INFORMAL HEARING – 27 AUGUST 2008

- Agenda provided by Inspector

- Description of development queried with appellants regarding the inclusion of an extension to create the office thereby it is not retained as stated in the description.

- Plans agreed as stated in Council's statement except for a typo – drawing no FP4.04-05-05 should read FP4.04-04-05.

- Address of site should be 4 Hawley Road and 68 Station Road

- Policy:
  Status of SPG questioned, including the refusal using T5 and the County's document referred to in the policy not equating to the HTD used by county. County Contributions policy document – status questioned.

- Issue 1:
  Submissions made by both parties regarding the design of the proposal and the impact of the proposed designed on the area.

- Issue 2:
  Revised plan submitted by appellant altering the parking arrangements off Station Road. LCC expressed concern regarding the revised plans regarding the layout of parking and adequacy of access.

- Issue 3:
  Unilateral Undertaking submitted by appellant – LPA raised concern over trigger for payment being prior to first occupation and obligations for Council to pay monies back in three years. Inspector reiterated concerns about obligations for Council and also raised issue with the 'In Witness' statement being on a separate page to signatures. This resulted in an amendment to the undertaken by hand – original provided to LPA copies to Inspector and Appellant.

  Justification for contributions requested – specifically where contributions are to be spent, what exactly are they to be spent on, where the deficiency exists currently and timescale for spending of monies. Neither LCC or PCT had provided adequate justification in these areas.

- Conditions:
  In LPA statement -
  Condition 1 – agreed
  Condition 2 – remove reference to proposed finished floor levels as these are determined by existing levels of building
  Condition 3 – agreed
  Condition 4 – replace with model condition (see attached)
  Condition 5 – covered by other legislation
  Condition 6 – covered by other legislation
  Condition 7 – remove reference to building
  Condition 8 – remove reference to play equipment
  Condition 9 – remove 'at which time shall be specified in writing by the LPA'

  In Highway statement –

Condition 1 – agreed that gates/barrier can be erected at Hawley Road access providing they are set back at least 5 metres from highway boundary. Barrier can be erected at Station Road access providing it is set back at least 7 metres from highway boundary.
Condition 2 – layout provided therefore no need for condition
Condition 3 – cannot be achieved on Station Road within control of applicant and is shown on layout for Hawley Road access therefore condition not necessary.

- Additional conditions:
Prior to first occupation a scheme for the provision of accommodation for a permanent on site warden shall be submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details. (NOTE: scheme should include timescales for implementation)

Gradient to be 1:12 for first 5 metres from back edge of highway

Access to be hard bound for first 5 metres from back edge of highway

Parking to be hard surfaced and marked out – covered by landscaping condition

- Other matters:
Full costs application made by Appellant – see attached

Councils rebuttal:
The application was not encouraged by the LPA this is demonstrated by the refusal of the 2005 scheme on design terms. The current appeal proposal seeks the same design and therefore was never going to be considered acceptable and this could not have been a surprise to the appellant.

The submission of a revised plan the day before committee gave insufficient time to consult with Highways and neighbours. Bearing in mind the revised plan altered the highway access and parking arrangements and introduced the use of an access alongside an existing residential property such consultation was considered necessary. Targets for applications are set by Central Government for a reason and it is necessary to draw a line in the sand and determine applications based on the application details submitted by a certain time.

Following refusal of the application no contact has been made by the appellants to either the LPA or the Highways Authority regarding the revised plan. Highways do still have concerns therefore the highway reasons for refusal would still stand in relation to the revised plans.

The fourth reason for refusal regarding contributions has been satisfied with the submission at appeal of the unilateral undertaking but the revised heads of terms was not submitted by the applicant until the day before committee and therefore was not taken into consideration.

The LPA and Highways Authority have justified the reasons for refusal and therefore feel the costs application should fail.

- The site visit was undertaken in the presence of the Inspector, David Loveday, Simon England, Tracy Miller and Rebecca Henson.

Model planning conditions for development on land affected by contamination:

Unless otherwise agreed by the Local Planning Authority, development other than that required to be carried out as part of an approved scheme of remediation must not commence until conditions 1 to 4 have been complied with. If unexpected contamination is found after development has begun, development must be halted on that part of the site affected by the unexpected contamination to the extent specified by the Local Planning Authority in writing until condition 4 has been complied with in relation to that contamination.

1. Site Characterisation
An investigation and risk assessment, in addition to any assessment provided with the planning application, must be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme are subject to the approval in writing of the Local Planning Authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the Local Planning Authority. The report of the findings must include:

(i) a survey of the extent, scale and nature of contamination;

(ii) an assessment of the potential risks to:

- human health,
- property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,
- adjoining land,
- groundwaters and surface waters,
- ecological systems,
- archeological sites and ancient monuments;

(iii) an appraisal of remedial options, and proposal of the preferred option(s).

This must be conducted in accordance with DEFRA and the Environment Agency's *'Model Procedures for the Management of Land Contamination, CLR 11'.*

2. Submission of Remediation Scheme
A detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment must be prepared, and is subject to the approval in writing of the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

3. Implementation of Approved Remediation Scheme
The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development other than that required to carry out remediation, unless otherwise agreed in writing by the Local Planning Authority. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works.
Following completion of measures identified in the approved remediation scheme, a verification report (referred to in PPS23 as a validation report) that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval in writing of the Local Planning Authority.

4. Reporting of Unexpected Contamination
In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with the requirements of condition 1, and where remediation is necessary a

Town and Country Planning Act 1990
(Section 78)

Appeal by Messrs Cotswold Estates

Against the decision of Hinckley and Bosworth Borough Council to refuse planning permission for

Conversion and extensions to form 42 units

Site at Hawley Road/Station Road Hinckley

Department of the Environment reference: -

APP/K2420/A/08/2074009/NWF

David J Loveday reference: -

08/010/IH/CE

Application for a full award of costs by :

David J Loveday, BSc (Hons) MRTPI
Independence House
15 Burley Road
Oakham
Rutland
LE15 6DH

APPLICATION FOR FULL COSTS
under Circular 8/93

The application is made under the provisions of Circular 8/93.

The General Conditions relating to such applications are to be found in Annex 1 para 6.

1) Timing - this is the appropriate stage of proceedings.

2) Unreasonable behaviour - We consider that the LPA have acted unreasonably. This issue is for the Inspector.

3) Incur expense unnecessarily - We feel that the actions of the Council have led to this appeal, not only by the refusal, but by the continuing lack of objection to the scheme in principle throughout its consideration; the ~~active~~ encouragement given to the appellant, in principle both before and during the consideration of the application.

tasscit

Unreasonable behaviour.

Looking through the files, this whole matter must have been a nightmare for the appellants. Before any submission, the appellants knew that the principal of residential development at this site was likely to be satisfactory. Indeed, permission exists for the demolition and redevelopment of the site for that purpose. During the life of the application, the officers refused to consider amendments made to overcome objections, solely in order to meet the 13 week deadline. The application 'had' to be put to the Ctee meeting. – early December - letter to app. led to refusal.
The Council have, in my professional view, acted appallingly and unreasonably. The system is supposedly designed to assist all through the process. I feel that the Council have let that process down and as a consequence the appellant.
Whatever the outcome of the appeal, and that is for the Inspector to assess, my clients have been encouraged and then rebuffed by the Council. Had the members of the Council been advised to deal with the application in a proper manner this appeal would have been unnecessary.

We are in line with policy and therefore Section 54a of the Act applies.

The Council have in my professional view acted unreasonably. It is appalling to determine applications on the basis of the calendar rather than planning merit. – revised plan submitted prior to consideration of app.

Annex 3 paras 7-15 and 26-28

I do not propose to quote from the document. The tests for this application for costs are: -

a) Whether the Council had reasonable planning grounds upon which to base their decision and that they are able to produce substantial relevant evidence to support the decision.
b) Whether the application was handled correctly

The second and third reasons for refusal relates to just the items that can be overcome and were attempted to be overcome by the appellants before the decision was made. The first reason for refusal relates to scale. The original permission was of similar scale and there are very large buildings on site. The fourth reason was under discussion. We have a unilateral undertaking here. **ALL NEGOTIABLE.** We feel that these reasons were trumped up in order to determine the application at Committee, within the 13 week timescale.
I respectfully request that this application for the full costs of this Hearing be awarded.

AGENDA FOR DISCUSSION

Proposal:
To convert [including some new build extensions] the existing building at 4 Hawley Road and 68 Station Road, Hinckley, into 42 one and two bedroom self contained flats, with common areas and facilities creating a sheltered housing complex with 682.16 sq m of employment space within the eastern block [68 Station Road] being retained and refurbished continuing with its B1, B2 and B8 classification

Address:
Dennis House, 4 Hawley Road, Hinckley, Leicestershire LE10 0PR

Issues

1) The nature of the development and confirmation of the status of the application
    a) Plans
    b) Address
2) The policy framework:-
    a) Development plan
    b) The status of any emerging plans
    c) The status of SPG
3) Issue 1: The effect of the proposed development on the character and appearance of the area
    a) Present factors contributing to character and appearance
    b) Quality of design
    c) Effect on the area
4) Issue 2: The effect of the proposal on highway safety
    a) Station Road access
        (i) Applicable standards
        (ii) Traffic generation
        (iii) Effect on highway safety
    b) Parking
        (i) Applicable standards
        (ii) Hawley Road car park
        (iii) Station Road car park
        (iv) Spaces with direct access from Station Road
5) Issue 3: Whether the lack of a financial contribution towards the provision of library and health facilities would lead to unacceptable pressure on existing facilities in the local area
    a) Library services
    b) Health services
6) Conditions - without prejudice to the outcome of the appeal.
7) Any other matters
8) Site visit

DRE
Property Services Ltd
High Cross, Lancaster Road, Hinckley, Leicestershire, LE10 0AW, United Kingdom
Tel: 01455 632777 Fax: 01455 633503
Website: www.dreproperties.co.uk

27 AUG 2008

Our ref: PROP/CE/68STAT/6/ARC-07/01155/FUL/2.2/SJE/SB 26 August 2008

Ms T Miller
Hinckley & Bosworth Borough Council
Council Offices
Argents Mead
Hinckley
Leicestershire
LE10 1BZ

DEVELOPMENT SERVICES
27 AUG 2008
RECEIVED

SUBJECT TO CONTRACT
WITHOUT PREJUDICE

Dear Ms Miller

Premises: **4 Hawley Road & 68 Station Road**
Owner: **Cotswold Estates Limited**
Subject: **Conversion of the Existing Building into 42 Flats and 682M^2 of Industrial Unit**

Please find enclosed a duly signed Section 106 Obligation (Unilateral Undertaking) detailing the financial contributions that Cotswold Estates Limited are prepared to pay in respect of the above development.

The contributions include the following:

- Libraries Facilities Contribution £1,510
- Health Care Contribution £12,858

The total contribution equates to £14,368 which is inline with the Heads of Terms submitted as part of the application.

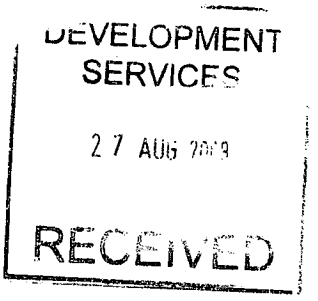
Yours sincerely

S J England BSc (Hons)
Estates Director
e-mail: sje@dregroup.co.uk

Enc: Duly signed Section 106 Obligation (Unilateral Undertaking)

Submitted at Hearing.

DATED: 27 August **2008**



(1) COTSWOLD ESTATES LIMITED

(2) HINCKLEY & RUGBY BUILDING SOCIETY

SECTION 106 OBLIGATION

(Unilateral Undertaking)

RELATING TO:

4 HAWLEY ROAD & 68 STATION ROAD

DRE PROPERTY SERVICES LTD
HIGH CROSS
LANCASTER ROAD
HINCKLEY
LEICESTERSHIRE
LE10 0AW

TELEPHONE: 01455 632777
FACSIMILE: 01455 633503
WEBSITE: www.dreproperties.co.uk

REF CE/SJE/SB

THIS UNDERTAKING is given the Twenty-Seventh day of August 2008

BY

1 **COTSWOLD ESTATES LIMITED** (Company Registration Number 2062383) whose registered office is situate at High Cross Lancaster Road Hinckley Leicestershire LE10 0AW (hereinafter referred to as "the Owner") of the first part

2 **HINCKLEY & RUGBY BUILDING SOCIETY** (Company Registration Number 03262800) whose registered office is situate at 81 Upper Bond Street Hinckley Leicestershire LE10 1DG (hereinafter referred to as "the Mortgagee") of the second part

TO

3 **HINCKLEY & BOSWORTH BOROUGH COUNCIL** of Council Offices Argents Mead Hinckley Leicestershire LE10 1BZ (hereinafter referred to as "the Council") of the third part

WHEREAS

(A) The Owner is seised in fee simple of all of the land and buildings at 4 Hawley Road and 68 Station Road and shown indicatively edged in red on the Plan appended hereto (hereinafter called "the Land") and which area is more particularly shown on drawing nos. FP4.04-03-05 Rev A submitted with the Application.

(B) Cotswold Estates Limited (hereinafter called the "Developer") has submitted a planning application to the Council under reference number 07/01155/FUL ("the Application")

(C) The Council have refused to grant planning permission pursuant to the Application to develop the Land in the manner hereinafter described and the Developers have appealed the said refusal to the Planning Inspectorate

(D) The Council is the Local Planning Authority for the purposes of Section 106 of the Town & Country Planning Act 1990 (hereinafter referred to as "the Act") and would require certain contributions to be paid in connection with the development of the Land in the event that planning permission were to be granted on appeal

(E) The Council and the Developer have failed to agree the amount of any contributions payable to the Council in order to secure the grant of a Planning Permission

DEFINITIONS

In this Undertaking the following words and expressions shall unless the context otherwise requires have the precise meanings set out below:

"Commencement of Development" means the point at which Planning Permission has been implemented by carrying out a material operation as defined in Section 56 of the Act other than the carrying out of the development

comprising trial holes bore pits or other ground investigation works or any other works relating to archaeology ground surveys site decontamination or demolition

"Development" means the development of the Land in accordance with the details submitted with the Application

"Library Facilities Contribution" the sum of One Thousand Five Hundred and Ten Pounds (£1,510) as a contribution towards the cost of the provision and enhancement of library facilities at Library which would ordinarily be expected to be attended by residents of the Development

"Health Care Contribution" means the sum of Twelve Thousand Eight Hundred and Fifty Eight Pounds (£12,858) towards the improvement of healthcare provision which would ordinarily be expected to serve the residents of the Development

" Index" means the index referred to in the Schedule to this Undertaking and by which all payments are to be adjusted

"Plan" means the plan annexed hereto

"Planning Permission" means the Planning Permission to be granted in respect of the conversion of the existing buildings (know as Dennis House) including some new build extensions to create 42 self contained flats within a sheltered housing complex and refurbishment of employment space

1. Interpretation

1.1 The expressions "the Owner" "the Council" and "the Mortgagee" shall include their respective successors in title and assigns and/or any successor body

1.2 Where appropriate the singular includes the plural and vice versa Words importing one gender include all other genders

1.3 Unless otherwise stated all references to clause numbers schedules and paragraph numbers are references to the clause schedules and paragraphs of schedules contained within this Undertaking

1.4 References to statutory provisions shall be construed as references to those provisions as may hereafter be amended or re-enacted

2. Liability of the Owner for the Covenants herein

The covenants and obligations on the part of the Owner herein shall not be such as to render the Owner liable for any breach which may occur in relation to the Land after it shall have parted with all of its interest therein or the part in respect of which such breach occurs save and unless such breach occurred during its ownership of such land

3. Enabling Powers

This Undertaking is given pursuant to the provisions of Section 106 of the Act and shall constitute and shall be deemed to contain planning obligations for the purposes of Section 106 of the Act and in the event of a breach it shall be enforceable by the Council pursuant to all powers enabling and all enactments which may be relevant for the purpose of giving validity hereto or facilitating the enforcement of the obligations herein contained and shall bind the Owner's interest in the Land

4. Conditions Precedent

4.1 This Undertaking is conditional and shall only have effect upon the Commencement of Development pursuant to the Planning Permission in circumstances where the inspector granting such permission makes it clear that he or she does so on the basis of the obligations contained in this Undertaking and without which he or she would not have granted the Planning Permission

4.2 For the avoidance of doubt this Undertaking is given on the understanding that in the event of the Planning Permission being quashed as a result of any legal proceedings or revoked or modified pursuant to Section 97 of the Town & Country Planning Act 1990 or for any other reason then this Undertaking shall absolutely determine and shall become null and void

5. Covenants by the Owner

The Owner HEREBY COVENANTS with the Council to comply with the obligations set out in this Clause 5

5.1 Contributions to the Council

Prior to first occupation of the Development and upon the Council confirming in writing at any time prior to the first occupation that it will comply with the obligations specified in clause 6 the Owner will pay to the Council the Health Care Contribution and the Library Facilities Contribution such sum to be adjusted in accordance with the formula in the Schedule to this Undertaking

6. Acceptance Terms of the Council

6.1 The Council will if they request the Owner to make the payment specified in clause 5 undertake in writing as part of such request:

6.1.1 to hold any such sum they receive pursuant to the obligation set out in clause 5 of this Undertaking in an interest bearing account

6.1.2 to apply the financial contribution contained in this Undertaking for the purposes for which it is paid

6.1.3 in the event of all or any of the financial contribution contained in clause 5 not being solely applied for the purposes specified within three years of receipt of the said contribution the Council shall refund to the Owner within 21 days of a written request

from the Owner the contribution or any unexpended contribution along with interest accrued thereon from the date the payment was received by the Council to date of repayment to the Owner

7. Mortgagee's Consent

7.1 The Mortgagee consents to the giving of the obligations on the part of the Owner

7.2 The Mortgagee acknowledges that the Land is bound by the restrictions and obligations contained in this Deed that this Deed will be binding on its successors in title and agrees to be bound by them in the event that it becomes a mortgagee in possession but that its liability will cease once it has parted with its interest in the Land (without prejudice to its liability for any subsisting breach of covenant prior to parting with such interest)

8. Monitoring

For the purpose of monitoring compliance with this Undertaking the Owner shall notify the Council of the Commencement of Development immediately following the date thereof and the date of the first occupation of the Development at least 14 days prior to the date thereof

9. Resolution of Disputes

9.1 In the event of any dispute or difference arising between the parties hereto touching or concerning any matter or thing arising out of this Undertaking such dispute or difference shall be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of agreement) by and on behalf of the President for the time being of the professional body chiefly concerned in England with such matters as may be in dispute and such person shall act as an expert and his decision shall be final and binding on the parties to the dispute or difference and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination each party shall bear their own costs

9.2 In the absence of agreement between the parties to the dispute or difference as to the suitability of the person to be appointed pursuant to clause 9.1 or as to the appropriateness of the professional body then such question may be referred by any party to a Solicitor appointed by or on behalf of the President for the time being of the Law Society of England and Wales and such Solicitor shall act as an expert and his decision as to the professional qualifications of such person or appropriateness of the professional body shall be final and binding on the parties to the dispute or difference and his costs shall be payable by the parties to the dispute in such proportion as he shall determine failing such determination each party shall bear their own costs

10. Notices

10.1 Any notice consent or approval required to be given under this Undertaking shall be in writing and shall be delivered personally or sent by prepaid first class Recorded Delivery post telex or facsimile transmission

10.2 The address for service of any such notice consent or approval as aforesaid shall be on all of the parties at the addresses aforesaid or such other address for service as shall have been previously notified in writing by the parties to all the other parties specified in this Undertaking

10.3 A notice consent or approval under this Undertaking shall be deemed to have been served as follows:

10.3.1 if personally delivered at the time of delivery

10.3.2 at the expiration of forty-eight hours after the envelope containing the same was delivered into the custody of the postal authority within the United Kingdom

10.3.3 if sent by telex or facsimile transmission at the time of successful transmission

10.4 In proving such service it shall be sufficient to prove that personal delivery was made or that the envelope containing such notice consent or approval was properly addressed and delivered into the custody of the postal authority in a prepaid first class or Recorded Delivery envelope (if appropriate) or that the telex or facsimile was successfully transmitted on a tested line as the case may be

11. Registration of the Undertaking

This undertaking shall be registrable as a Local Land Charge in the Register of Local Land Charges maintained by the Council

12. Certificate of Satisfaction

The Owner may make application to the Council for written confirmation to the effect that any of the provisions of this Undertaking have been completed and/or satisfied

13. Application of Undertaking

Nothing in this Undertaking shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission referred to herein) granted or deemed to be granted by any order or where granted expressly by the Council or on appeal

SCHEDULE

1. In this Schedule:

"Index" means in respect of the total of the Health Care Contribution and the Library Facilities Contribution 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 cost of living

"Base Index Date" means the date of the grant of the 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 date whereupon the Health Care Contribution and Library Facilities Contribution is paid

2. The Health Care Contribution and Library Facilities Contribution shall be increased by a sum if any in pounds sterling as shall be equal to the sum calculated according to the following formula:

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

Where "A" equals the relevant 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 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 therefor on the other hand

IN WITNESS whereof the Owner and Mortgagee have duly executed this Undertaking as a Deed the day and year first above written

Executed as a DEED by
Cotswold Estates Limited

Director

EXECUTED as a DEED by
COTSWOLD ESTATES LIMITED

Director

Director

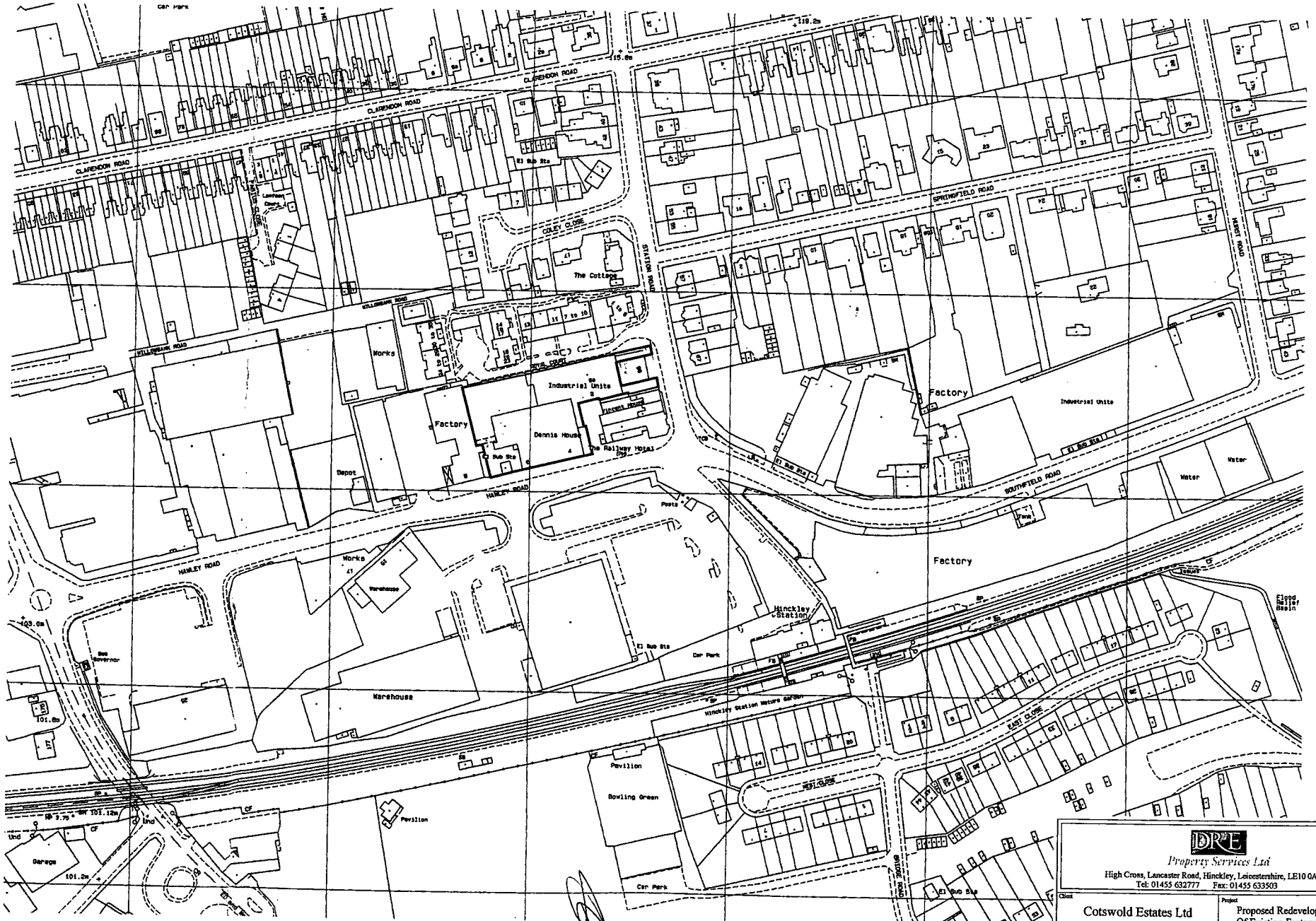
EXECUTED as a DEED by
HINCKLEY & RUGBY BUILDING SOCIETY

Authorised Signatory

BY AUTHORITY OF THE BOARD OF DIRECTORS

~~**EXECUTED as a DEED by**~~
~~**HINCKLEY & BOSWORTH BOROUGH COUNCIL**~~

~~Authorised Signatory~~



DRE
Property Services Ltd
High Cross, Lancaster Road, Hinckley, Leicestershire, LE10 0AW.
Tel: 01455 632777 Fax: 01455 633503

Client: Cotswold Estates Ltd, High Cross, Lancaster Rd. Hinckley, Leicestershire	Project: Proposed Redevelopement Of Existing Factory Buildings Hawley Road, Hinckley, Leics.
Title: Sheltered Accommodation Location Plan	Scale: 1:1250 @ A4 Sht Size; Dwn.by: CPL; Date: Apr 05
	Dwg.No.: FP4.04-03-05; Rev.: A