# Memorandum

2 - JUN 2010

**To:** Sarah Humphries, Planning Department

**CC:**

**From:** Mike Rice, Legal Services

**Date:** 1st June, 2010

**Re:** S.106 AGREEMENT, LAND AT MOORE ROAD, BARWELL

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I attach a copy of the Section 106 Agreement relating to the above land dated 20th May, 2010 now completed. Would you kindly issue planning consent if still outstanding.

Many thanks,

Mike

DEVELOPMENT SERVICES

3 JUN 2010

RECEIVED

DATE 20 MAY 2010

HINCKLEY AND BOSWORTH BOROUGH COUNCIL

- and -

LEICESTERSHIRE COUNTY COUNCIL

- and -

NAVAL KISHORE KHOSLA, ROBINDER GHAI and NAVNEET AGGARWAL
trading as RIVERSTONE ESTATES

# PLANNING AGREEMENT

SECTION 106 TOWN AND COUNTRY PLANNING ACT 1990

Relating to the residential development of land
at Moore Road, Barwell, Leicestershire

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

THIS AGREEMENT is made the 20 day of July 2010

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 8RA ("the County Council")

(3) NAVAL KISHORE KHOSLA of 9 Carpenter Road Edgbaston Birmingham B15 2JT, ROBINDER GHAI of 200 Markfield Lane Markfield LE67 9PS and NAVNEET AGGARWAL of 54 Westfield Road Leicester LE3 6HS trading as Riverside Estates ("the Owner")

(4) NATIONAL WESTMINSTER BANK PLC (Company Registration No 929027) whose Registered Office is situated at 135 Bishopsgate London EC2M 3UR (the 'Chargee')

RECITALS

A. The Borough Council is the Local Planning Authority for the purposes of this Agreement for the area within which the Application Site is situated

B. The County Council is a Local Planning Authority and the Local Education Authority for the area within which the Application Site is situated

C. The Owner is the registered proprietor with title absolute of the Application Site (Land Registry Title No LT390882)

D. The Owner has applied to the Borough Council for planning permission to carry out the Development

E. To facilitate the Development the Borough Council require the payment of the Health Contribution and the Library Facilities Contribution

F. The Borough Council has resolved to grant planning permission in the form of the draft Decision Notice attached to this Agreement 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

G. The Chargee has a charge over the Application Site dated ~~9 October 2006~~ 11 SEPTEMBER 2006 ASW

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:-

| | |
|---|---|
| 'Application Site' | means the land shown edged red on the Plan and more particularly described in the First Schedule hereto |
| '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' | residential development of the Application Site pursuant to the Planning Permission |
| 'Health Contribution' | the sum of twenty two thousand one hundred and fifty four pounds (£22,154.00) as a contribution to the improvement o facilities at Jersey Way Surgery ad Health Lane Surgery Earl Shilton |
| 'Library Facilities Contribution' | the sum of one thousand and thirty pounds (£1,030.00) as a contribution towards the cost of the provision and enhancement of library facilities at libraries which would ordinarily be expected to be attended by residents of the Development |
| 'Monitoring Costs Contribution' | the sum of or 0.5% of the value of the contribution (whichever is the greater) for each contribution payable to the County Council towards the County Council's costs of monitoring compliance with the obligations contained in the Fifth Schedule hereto |
| 'The Plan' | the plan annexed hereto |
| 'Planning Act' | the Town and Country Planning Act 1990 (as amended) |
| 'Planning Application' | the Planning Application made by the Owner to the Borough Council under reference number 09/00358/FUL for 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 as set out in the draft Decision Notice attached to this Agreement

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" and "the Owner" and the "Chargee" shall where the context so admits include their respective successors and assigns.

12.7 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 Application Site).

3. PLANNING OBLIGATION

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

3.2 The covenant contained in clause 4.2 is also enforceable by the County Council

4. THE OWNER'S COVENANT

4.1 The Owner covenants with the Borough Council to comply with the covenant contained in the Second Schedule

4.2 The Owner covenants with the County Council to comply with the covenant contained in the Third Schedule

5. THE BOROUGH COUNCIL'S COVENANTS

5.1 The Borough Council covenants with the Owner to comply with the obligations contained in the Fourth Schedule

6. THE COUNTY COUNCIL'S COVENANTS

6.1 The County Council covenants with the Owner to comply with the obligations contained in the Fourth Schedule

7. **CHARGEE'S CONSENT AND COVENANTS**

7.1 The Chargee for itself and its successors in title hereby consents to the completion of this Agreement and acknowledges the covenants on the Application Site by the Owner and covenants with the Borough Council that in the event that the Chargee takes possession of the Application Site or any part of it and/or exercising its power of sale under the provisions of the Charge then the Chargee and its successors in title will observe and perform and be bound by the terms conditions and covenants in this Agreement so far as the same remain to be observed and performed

8. GENERAL

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

8.2 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.

8.3 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:-

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

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

8.3.3 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.

8.4 The Owner shall notify the Borough Council and the County Council within 14 days of such Commencement of Development

8.5 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.

8.6 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.

8.7 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 Planning Permission) granted after the date of this Agreement.

8.8 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.

8.9 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 Chargee have executed this Agreement as a Deed on the day and year first before written.

## THE FIRST SCHEDULE

### The Application Site

5704 square metres of land at Moore Road Barwell and shown for identification edged red on the Plan

## SECOND SCHEDULE

### The Owners' Covenants to the Borough Council

1. No Development shall commence until the greater of the Health Contribution or the Health Contribution adjusted in accordance with the Sixth Schedule has been paid to the Borough Council

## THIRD SCHEDULE

The Owner's Covenant to the County Council

1. No Development shall Commence until the greater of the Library Facilities Contribution or the Library Facilities Contribution adjusted in accordance with the Sixth Schedule has been paid to the County Council

2. No Development shall Commence until the greater of the Monitoring Costs Contribution or the Monitoring Costs Contribution adjusted in accordance with the Sixth Schedule has been paid to the County Council

## FOURTH SCHEDULE

The Borough Council's Covenant to the Owner

1. The Borough Council covenants with the Owner to pay the Health Contribution to the Leicestershire County and Rutland Community Health Services with a request that it be used as a contribution to the improvement of facilities at Jersey Way Surgery and Heath Lane Surgery Earl Shilton

## FIFTH SCHEDULE

The County Council's Covenants to the Owner

1. The County Council covenants with the Owner to apply the Library Facilities Contribution towards the provision and enhancement of library facilities at libraries which would ordinarily be expected to be

attended by residents of the Development

2. If the whole of the Library Facilities Contribution has not been used by the County Council within five years of the date of payment of each such Contribution then any sums not so used shall be repaid by the County Council to the payer with interested accrued thereon on written demand

3. To apply the Monitoring Costs Contribution towards the administrative costs of confirming compliance with the Library Facilities Contribution

## SIXTH SCHEDULE

1. In this Schedule:

"Index" means

(i) In the case of the Library Facilities Contribution the Health Contribution and the Monitoring Costs Contribution the All in Tender Price Index of Buildings Cost Information Services ("BCIS") as published by the Royal Institution 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 Library Facilities Contribution the Health Contribution and the Monitoring Costs Contribution are paid

2. The Library Facilities Contribution the Health Contribution and the Monitoring Costs 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 Library Facilities Contribution the Health Contribution and the Monitoring Costs Contribution

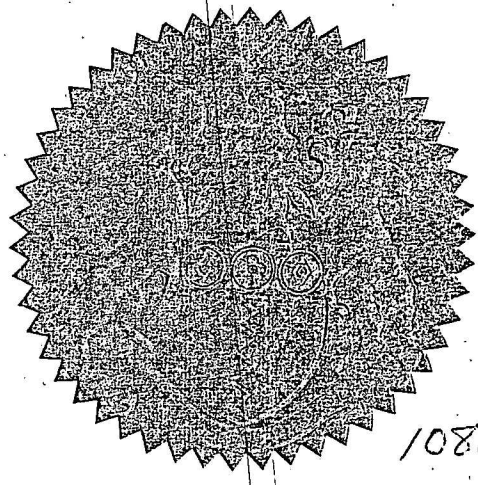
"B" equals the Base Index Figure

"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

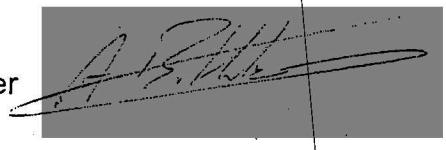
4. If any substitution for the said All Items Retail Prices Index or the BCIS, or any index previously substituted therefor shall occur, the parties hereto shall endeavour to agree the appropriate reconciliation between the Index substituted on the one hand and the All Items Retail Prices Index or the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



10886

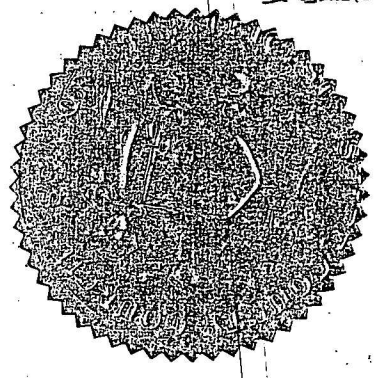
Authorised Officer



28111-5(b)

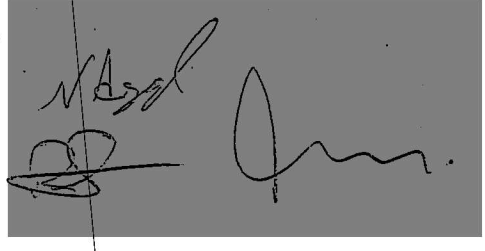
THE COMMON SEAL of LEICESTERSHIRE)
COUNTY COUNCIL was hereunto affixed )
in the presence of:-





Authorised Officer

Signed as a Deed by the Owners
in the presence of:-



Witness Name:

Witness Signature

Witness Address:

NARESH SHARMA (SOLICITOR)
MURRIA SOLICITORS
180 CORPORATION STREET
BIRMINGHAM
B4 6UD

Witness Occupation

THE COMMON SEAL of NATIONAL )
WESTMINSTER BANK PLC was )
hereunto affixed in the presence of:- )

Signed as a deed by
ANNEBROOKES
as the Attorney in their capacity
as Documentary Official Credit
Documentation for and on
behalf of National Westminster
Bank PLC

In the presence of

Bank Official

VICTORIA COOPER
S.Sheffield Credit Documentation
P.O. Box No. 502
2.2nd Floor, 42 High Street
Sheffield S1 2YW

# Neighbour Map

## 29 Moore Road




10886

Scale : 1:250

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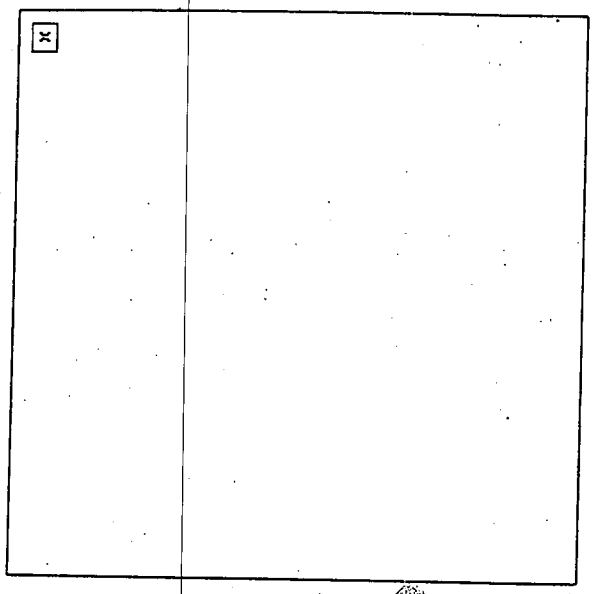
| | |
|---|---|
| Organisation | Not Set |
| Department | Not Set |
| Comments | Do Not Copy |
| Date | 06 January 2010 |
| SLA Number | Not Set |

Produced using ESRI (UK)'s MapExplorer 2.0 - http://www.esriuk.com



**Town and Country Planning Act 1990**

**PLANNING PERMISSION**

**Name and Address of Applicant**
Riverstone Estates
29 Moore Road
Barwell
Leicester
Leicestershire
LE9 8AF

**Name and Address of Agent (if any)**
Mr Andrew Khoury
Khoury Architects
50-54 St Pauls Square
Studio 6
Birmingham
B3 1QS

**Part I - Particulars of Application**

| **Date of Application** | **Application No.** |
|---|---|
| 15 May 2009 | 09/00358/FUL |

**Particulars and location of development :**

REDEVELOPMENT OF EXISTING DERELICT SITE INTO A 2.5 STOREY 38 BED RESIDENTIAL CAREHOME

**29 Moore Road Barwell Leicester Leicestershire LE9 8AF**

**Part II - Particulars of decision**

**Summary of Reasons for Recommendation and Relevant Development Plan Policies :**

Having regard to the pattern of existing development in the area, representations received and relevant provisions of the development plan and core strategy, as summarised below, it is considered that subject to compliance with the conditions attached to this permission, the proposed development by virtue of the scale, mass, design and parking provision, the development is not considered to detrimentally affect the amenities of nearby residents, nor the character or appearance of the street scene and therefore would be in accordance with the development plans.

Hinckley & Bosworth Borough Council Local Plan (2001) :- Policy 3 of Core Strategy, Policies BE1, T5 and CF8

**In pursuance of its powers under the Town and Country Planning Act 1990, the Hinckley and Bosworth Borough Council grants permission for the carrying out of the development referred to in Part I hereof in accordance with the application form and plans submitted, subject to the following conditions :-**

**IMPORTANT - PLEASE READ THE NOTES AT THE END OF THIS DOCUMENT**

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

2. Before any development commences, representative samples of the types and colours of materials to be used on the external elevations of the proposed care home shall be deposited with and approved in writing by the Local Planning Authority, and the scheme shall be implemented in accordance with those approved materials.

3. The development hereby permitted shall not be carried out otherwise than in complete accordance with the submitted application details, as follows:
085.E.01.G01-A, 085.P.01.G02-A received 18.02.10
085.P.03.G01-B received 24.02.10
085.P.01.G01-B, 085.P.01-G04-B received 01.03.10

4. No development approved by this permission shall be commenced until a scheme for the investigation of any potential land contamination on the site has been submitted to and agreed in writing by the Local Planning Authority which shall include details of how any contamination shall be dealt with. The approved scheme shall be implemented in accordance with the agreed details and any remediation works so approved shall be carried out prior to the site first being occupied.

5. If during development, contamination not previously identified is found to be present at the site, no further development shall take place until an addendum to the scheme for the investigation of all potential land contamination is submitted to and approved in writing by the Local Planning Authority which shall include details of how the unsuspected contamination shall be dealt with. Any remediation works so approved shall be carried out prior to the site first being occupied.

6. The parking and turning areas shown on plan 085.P.01G01-B received 01.03.10 shall be laid out and available prior to the development being brought into use.

7. The landscape scheme shown on plan number 085.P.01.G04-B received 01.03.10 shall be implemented within the first planting season after the development is completed unless otherwise agreed in writing by the local planning authority.

8. Prior to the first occupation of the care home hereby permitted, the proposed cycle parking as shown on approved plan 085.P.01.G01-B receive 01.03.10, shall be provided and retained as such.

The reasons for the conditions are :-

1. To comply with the requirements of Section 51 of the Planning and Compulsory Purchase Act 2004.

2. To ensure that the development has a satisfactory external appearance to accord with policy BE1 of the adopted Hinckley & Bosworth Local Plan.

3. For the avoidance of doubt and in the interests of proper planning.

4. To ensure that the development would not result in any material harm through the pollution within the soil in accordance with Policy NE2 of the adopted Hinckley and Bosworth Local Plan.

5. To ensure that the development would not result in any material harm through the pollution within the soil in accordance with Policy NE2 of the adopted Hinckley and Bosworth Local Plan.

6. To ensure that there is adequate off street parking and turning for the proposed development in accordance with Policy T5 of the Hinckley and Bosworth Local Plan.

7. To ensure that an adequate standard of landscaping is provided in accordance with BE1 of the adopted Hinckley and Bosworth Local Plan.

8. In the interest of sustainable transport choice in accordance with Policy T5 of the adopted Hinckley and Bosworth Local Plan.

NOTES TO APPLICANT :-

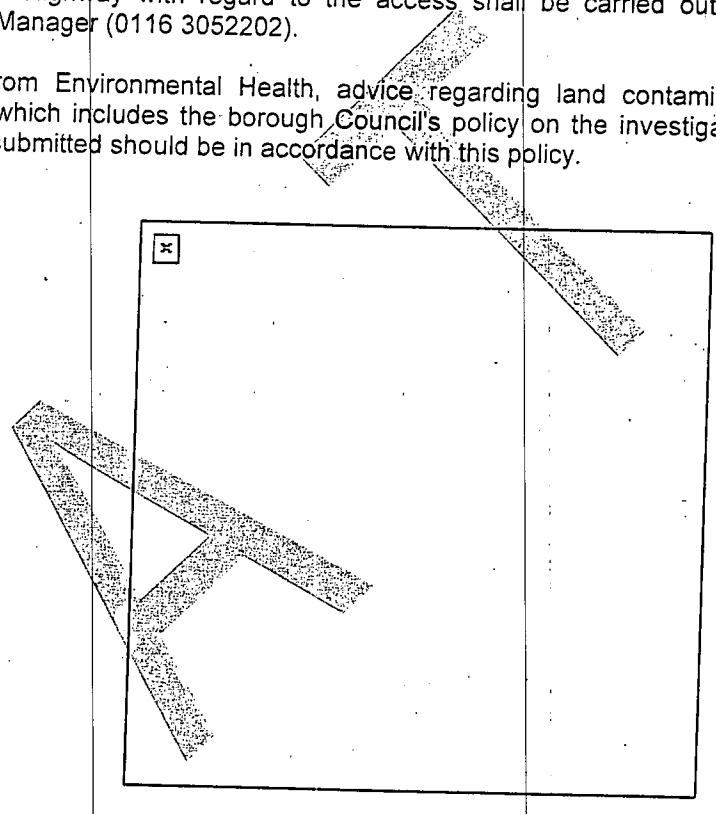
1. Bats, nesting birds, great crested newts and certain other species are protected by law. If any such species are discovered before or during the works the works must be suspended and the local office of Natural England contacted for advice.

2. This permission does not grant approval under the Building Act 1984 and the Building Regulations 2000 (as amended) for which a separate application may be required. You are advised to contact the Building Control Section.

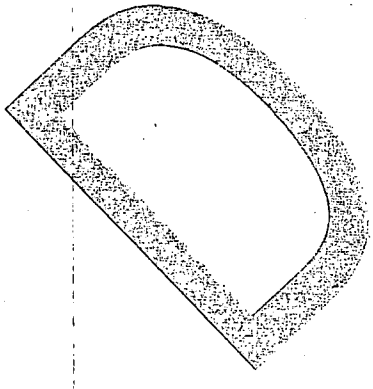
3. As from 6th April 2008 this Authority are charging for the discharge of conditions in accordance with revised fee regulations which came into force on that date. Application forms to discharge conditions and further information can be found on the planning portal web site www.planningportal.gov.uk.

4. All works within the limits of the Highway with regard to the access shall be carried out to the satisfaction of the Southern Area Manager (0116 3052202).

5. In relation to advice received from Environmental Health, advice regarding land contaminations attached to this decision notice, which includes the borough Council's policy on the investigation of land contamination. Any scheme submitted should be in accordance with this policy.



Date : 23 March 2010



**TREVOR PROWSE**
PROPER OFFICER OF THE COUNCIL

## NOTES

1. It will be most helpful if the application number shown overleaf is quoted in all correspondence.

If the applicant is aggrieved by the decision of the Local Planning Authority to grant permission subject to conditions, he may appeal to the Secretary of State for the Environment in accordance with Section 78 of the Town and Country Planning Act 1990 within six months (see para 2a below) of the date of this notice. (Appeals must be made on a form which is obtainable from the Planning Inspectorate, Room 305(K), Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN or by telephoning 0117 372 6372). The Secretary of State has power to allow a longer period for the giving of a notice of appeal but he will not normally be prepared to exercise this power unless there are special circumstances which excuse the delay in giving notice of appeal. The Secretary of State is not required to entertain an appeal if it appears to him that the permission for the proposed development could not have been granted by the Local Planning Authority, or could not have been so granted otherwise than subject to the conditions imposed by them, having regard to the statutory requirements as set out in Section 78 of the Town and Country Planning Act 1990, to the provisions of the development order, and to the directions given under the order. He does not in practice refuse to entertain appeals solely because the decision by the Local Planning Authority was based on a direction given by him.

2a. Appeals- new time rules. Appeals relating to applications made to the Local Planning Authority on, or after, 5th September 2003 must be made within six months of the date of this notice.

3. If permission to develop land is granted subject to conditions, whether by the Local Planning Authority or by the Secretary of State for the Environment, and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, he may serve on the Council a purchase notice requiring that Council to purchase his interest in the land in accordance with the provisions of Part VI of the Town and Country Planning Act 1990.

4. In certain circumstances, a claim may be made against the Local Planning Authority for compensation, where permission is refused or granted subject to conditions by the Secretary of State on appeal or on a reference of the application to him. The circumstances in which such compensation is payable are set out in Section 114 of the Town and Country Planning Act 1990.

5. This permission covers only consent under the Town and Country Planning Acts and does not give permission to demolish a Listed Building, for which separate consent is required. Amongst other things the consent of the Council of the district in which the land is situated may be required under the Building Regulations and if the proposals affect land within the limits of the highway (that is between the highway fences or hedges) the separate consent of the Highway Authority may also be required. Steps to obtain the necessary further consents should be taken before proceeding with the development.

SHOPS, OFFICES, FACTORIES, EDUCATIONAL BUILDINGS & BUILDINGS TO WHICH THE PUBLIC ARE TO BE ADMITTED - ACCESS AND PROVISION FOR THE DISABLED PERSONS

The Local Planning Authority is required to bring to your attention the requirements of the Disabled Persons 1981, Building Regulations 1991 "Access and facilities for Disabled People" document M and the Chronically Sick & Disabled Act 1970 (as amended 1976) (Sections 4,7,8 and 8A) requiring the provision of access facilities, car parking and toilets for the disabled and the provision of signing indicating what provision has been made for disabled persons within the building. Your attention is also drawn to the Code of Practice B.S 5619 "Design of Housing for the convenience of Disabled People" 1978 and Code of Practice, B.S. 5810 : 1979, "Access for the Disabled to buildings" available from the British Standards Institution, 2 Park Street, London W1A 2BS. (Tel 071-629-9000) and (in so far as educational buildings are concerned), to Design Note 18 "Access for the Physically Disabled to Educational Buildings."

The buildings to which these requirements apply are :-

- Buildings to which the public are to be admitted to which Section 4 of the Chronically Sick & Disabled Act 1970 (as amended 1976) applies.
- Offices, Shops & Railway Premises as defined in the Offices, Shops & Railway Premises Act 1963 or premises deemed to fall within the Act.
- Factories as defined by Section 175 of the Factories Act 1961.
- Educational Buildings as defined by Section 29B of the Disabled Persons Act 1981.