



DISCLAIMER

This document or some parts of it may not be accessible when using adaptive technology.

If you require assistance with accessing the content of the document, please contact the Planning team and quote the document name and the web page you found it on:

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

DATED 13th February 2019

(1) ASHFIELD DISTRICT COUNCIL
(2) CLOWES DEVELOPMENTS (UK) LIMITED
and

GAZELEY CASTLEWOOD S. A R.L.

UNILATERAL UNDERTAKING BY DEED OF AGREEMENT UNDER SECTION
106 OF THE TOWN AND PLANNING ACT 1990
Relating to the development of Units 5 & 7 (Plots 2 & 3) Castlewood Business
Park, Farmwell Lane, Sutton-In-Ashfield

CONTENTS

CLAUSE	PAGE
1. DEFINITIONS	2
2. Construction of this deed	4
3. Legal basis	5
4. Conditionality	5
5. The Owner's covenants	5
6. Miscellaneous	5
7. Waiver	6
8. Change in ownership	6
9. Indexation	6
10. Interest	6
11. VAT	6
12. Dispute provisions	7
13. Jurisdiction	7
14. Delivery	7
Schedule 1 – draft decision notice	9
Schedule 2 - The Owner's Covenants with the Council	10

DATE 13th February 2019

PARTIES

- (1) ASHFIELD DISTRICT COUNCIL of Urban Road Kirkby in Ashfield Nottingham NG17 8DA ("Council")
- (2) CLOWES DEVELOPMENTS (UK) LIMITED (Co. No. 00819793) whose registered office is situate at Ednaston Business Park, Ednaston, Ashbourne, Derbyshire DE6 3FA ("Estate Owner"); and
- (3) GAZELEY CASTLEWOOD S. À R.L. a Luxembourg société à responsabilité Limitée (private Limited Liability Company) whose registered office is at 19 Rue de Bitbourg, L-1273, Luxembourg registered with the Luxembourg Register of Commerce with registration number B227465 and whose address for service in England is care of GLP UK Management Limited 6th Floor, 99 Bishopsgate, London, EC2M 3XD ("Plot Owner")

INTRODUCTION

- A The Council is the local planning authority for the purposes of the Act for the area in which the Site is situated.
- B The Plot Owner is the freehold owner of that part of the Site shown edged brown on the Plan.
- C The Estate Owner is the freehold owner of the remainder of the Site.
- D The Estate Owner 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.
- E The Council resolved on 13th February 2019 to grant the Planning Permission subject to the prior completion of this Deed.

NOW THIS DEED 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 submitted to the Council for the Development and allocated reference number V/2018/0592.
Bus Service Contribution	a contribution of £22,000 (twenty-two thousand pounds) to be paid to the Council in

	accordance with Schedule 2 to provide the Bus Service Improvement
Bus Service Improvements	improvements to the bus stops below to promote sustainable travel: (a) <u>AS0815 Grange Farm</u> - Bus Stop Pole and Bus Stop Layby; (b) <u>AS0816 Grange Farm</u> – No Infrastructure; (c) <u>AS0096 Common Road</u> – Bus Stop Pole, Polycarbonate Bus Shelter, Raised Boarding Kerbs and Bus Stop Layby with Enforceable Clearway; and (d) <u>AS0099 Common Road</u> – Bus Stop Pole, Polycarbonate Clear Channel Advertising Bus Shelter, Raised Boarding Kerbs and Bus Stop Layby with Enforceable Clearway.
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.
Development	the Development of the Site for industrial warehousing with ancillary offices (within B1, B2 and B8 of the Order) and associated service yard, car parking and landscaping as set out in the Application.
Index	All In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation.
Interest	interest at 6 per cent above the base lending rate of the Bank of England from time to time.

Occupation and Occupied	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.
Order	the Town and Country Planning (Use Classes) Order 1987.
Owner	means the Estate Owner and the Plot Owner;
Plan	the plan attached to this Deed.
Planning Permission	the full planning permission subject to conditions to be granted by the Council pursuant to the Application as set out in Schedule 1.
Site	land at Plots 2 & 3, Farmwell Lane, Sutton-in-Ashfield being part of the land registered under title numbers NT426795 and NT424389 against which this Deed may be enforced as shown edged red on the Plan.
Unit	the unit constructed pursuant to the Planning Permission

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 severally 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 person deriving title through or under that party and in the case of the Council and the successors to its statutory functions.

2.7 The headings and contents list are for reference only and shall not affect construction.

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.

3.2 The covenants, restrictions and requirements imposed upon the Owner 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 Owner.

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 6.1, 12, 13 and 14 which shall come into effect immediately upon completion of this Deed.

5. The Owner's covenants

The Owner covenants with the Council as set out in Schedule 2.

6. Miscellaneous

6.1 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.

6.2 This Deed shall be registrable as a local land charge by the Council.

6.3 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.

6.4 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.

6.5 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 Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development.

6.6 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.

6.7 This Deed shall not be enforceable against any owner-occupier or tenant of the Unit constructed pursuant to the Planning Permission nor against those deriving title from them.

6.8 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.

6.9 Nothing contained or implied in this Deed shall prejudice or affect the rights discretions powers duties and obligations of the Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority.

7. Waiver

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

8. Change in ownership

8.1 The Owner agrees with the Council to give the Council immediate written notice of any change in ownership of any of its interests in the Site (other than a transfer of the Unit) occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation purchased by reference to a plan.

8.2 The Owner agrees to notify the Council of:

- (a) the Commencement of Development; and
- (b) Occupation of the Unit constructed pursuant to the Planning Permission.

9. Indexation

Any sum referred to in the Second Schedule shall be increased by an amount equivalent to the increase in the Index from the date hereof until the date on which such sum is payable.

10. Interest

If any payment due under this Deed is paid late, Interest will be payable from the date payment is due to the date of payment.

11. VAT

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

12. Dispute provisions

- 12.1 In the event of any dispute or difference arising between the parties to this Deed in respect of any matter contained in this Deed such dispute or difference shall be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in England with such matters as may be in dispute and such person shall act as an expert whose decision shall be final and binding on the parties in the absence of manifest error and any costs shall be payable by the parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the parties in equal shares.
- 12.2 In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to Clause 12.1 or as to the appropriateness of the professional body then such question may be referred by either part to the president for the time being of the Law Society for him to appoint a solicitor to determine the dispute such solicitor acting as an expert and his decision shall be final and binding on all parties in the absence of manifest error and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties in equal shares.
- 12.3 Any expert howsoever appointed shall be subject to the express requirement that a decision was reached and communicated to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty-eight working days after the conclusion of any hearing that takes place or twenty-eight working days after he has received any file or written representation.
- 12.4 The expert shall be required to give notice to each of the said parties requiring them to submit to him within ten working days of notification of his appointment written submissions and supporting material and the other party will be entitled to make a counter written submission within a further ten working days.]

13. Jurisdiction

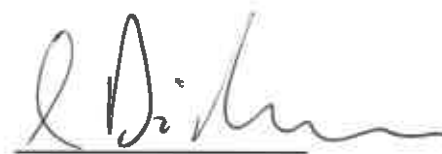
This Deed is governed by and interpreted in accordance with the law of England and the parties submit to the non-exclusive jurisdiction of the courts of England.

14. 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.

EXECUTED as a DEED by
CLOWES DEVELOPMENTS (UK) LIMITED



Signature

in the presence of:

WITNESS

Signature:

Print name:

Address:

Occupation:


P. STONES
EDNASTON PARK
EDNASTON
DEG 3 FA
SECRETARY

SIGNED as a DEED
on behalf of
GAZELEY
CASTLEWOOD
S.A.R.L., a company
incorporated in
Luxembourg, by

Signature



SONIA BAWDAN

Manager

being a person who,
in accordance with
the laws of that
territory is acting
under the authority of
the company:

Schedule 1 – draft decision notice



TOWN AND COUNTRY PLANNING ACT 1990

Town and Country Planning (General Permitted Development) (England) Order 2015
Town and Country Planning (Development Management Procedure) (England) Order 2015
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 Remove/Vary Condition

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/2018/0592**

Location of Development: **Castlewood Grange Business Park
Unit 5 & Unit 7 (Plots 2 & 3)
Farmwell Lane
Sutton In Ashfield
Nottingham
NG17 1BX**

Description of Development: **Application for Removal of Conditions 2 and 9 of
Planning Permission V/2018/0217 - Alteration to
Size, Layout and Fencing**

Applicant Name: **CWC Group Mr J Richards**

Date: **XXXXXX**

Address: Council Offices, Urban Road, Kirkby-In-Ashfield, Nottingham. NG17 8DA
Tel: 01623 450000 **Fax:** 01623 457585
www.ashfield.gov.uk

If reasonable adjustments are needed to fully engage with the Authority - contact **01623 450000**

CONDITIONS:

1. This permission shall be read in accordance with the following plans:

- Proposed Site Sections Drg No. 218004-PL04 Rev A
- Proposed Layouts Drg No. 218004-PL02 Rev A
- Proposed Elevations Drg No. 218004-PL03 Rev A
- Proposed Layout Drg No. 218004-PL01 Rev C
- Proposed Roof Plan Drg No. 218004-PL05 Rev A
- Gatehouse Layout Drg No. 218004-PL07
- Proposed External Surface Finishes Layout Drg No. 218004-PL06 Rev C
- Illustrative Landscape Sections Drg No. 1812-18-01C
- Ancillary Building Plan Drg No. 218004-PL08
- Landscape Concept Plan Drg No. 1812-18-01D Landscape Concept Plan

The development shall thereafter be undertaken in accordance with these plans unless otherwise agreed in writing by the Local Planning Authority.

2. Prior to the development being brought into use, a five-year maintenance schedule for all soft works proposed in the Landscape Concept Plan 1812-18-01D and Illustrative Landscape Sections Drg No. 1812-18-01C shall be submitted to and agreed in writing by the Local Planning Authority. All plant and tree losses in the first year following completion of the soft
3. The TPO trees (TPO Ref 183) along the southern boundary shall be retained and protected in accordance with Drg Nos. 1812-18-01D and 1812-18-03. The trees shall be protected in accordance with BS 5837 and the protection measures shall be in place prior to commencement of the development and retained until its completion.
4. The development hereby permitted shall be carried out in accordance with the details contained within the Site-specific Flood Risk Assessment and Surface and Foul Water Drainage Strategy Report No. 6930-001 dated March 2018.
5. The development hereby permitted shall be carried out in accordance with the Cotswold Wildlife Surveys dated 6th January 2018 and the recommendations made within part 4 shall be strictly adhered to.
6. The development hereby approved shall not be occupied until satisfactory details showing a scheme for the provision of a signal controlled crossing facilities for pedestrians and cyclists at the junction of the A38 and Alfreton Road have been

submitted to and agreed in writing. The scheme shall thereafter be implemented in accordance with the agreed details.

7. The recommendations made within parts 11.4 and 11.5 of the Preliminary Risk Assessment and Ground Investigation Report (prepared by DTS Raeburn limited) shall be strictly adhered to. Prior to occupation of the hereby approved development, a validation report shall be submitted showing the agreed gas protection measures have been installed.
8. There shall be no other storage of plant, machinery, raw materials, packing boxes pallets, waste materials, or finished products outside the screened pallet store or refuse area.
9. There shall be no adverse light spillage onto Pinxton Lane from the approved lighting shown on Drawing No. E416 – EXT01.

REASONS:

1. To ensure that the development takes the form envisaged by the Local Planning Authority when determining the application.
2. In the interests of visual amenity.
3. To protect TPO trees.
4. To ensure the development has provision for adequate facilities to dispose of surface and foul water.
5. In the interests of protecting wildlife.
6. In the interests of highways safety.
7. To ensure that the site, when developed, is free from contamination, in the interests of safety.
8. In the interests of visual amenity.
9. In the interests of residential and visual amenity.

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. This permission shall be read in conjunction with an Agreement made under Section 106 of the Town and Country Planning Act 1990.
3. 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 0345 762 6848.

Further information is also available on the Coal Authority website at:
www.gov.uk/government/organisations/the-coal-authority

4. The applicant's attention is drawn to the enclosed map showing Sutton in Ashfield Bridleway No.57. The availability of the path must not be affected in anyway unless subject to the appropriate diversion or closure orders. Please contact Bob Knowles 0115 9774559 at Nottinghamshire County Council for any further advice on this matter.

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 2018.

.....
Robert Mitchell
Chief Executive

Schedule 2 - The Owner's Covenants with the Council

1 Bus Service Contribution

To pay to the Council the Bus Service Contribution towards the provision of the Bus Service Improvements within 28 days of the Occupation of the Unit.