PROPOSED DEVELOMENT OF AFFORDABLE HOUSING AND MARKET HOUSING UNITS AT GROBY ROAD, RATBY

(Planning Application Ref No 08/00269/FUL)

DEVELOPMENT SERVICES

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OPEN SPACE AND EDUCATION CONTRIBUTION

DATE 2008

HINCKLEY AND BOSWORTH BOROUGH COUNCIL

DEVELOPMENT SERVICES
02 APR 2008
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- and -

LEICESTERSHIRE COUNTY COUNCIL

- and -

CAWREY LIMITED

~~- and -~~

PLANNING AGREEMENT

SECTION 106 TOWN AND COUNTRY PLANNING ACT 1990

Relating to the Residential development of land
at
Groby Road, Ratby

Hinckley and Bosworth Borough Council
Council Offices
Argents Mead
Hinckley
Leicestershire LE10 1BZ

THIS AGREEMENT is made the day of 2008

BETWEEN

(1) HINCKLEY AND BOSWORTH BOROUGH COUNCIL of Council Offices Argents Mead Hinckley LE10 1BZ ("the Borough Council")

(2) LEICESTERSHIRE COUNTY COUNCIL of County Hall Glenfield Leicestershire LE3 8RJ ("the County Council")

(3) CAWREY LIMITED – whose registered office is situate at of Kirby Grange Farm Taverner Drive Ratby Leicester LE6 0HQ

("the Owner")

(4) whose registered office is situate at

("the Mortgagee") (Not Applicable)

RECITALS

1. The Borough Council is the Local Planning Authority for the purposes of this Agreement for the area within which the Land is situated
2. The County Council is a Local Planning Authority and the Local Education Authority for the area within which the Land is situate.
3. The Owner is the owner in fee simple in possession free from encumbrances of the Land
4. The Mortgagee is mortgagee of the Land under a legal mortgage dated and made between the Owner and the Mortgagee.
5. The Owner has applied to the Borough Council for planning permission to carry out the Development
6. To facilitate the Development the Borough Council require the payment of the Education Contribution and the Open Space Contribution.
7. The Borough Council has resolved to grant planning permission for the Development subject to conditions and subject to the making of this Agreement without which planning permission for the development would not have been granted

NOW THIS DEED WITNESSES as follows:-

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement (including for the avoidance of doubt the Recitals hereto) the following expressions shall have the following meanings unless the context requires otherwise:-

"Planning Act"	the Town and Country Planning Act 1990 (as amended)
"Commencement of Development"	shall mean the time when the development is initiated or begun by carrying out any of the operations specified in Section 56(4) (a) (b) (c) or (d) of the Planning Act (other than works of demolition site clearance and fencing survey soil tests or archaeology tests) and "commence" or "commenced" shall mutatis mutandis be construed accordingly
"Development"	[~~r~~Residential development of] the Land pursuant to the Planning Permission
"Education Contribution"	the sum of One hundred and sixtytwo thousand and twenty-four pounds (£162,024) [determined ~~multiplied~~ by the total number of dwellings comprising more than one bedroom (36 houses and bungalows and 20 flats) which may be authorised pursuant to the Planning Permission and the approval of reserved matters thereunder ~~(provided that such number of dwellings so authorised exceeds nine)~~]as a contribution towards the cost of the provision and enhancement of educational facilities at schools which would ordinarily be expected to be attended by residents of the Development

["Occupation"	means in relation to the Development beneficial occupation of any part of it for residential purposes but shall not include (i) daytime occupation by workmen involved in the erection of any part of the Development; or (ii) the use of any dwelling house(s) for the marketing of the Development; or (iii) the storage of plant and materials and "occupy" and "occupied" shall be constructed accordingly]
"Off-Site Open Space Contribution"	the sum of Nineteen thousand four hundred and fifty-six pounds ~~pounds~~ (£19456) comprising £12,528 in respect of the provision and/or improvement of open space ("the provision sum") and £6928 in respect of the maintenance of such open space ("the maintenance sum") ~~[multiplied by the total number of dwellings which may be authorised pursuant to the Planning Permission and the approval of reserved matters thereunder]~~ as a contribution towards the provision and/or improvement and maintenance of open space in lieu of the provision of open space within the Development
["On-Site Open Space"	the public open space to be provided within the Development]
["On-site Open Space Contribution"	the sum of pounds in respect of the maintenance of the On-Site Open Space]

"the Land"	the Land as described in the First Schedule hereto.
"Plan"	the plan annexed hereto
"Planning Application"	the Planning Application made by the Owner to the Borough Council on 26 March 2008 reference number 08/00299/FUL for ~~[outline]~~ [detailed] planning permission for the Development.
"Planning Permission"	the planning permission to be granted pursuant to the Planning Application for the Development subject to conditions.

1.2 In this Agreement

1.2.1 Words importing the masculine gender shall be deemed to include the feminine and the neuter and the singular the plural and vice versa and words denoting natural persons shall include corporations and vice versa unless the contrary is expressly provided or the context otherwise requires.

1.2.2 Obligations and liabilities of a party comprising more than one person are obligations and liabilities of such persons jointly and severally provided that no person shall be liable in respect of any breach (and for this purpose breach shall include the failure to perform any positive obligation) other than in respect of land in his beneficial ownership AND further no person shall be liable for any breach of covenant first occurring after he has disposed of such interest in such land or the part thereof in respect of which such breach occurs.

1.2.3 Any reference to a numbered clause or sub-clause or to a Schedule is (except where indicated to the contrary) a reference to the corresponding clause or sub-clause or a Schedule to this Agreement.

1.2.4 Any reference to any statute or any section thereof includes any amendment modification consolidation or re-enactment thereof and any statutory instrument direction or regulation made thereunder for the time being in force.

1.2.5 The clause headings in this Agreement are for ease of reference only and shall not affect the construction thereof.

1.2.6 The expressions "the Borough Council" "the County Council" "the Owner" and "the Mortgagee" shall where the context so admits include their respective successors and assigns.

1.2.7 No failure or delay by the Borough Council or the County Council to exercise any right power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same or some other right or power of the relevant Council.

2. STATUTORY BASIS

This Agreement is made pursuant to Section 106 of the Planning Act Section 111 of the Local Government Act 1972 and in pursuance of all other powers enabling the parties hereto respectively with the intention that the covenants given by the Owner in this Deed bind (so far as provided by this Agreement) its successors in title (being owners for the time being of the owners interests or a part thereof in the Land).

3. PLANNING OBLIGATION

3.1 Each covenant by the Owners contained herein is a planning obligation for the purpose of Section 106 of the Planning Act and enforceable by the Borough Council

3.2 The covenant contained in clause 4.1.1 is also enforceable by the County Council.

4. THE OWNERS COVENANTS

4.1.1 No Development shall commence until the greater of the Education Contribution or the Education Contribution adjusted in accordance with the Second Schedule has been paid to the County Council and such greater sum shall be paid to the County Council before Development commences

4.1.2 No Development shall commence until the greater of the Off-Site Open Space Contribution or the Off-Site Open Space Contribution adjusted in accordance with the Second Schedule has been paid by the Owner to the Borough Council and

such greater sum shall be paid to the Borough Council before Development commences

4.1.3 [In the event the On-Site Open Space is transferred to [either] the Borough Council [or the Ratby Parish Council] the Owner shall on completion of such transfer pay to the Borough Council the On-Site Open Space Contribution adjusted in accordance with the Second Schedule]

5 THE BOROUGH COUNCIL'S AND THE COUNTY COUNCIL'S COVENANTS

5.1 The Borough Council covenants with the Owner to apply the Off-Site Open Space Contribution towards the provision of new or improvement of existing recreational facilities and open space and the maintenance thereof within the locality of the Development.

5.2 The County Council covenants with the Owner to apply the Education Contribution for the provision or enhancement of educational facilities at schools which would ordinarily be expected to be attended by residents of the Development

5.3 If the whole of the Education Contribution has not been used by the County Council within five years of the date of payment of the Education Contribution then any sums not so used shall be repaid by the County Council to the payer on written demand

5.4 If no part of the Off-Site Open Space Contribution has been used by the Borough Council within five years of the date of payment the Off-Site Open Space Contribution shall be repaid by the Borough Council to the payer on written demand

5.5 If part of the Off-Site Open Space Contribution has been used by the Borough Council within five years of the date of payment then the following amounts shall be repaid by the Borough Council to the payer on written demand:

5.5.1 that part of the provision sum which has not been used; and

5.5.2 such proportion of the maintenance sum as that part of the provision sum which has not been used bears to the provision sum.

[5.6 The Borough Council covenants with the Owner to apply the On-Site Open Space Contribution towards the maintenance of the On-Site Open Space]

6. GENERAL

6.1 This Agreement is a local land charge and shall be registered as such

6.2 Any dispute under or arising out of the operation of this Agreement may be referred to a single arbitrator if all parties to the dispute shall agree such arbitrator or in default of agreement 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 or any statutory modification or re-enactment thereof for the time being in force.

6.3 Any notice agreement consent or approval to be given under the terms of this Agreement shall be in writing and sent by ordinary post and:-

6.3.1 in the case of the Borough Council be addressed to the Planning Office, Council Offices, Argents Mead, Hinckley, Leicestershire, LE10 1BZ; and

6.3.2 in the case of the County Council be addressed to the County Solicitor County Hall Glenfield Leicester LE3 8RA

6.3.3 in the case of the Owner shall be sent by ordinary post to its registered office or the Owner's address above or such other address as it shall provide in this regard.

6.4 The Owner shall notify the Borough Council and the County Council within 14 days of such commencement of the Commencement of the Development [and within 14 days of such occupation of the first occupation of the Development].

6.5 The Mortgagee consents to the Owner entering into this Agreement and acknowledges that this Agreement binds the proposed development. The Mortgagee shall only be liable for any breach of this Agreement if it has itself caused the breach whilst mortgagee in possession. It shall not be liable for any pre-existing breach although for the avoidance of doubt any of its successors in title shall be so liable

6.6 If the Planning Permission expires is revoked or otherwise ceases to exist before the Commencement of Development this Agreement will cease to have effect and

as from such time there shall be no further obligations on any party in relation to any matter that has occurred or may arise under this Agreement.

6.7 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement and no person other than the parties to this Agreement or their successors in title or assigns shall have any rights under it nor shall it be enforceable by any person other than the parties to it or their successors in title.

6.8 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) granted after the date of this Agreement.

6.9 The Borough Council will upon the written request of the Owner at any time after the obligations of the Owner under this Agreement have been fulfilled issue written confirmation thereof and thereafter cancel all related entries in the Register of Local Land Charges.

6.10 The Owner shall pay the Borough Council's and the County Council's reasonable legal costs in respect of the preparation and completion of this Agreement.

IN WITNESS THE Borough Council the County Council the Owner and the Mortgagee have executed this Agreement as a Deed on the day and year first before written.

THE FIRST SCHEDULE

The Land

2.1629~~square metres/~~hectares~~/acres~~ of land at Groby Road, Ratby and shown for identification edged red on the Plan

SECOND SCHEDULE

1. In this Schedule:-

"Index" means

(i) In respect of the Open Space Contribution the All Items Retail Prices Index published by the Office of National Statistics contained in the Monthly Digest of Statistics (or

contained in any official publication substituted therefor) or such other index as may from time to time be published in substitution therefor or if for any reason the Index shall be abolished, there shall be substituted for the purposes of this Schedule, such index of food price costs (including the altered All Items Retail Prices Index) as may from time to time be published by or under the authority of any Ministry or Department of Her Majesty's Government and if no such index is published, the parties thereto shall endeavour to agree such other index as shall most closely reflect changes in the costs of living; and

(ii) In the case of the Education Contribution the All in Tender Price Index of Buildings Cost Information Services ("BICS") as published by the Royal Institute of Chartered Surveyors ("RICS") or in the event that the RICS shall change the basis of compilation or cease to compile or publish the said Index such other Index as the parties hereto shall agree or in default of agreement such Index as shall be determined by an Arbitrator appointed by the President of the RICS for the purposes of this Agreement in all cases to ensure as nearly as possible that the sums of money involved shall fluctuate in accordance with the general level of the building industry costs

"Base Index Date" means the date of the grant of planning permission.

"Base Index Figure" means the figure published in respect of the Index immediately prior to the Base Index Date

"Final Index Figure" means the figure published or otherwise agreed or determined in respect of the Index immediately prior to the respective dates upon which the Education Contribution and the Open Space Contribution are paid

2. The Education Contribution and the Open Space Contribution shall be increased by such sum, if any, in pounds sterling as shall be equal to the sum calculated according to the following formula:-

   Increased Sum = $\frac{A \times C}{B}$

   Where: "A" equals the Education Contribution or the Open Space Contribution

   "B" equals the Base Index Figure

   "C" equals the Final Index Figure

3. If after the Base Index Date there should be any change in the Base Index Figure by reference to which changes in the Index are calculated, the figure taken to be shown in the Index after such change shall be the figure which would have been shown in the Index if the said Base Index Figure had been retained and the appropriate reconciliation shall be made

4. If any substitution for the said All Items Retail Prices Index or the BICS, or any index previously substituted therefor shall occur, the parties hereto shall endeavour to agree the appropriate reconciliation between the Index substituted on the one hand and the All Items Retail Prices Index or the BICS or any index previously substituted therefor on the other hand

THE COMMON SEAL of HINCKLEY)
AND BOSWORTH BOROUGH COUNCIL)
was hereunto affixed in the presence of:-)

Authorised Officer

THE COMMON SEAL of LEICESTERSHIRE)
COUNTY COUNCIL was hereunto affixed in)
the presence of:-)

Authorised Officer

THE COMMON SEAL of)
was hereunto affixed)
in the presence of:-)

SIGNED AS A DEED by)
in the presence of:-)

Ss/legal/agreements/s106/openspace&education(A)