

DATE: 19th March 2019

(1) ASHFIELD DISTRICT COUNCIL

AND

(2) PEVERIL HOMES LIMITED

Deed
pursuant to Section 106 of the
Town and Country Planning Act 1990
and other powers

in relation to development at land known as
land off Mansfield Road, Sutton in Ashfield NG17 4HH

SRD/002240

V/2018/0221

THIS DEED is made the 19th day of March 2019

BETWEEN:

1. **ASHFIELD DISTRICT COUNCIL** of Ashfield Homes Broadway, Brook Street, Sutton in Ashfield, NG17 1AL ("**Council**") and
2. **PEVERIL HOMES LIMITED** (Company registration number 01888444) whose registered office is at High Edge Court, Church Street, Belper, Derbyshire DE56 2BW ("**Owner**")

BACKGROUND

- (A) The Council is the Local Planning Authority for the purposes of this Deed for the area within which the land described in the First Schedule ("**the Land**") is situated and by whom the obligations contained in this Deed are enforceable
- (B) The Owner is the freehold owner of the Land (which is registered at the Land Registry with title absolute under title numbers NT209309 and NT259197
- (C) The Application was made to the Council for planning permission for the Development on the Land and the Council is minded to grant approval of the Development under reference number V/2018/0221 ("**the Planning Permission**") subject to the Owner first entering into this Deed

NOW THIS DEED is made in pursuance of Section 106 of the 1990 Act and contains planning obligations and is a planning obligation for the purposes of that Section and **WITNESSES** as follows:

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

The following definitions and rules of interpretation apply in this deed.

1.1 Definitions:

"the 1990 Act" means the Town and Country Planning Act 1990 (as amended)

"the 1999 Act" means The Contracts (Rights of Third Parties) Act 1999 as may be amended from time to time

"the Application" means the application for full planning permission to carry out the Development and which was submitted to the Council and validated on 9 April 2018 and allocated planning reference V/2018/0221

"Base Rate": 5% above the base rate from time to time of Barclays Bank plc.

"Commencement Date" the date of Commencement of Development

"Commencement of Development" means the date on which any material operation (as defined in Section 56(4) of the 1990 Act forming part of the Development begins to be carried out other than (for the purposes of this deed and no other purposes) operations consisting of site clearance demolition works, 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

"Development": means the development of the Land being the erection of a retail store with car parking and landscaping described in the Planning Application

"the Expert" means a person having appropriate qualifications and local knowledge and experience in the matters in dispute as agreed by the Relevant Parties or failing agreement such person as is nominated by the President for the time being of the Royal Institution of Chartered Surveyors on the application of the Relevant Parties

"Index Linked": increased in accordance with the following formula:
Amount payable = the Contribution x (A/B) where:

A = the figure for the Retail Prices Index (All Items) that applied immediately preceeding the date of actual payment

B = the figure for the Retail Prices Index (All Items) that applied when the Index was last published prior the date of this deed

"Interest" means 4% above the Base-lending rate of the National Westminster Bank Plc from time to time or such other bank as the Council may notify the Applicant

"Land" means the Land referred to in the First Schedule and Recitals A and B hereof

"Occupation" means occupation for the purposes of retail use 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 and the terms "Occupied" "Occupy" and "Occupier" shall be interpreted accordingly;

"the Plan" means the plan referred to in the First Schedule and annexed hereto

"the Planning Permission" means the planning permission pursuant to the Application

"Percentage" means the increase in the percentage rise in the United Kingdom General Index of Retail Prices (All Items) when the last published index figure before the day of

3. COVENANTS

The Owner covenants with the Council to fulfil the obligations and restrictions specified in this Deed

4. OWNER'S FURTHER AGREEMENT

The Owner further agrees as follows:

- 4.1 To supply to the Council (within 21 days of the Council's written request to do so) such information as the Council within its reasonable discretion considers that it requires in order to determine whether the terms and conditions of this Deed are being observed
- 4.2 To pay the Council's reasonable legal fees and any costs incurred in the negotiation preparation and execution of this Deed on completion of this Deed

5. REGISTRATION

The parties hereby consent to the registration of: This Deed as a Local Land Charge by the Council

6. NOTICES

Any notice consent or approval required to be given under this Deed to any party to this Deed shall be in writing and shall be delivered personally or sent by pre-paid first class post to the address of the party aforesaid or such other address for service as shall have been previously notified by the party to the other parties

7. SETTLEMENT OF DISPUTES

- 7.1 Any dispute arising out of the provisions of this Deed shall be referred to the Expert for the determination of that dispute PROVIDED THAT the provisions of this clause shall be without prejudice to the right of any party to seek the resolution of any matter relating to the Deed by the courts and / or in accordance with Section 106(6) of the 1990 Act
- 7.2 The Expert shall be appointed jointly by the Relevant Parties who are in dispute

7.3 The decision of the Expert shall be final and binding upon the Relevant Parties and subject to the following provisions:-

- (a) the charges and expenses of the Expert shall be borne equally between the Relevant Parties who are in dispute unless the Expert shall otherwise direct;
- (b) the Expert shall give the Relevant Parties who are in dispute an opportunity to make representations and counter representations to him before making his decision;
- (c) the Expert shall make his decision within the range of any representations made by the Relevant Parties who are in dispute themselves;
- (d) where there is a dispute as to the amount of any contribution the Owner shall pay its estimate of such contribution to the Council at the time specified in this Deed and shall pay any difference between that figure and the amount determined by the Expert within 28 days of the Expert's decision together with interest thereon calculated (in accordance with this Deed) from the date the payment was required until the date it is made

8. JURISDICTION

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

IN WITNESS whereof the parties hereto have executed this Deed on the day and year first before written

THE FIRST SCHEDULE

("the Land")

ALL THAT piece or parcel of land lying to the east of Eastfield Side, Sutton-in-Ashfield, Nottinghamshire **ALL OF WHICH** said land is shown for identification purposes only edged with a red line on the Plan

THIS DRAWING IS STRICTLY NOT TO BE USED FOR CONSTRUCTION PURPOSES.

THIS DRAWING CONSISTS OF THE FOLLOWING THIRD PARTY INFORMATION & DOCUMENTS:

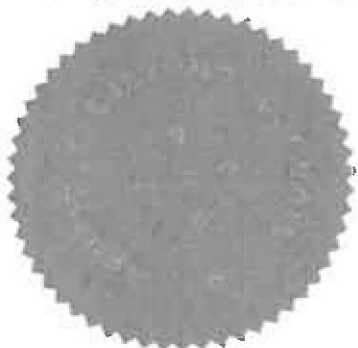
Ordnance Survey, (c) Crown Copyright 2015. All rights reserved. Licence number 10005257
 Midvale Hudson, Topographical & Unconsolidated Surface Survey Drawings No. 1847251, 1847252, 1847253 and 1847254, all dated July 2017. HD received via email on 18/07/2017.

Application Boundary
 10,371 sq. ft. (1,112,623 sq. ft.)
 (2.55 acres)

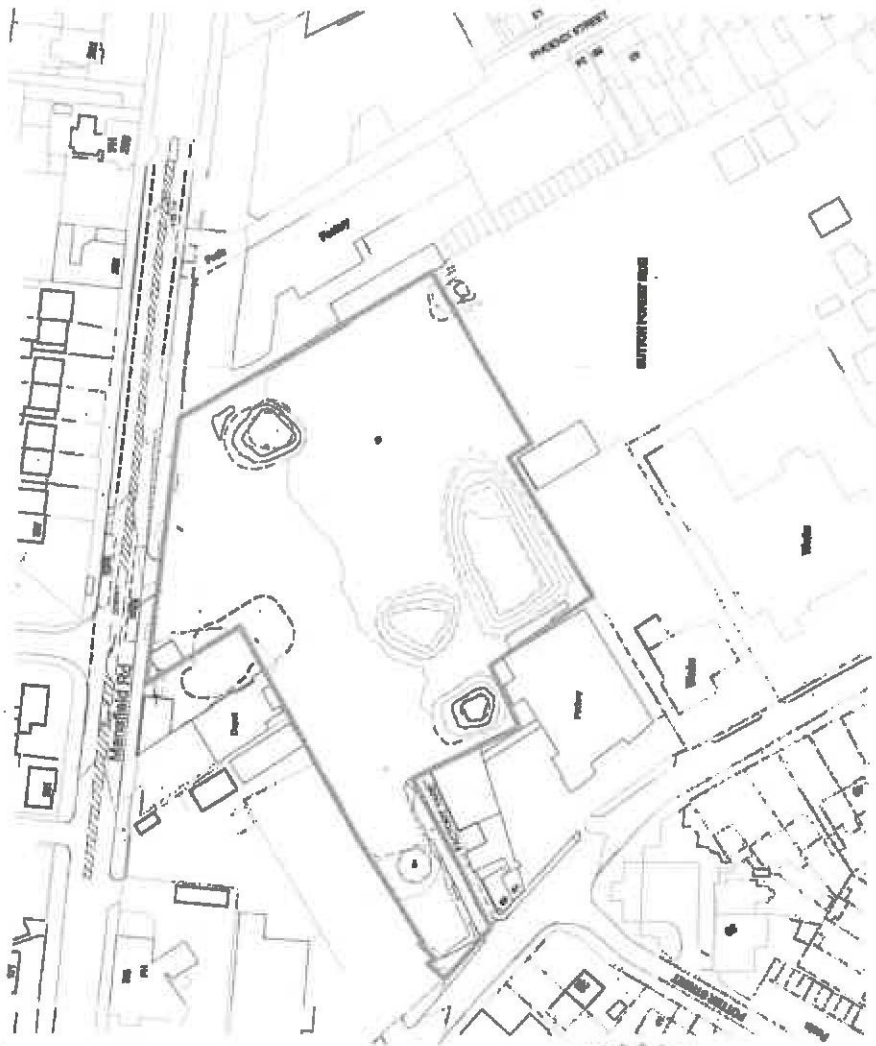
TO BE READ IN CONJUNCTION WITH HD DRAWINGS:

- APP-101 - SITE LOCATION PLAN
- APP-102 - EXISTING SITE PLAN
- APP-103 - PROPOSED SITE PLAN
- APP-104 - PROPOSED ROOF PLAN
- APP-105 - PROPOSED ELEVATIONS
- APP-106 - PROPOSED SITE & BUILDING SECTIONS
- APP-107 - PROPOSED BOUNDARY TREATMENT
- APP-108 - EXTERNAL WORKS DETAILS 1
- APP-109 - EXTERNAL WORKS DETAILS 2
- APP-110 - BOUNDARY WALL DETAILS
- APP-111 - EXTERNAL PAVING DETAILS
- APP-112 - EXTERNAL PAVING DETAILS
- APP-113 - SURFACE TREATMENT

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PLANNING



MANSFIELD ROAD SUTTON IN ASHFIELD

SITE LOCATION PLAN

DATE: 10/05/2015
 FEB 2016

Headfield Cowdwell Davidson

Headfield Cowdwell Davidson
 10,371 sq. ft. (1,112,623 sq. ft.)
 (2.55 acres)

2017-049
 A-PL-101

THE SECOND SCHEDULE

("the Obligations and Restrictions")

1 NOTICE OF OCCUPATION

- 1.1 The Development shall not be Occupied until the Owner shall serve notice on the Council clearly addressed and marked for the attention of the Assistant Director of Planning and Regulatory Services confirming the date for the Occupation of the Development

2 PUBLIC REALM CONTRIBUTION

2.1 DEFINITIONS

- 2.1.1 "Public Realm Contribution" means the sum of **ONE HUNDRED AND TWENTY THOUSAND POUNDS (£120,000.00)** increased by the Percentage towards the provision of the Support;

- 2.1.2 "Support" means the support required for the increasing number of Independent traders in Sutton Town Centre and Outram Street;

2.2 OWNER'S COVENANTS

The Owner Covenants with the Council as follows;

- 2.2.2 To pay the Public Realm Contribution increased by the Percentage to the Council prior to the Occupation of the Development

- 2.2.3 There shall be no Occupation of the Development until the Public Realm Contribution increased by the Percentage has been paid to the Council

2.3 COUNCIL'S COVENANTS

- 2.3.1 The Council covenants with the Owner to apply the Public Realm Contribution to the provision of Support and for no other purpose whatsoever and to return any sums remaining unspent or uncommitted after five (5) years from the date of receipt (notwithstanding that the monies may be used towards a contract already let before the date hereof) to the person by whom the moneys were paid.

