

Prosecutor

From: North 1 <north1@planninginspectorate.gov.uk>
Sent: 15 January 2020 17:02
To: peter@peterhitchenarchitects.co.uk
Cc: planning@hyndburnbc.gov.uk
Subject: Planning Inspectorate ref. 3240964: LAND OFF BACK OWEN STREET, ACCRINGTON (LPA ref. 11/19/0211)
Attachments: PLANNING OBLIGATION - 500685 - SECTION 106 AGREEMENT (1).pdf

Dear Mr Hitchen

The appellant's evidence refers to a Section 106 agreement being in place and the Council's officer report confirms that officers at the time of the decision took account of the inclusion of a Section 106 agreement. However, the attached document received with your appeal appears to be a draft version of a Section 106 agreement that is incomplete (for example - it is undated, has no signatures and both Schedule 1 and the Appendices are missing).

In the above circumstances, please could you confirm whether it is your intention to submit a final version of the Section 106 agreement for the Inspector's consideration. If so, the finalised document should be submitted **by no later than 27 January 2020** to ensure that it is taken into account when the Inspector makes his decision. Our requirements in respect of planning obligations submitted as part of an appeal are set out in Annexe N of the Procedural Guide - Planning appeals - England (August 2019) which is available to download via this link: <https://www.gov.uk/government/publications/planning-appeals-procedural-guide>.

Yours sincerely

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Advice about the appeals process is available at:
<https://www.gov.uk/government/organisations/planning-inspectorate>

THIS DEED is made on

2019

BETWEEN:

(1) **HYNDBURN BOROUGH COUNCIL** of Scaitcliffe House, Ormerod St, Accrington BB5 0PF (“the Council”); and

→ (2) **J & R UK PLANT HIRE LIMITED** (registered number 06939784) whose registered office is at Higher Grain Farm, Wigglesworth, Skipton, North Yorkshire, BD23 4SN (“the Landowner”).

BACKGROUND

(A) For the purposes of the 1990 Act, the Council is the local planning authority for the area within which the Site is located and the person who is entitled to enforce the obligations contained in this Deed.

→ (B) The Landowner is the freehold owner of the whole of the Site free from encumbrances that would prevent the Landowner entering into this Deed.

→ (C) Pursuant to the Planning Application and planning appeal decision the Landowner has applied to the Council for planning permission for the Development.

→ (D) Having regard to the provisions of the development plan and the planning considerations affecting the Site, the Council considers that in the interests of the proper planning of its area the Development ought only to be permitted subject to the terms hereof.

→ (E) The parties have agreed to enter into this Deed with the intention that the obligations contained in this Deed may be enforced by the Council against the Landowner and their successors in title.

OPERATIVE PROVISIONS

1. INTERPRETATION

1.1 In this Deed, the following words and expressions have the following meanings:

“1990 Act” the Town and Country Planning Act 1990;

“Commencement Date” the date on which the Development commences by the carrying out on the Site pursuant to the Planning Permission of a material operation as specified in section 56(4) of the 1990 Act;

→ “Development” the development of the Site as land on the South-East side of Back Owen Street, Accrington, BB5 6AU under title number LA951006

→ “Plan” the plan attached to this Deed;

“Planning Permission” the planning permission that may be granted in pursuance of the Planning Application;

→ “Planning Application” an application for full planning permission for the carrying out of the Development made by the Landowner on 25th April 2018, carrying the reference 11/110/0177.

→ “Site” the land known as land on the South-East side of Back Owen Street, Accrington, BB5 6AU registered at HM Land Registry under Title

 Number LA951006 and shown for identification edged red on the Plan;

“Specialist” has the meaning given to it in clause 7.2.

1.2 In this Deed:

- 1.2.1 the clause headings do not affect its interpretation;
- 1.2.2 unless otherwise indicated, references to clauses and Schedules are to clauses of and Schedules to this Deed and references in a Schedule to a Part or paragraph are to a Part or paragraph of that Schedule;
- 1.2.3 references to any statute or statutory provision include references to:
 - 1.2.3.1 a all Acts of Parliament and all other legislation having legal effect in the United Kingdom as directly or indirectly amended, consolidated, extended, replaced or re-enacted by any subsequent legislation; and
 - 1.2.3.2 any orders, regulations, instruments or other subordinate legislation made under that statute or statutory provision;
-  1.2.4 references to the Site include any part of it;
- 1.2.5 references to any party in this Deed include the successors in title of that party. In addition, references to the Council include any successor local planning authority exercising planning powers under the 1990 Act;
- 1.2.6 “including” means “including, without limitation”;
- 1.2.7 any covenant on any party not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing;
- 1.2.8 where two or more people form a party to this Deed, the obligations they undertake may be enforced against them all jointly or against each of them individually; and
- 1.2.9 if any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of the Deed is to be unaffected.

1.3 The parties to this Deed do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

 **2. EFFECT OF THIS DEED**

-  2.1 This Deed is made pursuant to section 106 of the 1990 Act. To the extent that they fall within the terms of section 106 of the 1990 Act, the obligations contained in this Deed are planning obligations for the purposes of section 106 of the 1990 Act and are enforceable by the Council.
- 2.2 To the extent that any of the obligations contained in this Deed are not planning obligations within the meaning of the 1990 Act, they are entered into pursuant to the powers contained in section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and all other enabling powers.
- 2.3 Nothing in this Deed restricts or is intended to restrict the proper exercise at any time by the Council of any of its statutory powers, functions or discretions in relation to the Site or otherwise.

- 2.4 This Deed will be registered as a local land charge by the Council.
- 2.5 Nothing in this Deed prohibits or limits the right to develop any part of the Site in accordance with a planning permission, other than one relating to the Development as specified in the Planning Application, granted after the date of this Deed, whether or not pursuant to an appeal.

3. LEGAL EFFECT

This Deed shall have immediate effect save for the obligations contained in clauses 4.1 and 4.2 and the Schedules referred to in those clauses which do not come into effect until the Commencement Date.

4. OBLIGATIONS OF THE PARTIES

- 4.1 The Landowner agrees with the Council to comply with the obligations set out in Schedule[s] 1 [to [NUMBER]] in relation to the Development.
- 4.2 The Council agrees with the Landowner to comply with the obligations set out in Schedule 1.
- 4.3 The Council agrees to act reasonably, properly and diligently in exercising its discretion and discharging its functions under this Deed. In particular, where any notice, consent, approval, authorisation, agreement or other similar affirmation is required under the terms of the Deed, the Council will not unreasonably withhold or delay such notice, consent, approval, authorisation, agreement or other similar affirmation.
- 4.4 No person will be liable for any breach of the terms of this Deed occurring after the date on which they part with their interest in the Site or the part of the Site in respect of which such breach occurs, but they will remain liable for any breaches of this Deed occurring before that date.

5. TERMINATION OF THIS DEED

5.1 This Deed will come to an end if:

- 5.1.1 the Planning Permission is quashed, revoked or otherwise withdrawn before the Commencement Date so as to render this Deed or any part of it irrelevant, impractical or unviable; or
- 5.1.2 the Planning Permission expires before the Commencement Date without having been implemented.

6. NOTICES

- 6.1 Any notice, demand or any other communication served under this Deed will be effective only if delivered by hand or sent by first class post, pre-paid or recorded delivery.
- 6.2 Any notice, demand or any other communication served is to be sent to the address of the relevant party set out at the beginning of this Deed or to such other address as one party may notify in writing to the others at any time as its address for service.
- 6.3 Any notice, demand or any other communication to be served on the Council is to be sent for the attention of the Head of Planning at Planning Service, Higher Grain Farm, Wigglesworth, Skipton, North Yorkshire, BD23 4SN quoting the Planning Application reference.

- 6.4 Unless the time of actual receipt is proved, a notice, demand or communication sent by the following means is to be treated as having been served:
- 6.4.1 if delivered by hand, at the time of delivery;
 - 6.4.2 if sent by post, on the second working day after posting; or
 - 6.4.3 if sent by recorded delivery, at the time delivery was signed for.
- 6.5 If a notice, demand or any other communication is served after 4.00 pm on a working day, or on a day that is not a working day, it is to be treated as having been served on the next working day.
- 6.6 For the avoidance of doubt, where proceedings have been issued in the Courts of England and Wales, the provisions of the Civil Procedure Rules must be complied with in respect of the service of documents in connections with those proceedings.

7. DETERMINATION OF DISPUTES

- 7.1 Subject to clause 7.7, if any dispute arises relating to or arising out of the terms of this Deed, either party may give to the other written notice requiring the dispute to be determined under this clause 7. The notice is to propose an appropriate Specialist and specify the nature and substance of the dispute and the relief sought in relation to the dispute.
- 7.2 For the purposes of this clause 7 a “Specialist” is a person qualified to act as an expert in relation to the dispute having not less than ten years’ professional experience in relation to developments in the nature of the Development and property in the same locality as the Site.
- 7.3 Any dispute over the type of Specialist appropriate to resolve the dispute may be referred at the request of either party to the President or next most senior available officer of the Law Society who will have the power, with the right to take such further advice as he may require, to determine the appropriate type of Specialist and to arrange his nomination under clause 7.4.
- 7.4 Any dispute over the identity of the Specialist is to be referred at the request of either party to the President or other most senior available officer of the organisation generally recognised as being responsible for the relevant type of Specialist who will have the power, with the right to take such further advice as he may require, to determine and nominate the appropriate Specialist or to arrange his nomination. If no such organisation exists, or the parties cannot agree the identity of the organisation, then the Specialist is to be nominated by the President or next most senior available officer of the Law Society.
- 7.5 The Specialist is to act as an independent expert and:
- 7.5.1 each party may make written representations within ten working days of his appointment and will copy the written representations to the other party;
 - 7.5.2 each party is to have a further ten working days to make written comments on the other’s representations and will copy the written comments to the other party;
 - 7.5.3 the Specialist is to be at liberty to call for such written evidence from the parties and to seek such legal or other expert assistance as he or she may reasonably require;

- 7.5.4 the Specialist is not to take oral representations from the parties without giving both parties the opportunity to be present and to give evidence and to cross-examine each other;
 - 7.5.5 the Specialist is to have regard to all representations and evidence before him when making his decision, which is to be in writing, and is to give reasons for his decision; and
 - 7.5.6 the Specialist is to use all reasonable endeavours to publish his decision within 30 working days of his appointment.
- 7.6 Responsibility for the costs of referring a dispute to a Specialist under this clause 11, including costs connected with the appointment of the Specialist and the Specialist's own costs, but not the legal and other professional costs of any party in relation to a dispute, will be decided by the Specialist.
- 7.7 This clause 7 does not apply to disputes in relation to matters of law or the construction or interpretation of this Deed which will be subject to the jurisdiction of the courts.

8. JURISDICTION

This Deed is to be governed by and interpreted in accordance with the law of England and Wales.

9. EXECUTION

The parties have executed this Deed as a deed, and it is delivered on the date set out above.

SCHEDULE 1

To be confirmed

APPENDIX

Plan

Signed as a deed by **J & R Plant**)

Hire Limited acting by two directors:)

Director (Signature)

(Name)

Director (Signature)

(Name)