of the land comprised in title number NT208925
- 1.10 "the Layout Plan" means the layout plan drawing number (08) 02 Revision A dated May 2013 attached to this Agreement.
- 1.11 "the Obligations" means the planning obligations contained or referred to in the First and Third Schedules to this Agreement
- 1.12 "the On-Site Open Space" means any and all land designated as open space or visitor parking spaces on the Layout Plan which is laid out as open space pursuant to Condition 7 the Planning Permission and which is coloured in purple on the Layout Plan
- 1.13 "the Orange Land" means that part of the Application Site for the purposes of identification shaded orange on the Plan

- 1.14 "the Pink Land" means that part of the Application Site for the purposes of identification shaded pink on the Plan and being the land comprised in title number NT435382
- 1.15 "the Plan" means the plan attached to this Agreement
- 1.16 "the Planning Permission" means the grant of Planning Permission pursuant to the Application in the form of the draft attached to this Agreement
- 1.17 "the Proposed Development" means a development of ten semi-detached residential properties as more particularly described in the Application
- 1.18 "the Purple Land" means that part of the Application Site for the purposes of identification shaded purple on the Plan and being the land comprised in title number NT379338
- 1.19 "the Yellow Land" means that part of the Application Site for the purposes of identification shaded yellow on the Plan and being part of the land comprised in title number NT62455
- 1.20 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 has by transfers of even date acquired as the proprietor with title absolute the Blue Land, the Brown Land, the Green Land, the Orange Land, the Pink Land, the Purple Land and the Yellow Land which it has neither re-charged nor re-transferred since acquisition and awaits registration at H.M. Land Registry



AUTHORISED OFFICER



Section 106 Plan
Land to the Rear of 364 - 376 Watnall Road, Hucknall
V/2013/0298



Ashfield

Scale: 1 to 1250

Date: 08 Jul 2013



Alan Ashby *11/11/2013*

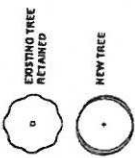
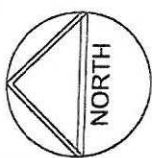
Blairmod



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P PARKING SPACES:
MIN 2.7m x 5m -
11m TOTAL

ALM PROPOSED
GROUND LEVEL

Area	Area	Area	Area
A 29.6/113	29.6/113	29.6/113	29.6/113
Area	Area	Area	Area
Area	Area	Area	Area

Rowan Developments

Residential Development
Kingsway Road
Hucknall

Site Plan as Proposed

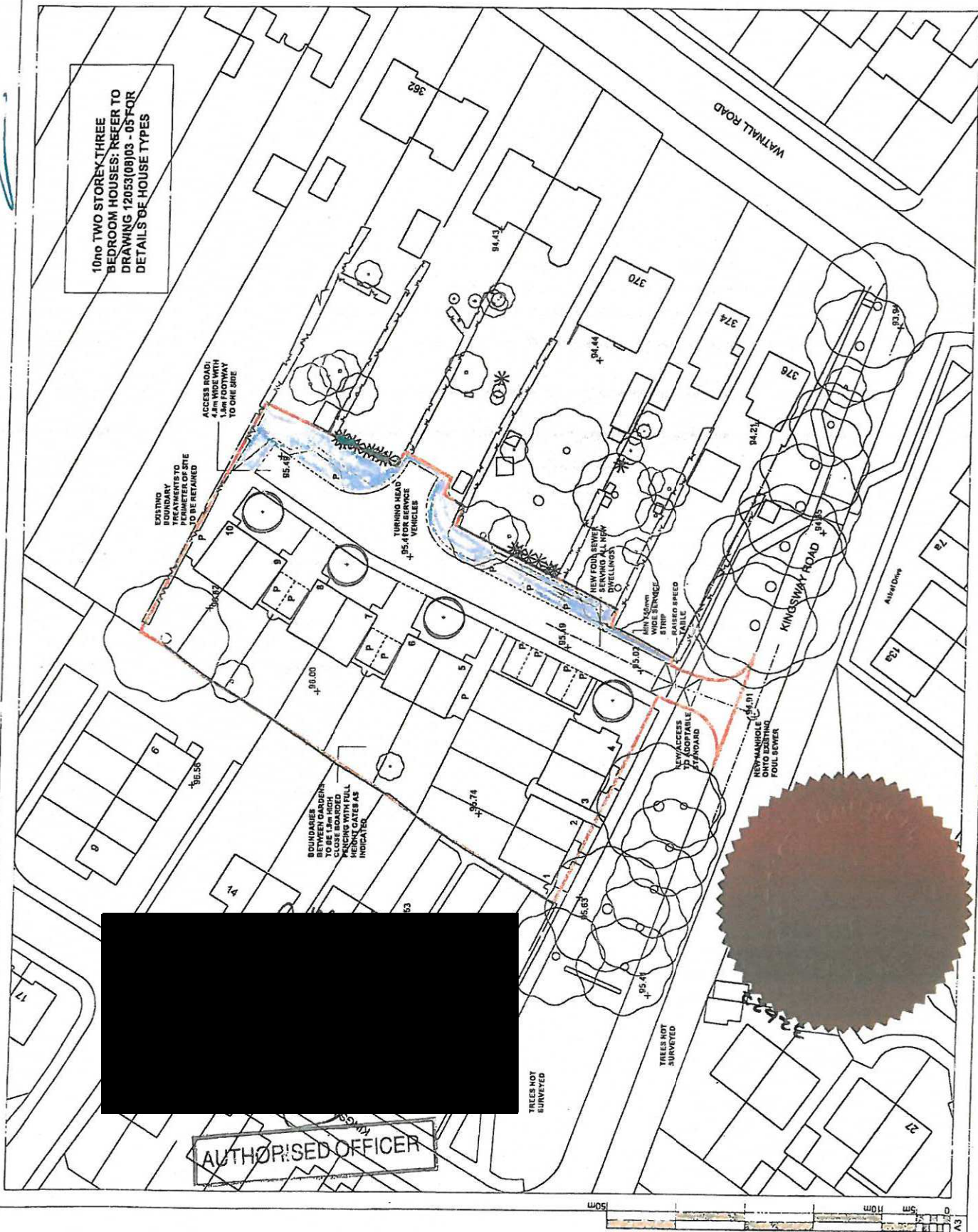
Drawn (Date):
1:5000/A3
IDW/DC
May 13

Project No:
12053 (08) 02 A

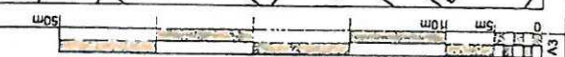
Drawing Title:
PLANNING

PLANNING

10no TWO STOREY THREE
BEDROOM HOUSES: REFER TO
DRAWING 12053(08)03 - 05 FOR
DETAILS OF HOUSE TYPES



AUTHORISED OFFICER



Alan Harker

- 2.2 The Lender is the mortgagee of the Application Site under a legal charge of even date
- 2.3 The Owner has submitted the Application
- 2.4 The Council is the Local Planning Authority for the purposes of the Act for the area in which the Application Site is situated
- 2.5 The Council's Local Plan Review adopted in November 2002 contains inter alia Policy HG6 (Public Open Space)
- 2.6 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
- 2.7 The Owner and the Lender have 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 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 the Application Site or the part 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 The provisions of the Second Schedule shall apply to any monies paid pursuant to the First Schedule
- 7.5 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
- 7.6 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
- 7.7 The Obligations shall not be enforceable against:

7.1.1 the buyers or occupiers of a single Dwelling erected on the Application Site pursuant to the Planning Permission; or

7.1.2 a statutory undertaker after a transfer of the statutory apparatus and / or any land within the Application Site upon or in which the statutory apparatus is situated or is to be situated by the Owner to that statutory undertaker

7.8 Provided that the Council shall use its reasonable endeavours to resist any attempt by others to seek an order for revocation or modification of the Planning Permission (but provided always that the District Council may lawfully resist such attempt(s) without fettering its discretion or affecting the proper exercise of its statutory duties including those under the Act and the Conservation of Habitats and Species Regulations 2010) in the event that the Planning Permission is modified or revoked pursuant to the review provisions in Regulation 69 of the Conservation of Habitats and Species Regulations 2010 and s.97 of the Act the Owner shall not apply to the Council for compensation pursuant to s.107 of the Act in respect of such revocation or modification

7.9 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

7.10 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 £2,400.00

9. Consent

The Lender hereby consents to the execution by the Owner of this Agreement

as a Deed and declares that subject as herein provided the Application Site shall be bound by the Obligations and agrees that her legal charge upon the Application Site shall take effect as if such legal charge had been executed after the date of this Agreement

IN WITNESS whereof the parties have executed this Agreement as a Deed the day and year first before written

FIRST SCHEDULE

THE OBLIGATIONS

Prior to the first occupation of any Dwelling there shall be paid to the Council:

1. For the improvement of existing open space and/or the provision of new open space and or the planting of community woodland within the administrative district of Ashfield in Nottinghamshire the sum of TWENTY-FIVE THOUSAND POUNDS (£25,000) ("the POS Sum")
2. Where any amount is payable pursuant to the provisions of this First Schedule the amount to be paid shall be adjusted for inflation in accordance with the following formula :-

$$(P \div A) \times B$$

Where:-

P = the amount payable pursuant to this First Schedule

A = the 'all items' figure of the Retail Prices Index published by the Office for National Statistics or any successor body (the 'RPI figure') in respect of the month in which the Planning Permission is issued.

B = the RPI figure for the month in which the relevant payment is made or (if earlier) falls due to be made

But so that if at any time B shall be less than A the amount payable pursuant to the relevant paragraphs as the case may be shall nevertheless be paid in full without reduction

PROVIDED ALWAYS that :

- (a) if such sum(s) or any part thereof shall not be paid before the actual first occupation of any Dwelling it shall carry interest at 8% per annum from the date of actual occupation until actual payment and no dwellinghouse

to be built upon the Application Site shall be occupied whilst such sum(s) or any part thereof (including interest as aforesaid) remains unpaid.

- (b) payment of the commuted sum(s) shall not in itself constitute commencement of the Proposed Development for the purposes of implementing the Planning Permission

SECOND SCHEDULE

TREATMENT OF COMMUTED SUMS

The following provisions shall apply to any sum paid pursuant to the First Schedule:-

1. Any POS Sum received by the Council shall be ring fenced and be spent only in accordance with the following provisions of this Schedule and shall be kept at all times in an interest bearing account until used for the purposes herein specified.
2. The POS Sum shall only be spent for the purposes mentioned in Policy HG6 of the Council's Local Plan Review
3. If any POS Sum has not been used by the Council by the fifth anniversary of the date on which payment was made then upon receipt by the Council of written notice by the Owner requiring that such POS Sum be repaid the Council shall repay it (together with interest that has accrued thereon) to the Owner. For the avoidance of doubt, any part of a POS Sum spent by the Council after the fifth anniversary of the payment but before the Council is served with written notice pursuant to this paragraph shall not have to be repaid to the Owner
4. At any time prior to the fifth anniversary of the making of a POS Sum the Council shall upon written request by the Owner supply to the Owner reasonable short particulars of any expenditure from that POS Sum made by the Council pursuant to the provisions of this Schedule provided that the Council shall be under no further obligation to answer any such request after they have given sufficient particulars pursuant to this paragraph showing that the whole of such POS Sum as the case may be has been expended.
5. For the purposes of this Schedule 'Owner' shall mean the Owner by whom the payment is actually made and not their successors in title

THIRD SCHEDULE

ON-SITE OPEN SPACE PROVISION

1. No Development anywhere on the Application Site shall Commence until a management scheme has been agreed by the Council as required by Condition 7 of the Planning Permission ('the Agreed Scheme') which shall thereafter be implemented by the Owner who shall improve and thereafter manage the On-Site Open Space in accordance with the requirements of the Agreed Scheme.

FIFTH SCHEDULE

Draft Decision Notice

ASHFIELD DISTRICT COUNCIL

Urban Road,
Kirkby-in-Ashfield,
Nottingham,
NG17 8DA

Tel: 01623 450000
Fax: 01623 457033
www.ashfield-dc.gov.uk/planning

**Ashfield****TOWN AND COUNTRY PLANNING ACT 1990**

Town and Country Planning (Development Management Procedure) Order 2010
Town and Country Planning (Control of Advertisements) (England) Regulations 2007
Town and Country Planning (Tree Preservation) England Regulations 2012
Planning (Listed Buildings and Conservation Areas Act 1990
Planning (Hazardous Substances) Act 1990
Planning and Compensation Act 1991

Approval Notice

Major Full Application

Approval has been granted by Ashfield District Council for the development referred to below providing it is carried out in accordance with the application and plans submitted. The approval is subject to the conditions set out on the attached sheet.

Application Details

Planning Reference Number:	V/2013/0641
Location of Development:	364 -376 Watnall Road Hucknall Nottinghamshire NG15 6ER
Description of Development:	10 No. Two Storey Dwellings
Applicant Name:	Rowan Developments Ltd
Date:	DRAFT FOR S106

CONDITIONS:

1. The development hereby approved shall be begun before the expiration of 3 years from the date of this permission.
2. No development shall take place until samples of the materials and finishes to be used for the external elevations and roof of the proposal have been agreed in writing by the Local Planning Authority. Thereafter the development shall be carried out with those materials, unless the Local Planning Authority gives written approval to any variation.
3. No development shall take place until the following matters have been submitted to and agreed in writing by the Local Planning Authority:
 - (a) Full details of the proposed treatment of the site's boundaries.
 - (b) A phasing scheme for the implementation of the agreed boundary treatment.
 The boundary treatment shall be undertaken in accordance with the agreed details.
4. No building operations shall commence on site until such time as an adequate means of disposal of surface water has been constructed and is capable of use to the satisfaction of the Local Planning Authority.
5. Development shall not commence until a scheme for works to be carried out in accordance with the Tree Survey by WKW Tree Services submitted 04 December 2013 has been submitted to and approved in writing by the Local Planning Authority. Work shall be carried out in accordance with the specifications of the survey.
6. During the first period 1 October to 31 March inclusive following completion of the felling, replanting shall take place in the vicinity of the felled trees using trees of a number, size and species to be agreed with the Council prior to the commencement of felling.
7. No development shall take place until there has been submitted to and approved by the Local Planning Authority a scheme of hard and soft landscaping. All planting, seeding or turfing indicated on the approved landscaping scheme shall be carried out in the first planting and seeding seasons following the occupation of the building or the completion of the development, whichever is the sooner; and any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.
8. The general arrangement, layout and access shall be constructed and surfaced in a bound material in accordance with plan, (Project number, 12053, - drawing number (08) 02, Revision B) and no other part of the development shall be commenced until the general arrangement, layout and access have been completed in accordance with those plans (subject to S278 technical approval).
9. This permission shall be read in accordance with the following plans: 12053(02)01 Site location plan and 12953(08)01 Site plan as existing; 12053(08)05 House Type 2a, 12053(08)04 House Type 2 and 12053(08)03A House Type 1; 12053(08)02B Site Plan as proposed, 12053(08)02B Site Plan as proposed with highway specification measurements and 13486-001 A Swept Path Analysis all received 04 December 2013. The development shall thereafter be undertaken in accordance

with these plans unless otherwise agreed in writing by the Local Planning Authority.

REASONS:

1. To comply with the requirements of Section 91 of the Town and Country Planning Act 1990 as amended.
2. To ensure the satisfactory appearance of the development.
3. To safeguard the amenities of residents living in the vicinity of the application site.
4. To ensure the development has provision for adequate facilities to dispose surface water.
5. The tree(s) in question are considered to be features of significance. This condition is imposed to ensure that they are satisfactorily protected during the period when construction works take place on the site.
6. To safeguard the visual amenity of the area.
7. To ensure the satisfactory overall appearance of the completed development and to help assimilate the new development into its surroundings.
8. In the interests of highway safety.
9. To define the terms of this permission and for the avoidance of doubt.

INFORMATIVE

1. The applicant/developer is strongly advised to ensure compliance with all planning conditions, if any, attached to the decision. Failure to do so could result in LEGAL action being taken by the Ashfield District Council at an appropriate time, to ensure full compliance. If you require any guidance or clarification with regard to the terms of any planning conditions then do not hesitate to contact the Development & Building Control Section of the Authority on Mansfield (01623 450000).
2. The applicant is advised that it is an offence to destroy habitats supporting protected species such as bats and nesting birds. It is recommended that the views of a qualified ecologist are obtained prior to carrying out any works on site, specifically before any trees are felled.
3. This permission shall be read in conjunction with an Agreement made under Section 106 of the Town and Country Planning Act 1990 and dated <<...>>.
4. In order to carry out the off-site works required you will be undertaking work in the public highway which is land subject to the provisions of the Highways Act 1980 (as amended) and therefore land over which you have no control. In order to undertake the works you will need to enter into an agreement under Section 278 of the Act.

This consent will require approval under Section 19 of the Nottinghamshire County Council Act 1985 and where the new streets are to be adopted an Agreement pursuant to Section 38 of the Highways Act 1980 will be required. Please contact Nottinghamshire County Council to ensure that approvals and agreements are

secured before commencement of works.

The applicant should note that notwithstanding any planning permission that if any highway forming part of the development is to be adopted by the Highways Authority. The new roads and any highway drainage will be required to comply with the Nottinghamshire County Council's current highway design guidance and specification for roadworks.

The Advanced Payments Code in the Highways Act 1980 applies and under section 219 of the Act payment will be required from the owner of the land fronting a private street on which a new building is to be erected. The developer should contact the Highway Authority with regard to compliance with the Code, or alternatively to the issue of a Section 38 Agreement and bond under the Highways Act 1980. A Section 38 Agreement can take some time to complete. Therefore, it is recommended that the developer contact the Highway Authority as early as possible.

It is strongly recommended that the developer contact the Highway Authority at an early stage to clarify the codes etc. with which compliance will be required in the particular circumstance, and it is essential that design calculations and detailed construction drawings for the proposed works are submitted to and approved by the District Council in writing before any work commences on site.

Correspondence with the Highway Authority should be addressed to: Peter Evans, Nottinghamshire County Council, Highway Development Control, Bevercotes House, Fountain Court, Darwin Drive, Sherwood Energy Village, New Ollerton, Notts, NG22 9GS.

5. The proposed development lies within a coal mining area which may contain unrecorded coal mining related hazards. If any coal mining feature is encountered during development, this should be reported immediately to The Coal Authority on 0845 762 6848.

Further information is also available on The Coal Authority website at www.coal.decc.gov.uk

Property specific summary information on past, current and future coal mining activity can be obtained from The Coal Authority's Property Search Service on 0845 762 6848 or at www.groundstability.com

6. In order to avoid impacts to nesting birds we also request that all tree/shrub/hedgerow/scrub and rough grassland removal work be undertaken outside of the bird-breeding season (March-September inclusive). If works are to be carried out during this time then a suitably qualified ecologist should be on site to survey for nesting birds prior to any vegetation clearance. As you will be aware all nesting birds', birds' nests, young and eggs (except pest species) are protected by the Wildlife and Countryside Act 1981 (and as amended). Nesting is taken to be from the point at which birds start to build a nest, to the point at which the last chick of the last brood of the season has fully fledged and left the nesting area. For further information please contact Rachel Hoskin at Natural England Telephone 0300 0602343 or rachel.hoskin@naturalengland.org.uk

7. The applicant is advised that it is an offence to destroy habitats supporting protected species such as bats and nesting birds. It is recommended that the views of a qualified ecologist are obtained prior to carrying out any works on site.

For further detail on the decision please see the application report by contacting the Development Section on 01623 457388.

REASONS FOR APPROVAL

The decision to grant permission has been taken having regard to the policies and proposals in the Ashfield Local plan Review (2002) and all relevant material considerations, including Supplementary Planning Guidance:

PROACTIVE WORKING

The processing of this application has been undertaken in accordance with the requirements of the National Planning Policy Framework (Core Planning Principles).

.....
Trevor Watson
SERVICE DIRECTOR – ECONOMY

EXECUTED AS A DEED by the said
ROWAN DEVELOPMENTS
(NOTTINGHAM) LIMITED
acting by a Director ~~and its~~
~~Secretary or two Directors~~



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

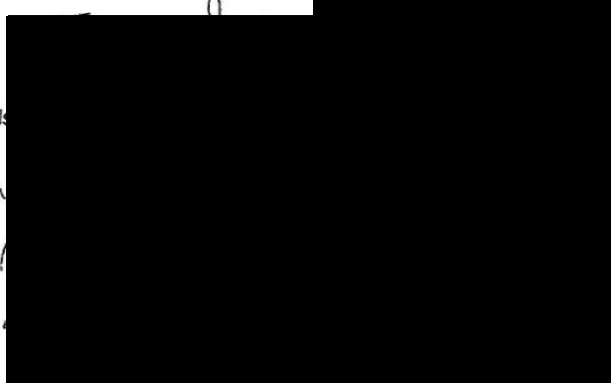


EXECUTED AS A DEED by the said
CLARE FRANCES BHABRA
in the presence of

Witness' signature:

Name (in block capitals)

Address:



EFN/A003580269.68