

G.Allen

S106/435

From: J.Jones

Sent: 26 September 2013 11:59

To: landcharges

V/2013/0431 - Lowmoor Road Car Sales, Lowmoor Road, Kirkby - 106

Attachments:

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Would you please register the above Section 106 Agreement (Town & Country Planning Act 1990) between:

1) Hilary Joy Brown

and

Ashfield District Council as a Local Land Charge

Regards,  
Joanne Jones  
Support Team

**Application Details**

Planning Reference Number: V/2013/0431

Location of Development: Lowmoor Road Car Sales Lowmoor Road  
Kirkby in Ashfield  
Notts  
NG17

Description of Development: Outline application for a maximum of 9 Apartments  
Applicant Name: Mrs J Brown

Date: 25/09/2013

Approval has been granted by Ashfield District Council for the development referred to below providing it is carried out in accordance with the application and plans submitted. The approval is subject to the conditions set out on the attached sheet.

**Outline Planning Application**

# Approval Notice

**TOWN AND COUNTRY PLANNING ACT 1990**  
 Town and Country Planning (Development Management Procedure) Order 2010  
 Town and Country Planning (Control of Advertisements) (England) Regulations 2007  
 Town and Country Planning (Tree Preservation) (England) Regulations 2012  
 Planning (Listed Buildings and Conservation Areas Act 1990  
 Planning (Hazardous Substances) Act 1990  
 Planning and Compensation Act 1991

**Ashfield**



**ASHFIELD DISTRICT COUNCIL**

Urban Road,  
Kirkby-in-Ashfield,  
Nottingham,  
NG17 8DA

Tel: 01623 450000  
 Fax: 01623 457033  
[www.ashfield-dc.gov.uk/planning](http://www.ashfield-dc.gov.uk/planning)



**CONDITIONS:**

1. The formal approval of the Local Planning Authority shall be obtained prior to the commencement of any development with regard to the following Reserved Matters :
  - (a) Layout
  - (b) Scale
  - (c) Appearance
  - (d) Access
  - (e) Landscaping
2. Application for approval of the Reserved Matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission.
3. The development to which this permission relates shall be begun not later than the expiration of 2 years from the final approval of the Reserved Matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.
4. No development shall take place until the following matters have been submitted to and agreed in writing by the Local Planning Authority:
  - (a) Full details of the proposed treatment of the site's boundaries.
  - (b) A phasing scheme for the implementation of the agreed boundary treatment.
5. The boundary treatment shall be undertaken in accordance with the agreed details. The development hereby permitted shall not commence until drainage plans for the disposal of surface water and foul sewage have been submitted to and approved by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details before the development is first brought into use.
6. No development shall take place until there has been submitted to and approved by the Local Planning Authority a scheme of hard and soft landscaping. All planting, seeding or turfing indicated on the approved landscaping scheme shall be carried out in the first planting and seeding seasons following the occupation of the building or the completion of the development, whichever is the sooner, and any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.
7. No development shall take place until samples of the materials and finishes to be used for the external elevations and roof of the proposal have been agreed in writing by the Local Planning Authority. Thereafter the development shall be carried out with those materials, unless the Local Planning Authority gives written approval to any variation.
8. This permission shall relate to the erection of a building no more than 2½ storeys in height.
9. Prior to the commencement of any construction works on site, a Construction Environmental Management Plan (CEMP) shall be submitted to and approved in writing by the Planning Authority. The agreed plan shall be implemented during the period of construction to the satisfaction of the Planning Authority.
10. Prior to first occupation of the hereby approved development, the noise mitigation measure shown to be necessary in section 6 of the submitted Noise Impact Assessment dated the 17th September 2012 shall be implemented in full and validation provided to the approval of the Local Planning Authority.
11. Prior to the commencement of any works pursuant to this permission the applicant shall submit the following to the Local Planning Authority (LPA):
  - i. a desktop study/Phase I report documenting the previous history of the site and its immediate environs



12. ii. a site investigation/Phase II report where any previous use of the site indicates a potential contaminative use. The applicant/developer shall submit a Site Investigation/Phase II Report documenting the characteristics of the ground at the site. The Site Investigation should establish the full extent, depth and cross-section, nature and composition of the contamination. Ground gas monitoring and chemical analysis, identified as being appropriate by the Desktop Study, should be carried out in accordance with current guidance using UKAS/MCERTS accredited methods. All technical data must be submitted to the Local Planning Authority.

iii. A Scheme of Remedial Works where the Site Investigation has identified the presence of significant levels of harmful ground gas and/or significant levels of chemical contamination. The scheme should include a Remediation Statement and Risk Assessment Strategy to prevent any significant risk arising when the site is being developed or subsequently occupied.

Any variation to the Remediation Scheme shall be agreed in writing with the Local Planning Authority, in advance of works being undertaken.

All remediation should be carried out safely, ensuring that no significant risk(s) remain. The applicant will need to have a contingency plan should the primary remediation or subsequent construction phase reveal any additional contamination. Where additional contamination is found the applicant must submit in writing, details of the contingency plan for the written approval by the Local Planning Authority.

On completion of remedial works and prior to the occupation/use of the development, the applicant must submit to the Local Planning Authority: iv. a Validation Report with confirmation that all remedial works have been completed and validated, in accordance with the agreed details. The Validation Report must be submitted for the written approval of the Local Planning Authority prior to the development being put to its intended use.

No work shall commence until such time as a scheme indicating proposed floor levels of all buildings, and the relationship of such to the existing dwellings has been submitted to and approved by the Local Planning Authority. The development shall be constructed in accordance with the agreed levels.

**REASONS:**

1. To comply with the requirements of Section 92 of the Town and Country Planning Act 1990 as amended.
2. To comply with the requirements of Section 92 of the Town and Country Planning Act 1990 as amended.
3. To comply with the requirements of Section 92 of the Town and Country Planning Act 1990 as amended.
4. To safeguard the amenities of residents living in the vicinity of the application site. To ensure that the development provides a satisfactory means of drainage, in order to reduce the risk of creating, or exacerbating a flooding problem, and to minimise the risk of pollution.
6. To ensure the satisfactory overall appearance of the completed development and to help assimilate the new development into its surroundings.
7. To ensure the satisfactory appearance of the development.
8. To ensure that the development is sympathetic to the general character and appearance of the surrounding area and does not adversely affect amenity.
9. To define the terms of this permission.
10. To define the terms of this permission.
11. To ensure that the site, when developed, is free from contamination, in the interests of safety.
12. To protect the amenity of the area.



**INFORMATIVE**

1. The applicant/developer is strongly advised to ensure compliance with all planning conditions, if any, attached to the decision. Failure to do so could result in LEGAL action being taken by the Ashfield District Council at an appropriate time, to ensure full compliance. If you require any guidance or clarification with regard to the terms of any planning conditions then do not hesitate to contact the Development & Building Control Section of the Authority on Mansfield (01623 450000).
  2. The applicant is advised make early contact with the Council's Environmental Protection Officer (Land) to discuss the most efficient way of meeting the requirements of the Contamination Condition. It should be noted that a minimum requirement will be to submit a Phase 1 Desk study and Site Walkover Report to indicate whether or not intrusive ground investigations will be necessary.
  3. Any development which requires creating a new junction or results in a change of traffic patterns will require the appropriate supporting details. These must comply with the latest version of 6 Cs Highways, Transportation & Development (Htd) Design Guide <http://www.leics.gov.uk/htd> for roads below 37mph and the Design Manual for Roads and Bridges (DMRB) <http://www.dft.gov.uk/ha/standards/dmr/b/> for roads above 37 mph. The plans submitted will need to indicate the site access visibility and its impact on existing public highway and the surrounding area. This visibility splay needs to comply with the 6 Cs Design Guide according to measured vehicle speed/speed limit and type of development.
  4. Where emerging vehicles cross footways from a shared private driveway, pedestrians must have sufficient warning of its approach. For this purpose, pedestrian visibility splays of 2m x 2m should be provided to the rear of the footway either side of the drive access and there should be no planting or obstructions in these areas. These visibility splays should be safeguarded for the lifetime of the development.
  5. The applicant needs to indicate the areas that will be allocated for the storage of communal refuse/recycle bins and provide appropriate areas for weekly servicing.
  6. The applicant needs to indicate key dimensions on the proposed layout to the highway, footway, junction & forward visibility splays, shared private access, parking bays, access to the rear parking area, areas allocated for refuse bin storage, and turning/manoeuvring areas.
  7. Before submitting a planning application, the applicant needs to reach an agreement in principle for the following WITH Nottinghamshire County Council Highway Authority:
    - o the site layout, including access;
    - o areas likely to be adopted as publicly maintained and those areas to be private;
    - o any off-site works;
    - o any financial contributions from you; and
    - o any travel plan transport statement or assessment.
  8. The CEMP required under condition 9 of this approval shall include full details of environmental management issues and mitigation measures to be adopted for the control of dust, noise, artificial lighting and waste disposal.
- The plan shall require the applicant and contractors to minimise disturbance during construction and will provide details of the following information for approval:
- o Roles and Responsibilities
  - o Communication - external and internal
  - o Works programme
  - o Equipment and Plant
  - o Construction Method Statements
  - o Work Instructions



- Working Hours (including deliveries)
- Details of any works envisaged outside normal working hours
- Details of noise control
- Details of dust control
- Details on the design and control of construction/security lighting
- Details of waste disposal arrangements and procedures
- Monitoring and reporting - receptors, frequency, reporting
- Complaints Procedures

The agreed plan shall be implemented during the period of construction to the satisfaction of the Planning Authority.

9. A booklet is available which gives details of the contents for reports required by this consent - "Developing Land in Nottinghamshire: A guide to submitting planning applications for land that may be contaminated". This is available from the Environmental Protection Section at Ashfield District Council or from the Ashfield District Council website using the following link:

[http://www.ashfield-dc.gov.uk/community/environment/contam\\_land/developing\\_land.pdf](http://www.ashfield-dc.gov.uk/community/environment/contam_land/developing_land.pdf)  
 An information leaflet is available from the National Society for Clean Air - "Land Quality - Contaminated Land". Copies can be obtained from Environmental Services or downloaded from the NSCA website using the following link:  
<http://www.nasca.org.uk/leaflet1.htm>

10. Where the presence of contamination is found or suspected the developer and/or his contractor should have regard to Health and Safety Executive guidance - "The Protection of workers and the general public during the development of contaminated land".  
 The applicants attention is drawn to the accompanying S106 Agreement dated the 25<sup>th</sup> September 2013

For further detail on the decision please see the application report by contacting the Development Section on 01623 457388.

**REASONS FOR APPROVAL**

The decision to grant permission has been taken having regard to the policies and proposals in the Ashfield Local plan Review (2002) and all relevant material considerations, including Supplementary Planning Guidance:

**PROACTIVE WORKING**

The processing of this application has been undertaken in accordance with the requirements of the National Planning Policy Framework (Core Planning Principles).

Trevor Watson  
 SERVICE DIRECTOR - ECONOMY

pp

THIS AGREEMENT is made the 25<sup>th</sup> day of September 2013

BETWEEN:

(1) ASHFIELD DISTRICT COUNCIL of Urban Road Kirkby in Ashfield Nottinghamshire NG17 8DA ("the Council")

(2) HILARY JOY BROWN of 31 Cavendish Crescent Kirkby in Ashfield Nottinghamshire ("the Owner")

BACKGROUND

1) The Council is the local planning authority for the purposes of the Act for the area within which the Site is located

2) The Owner is the freehold owner of the Site registered with Title Absolute under Title Number NT 248214 free from incumbrances

3) The Owner has submitted the Application to the Council and the Council has agreed to grant the Planning Permission subject to the completion of this Agreement

4) The Council requires and it is the purpose of this Agreement to secure financial contribution towards the provision of Off-Site Open Space without which the Planning Permission will not be granted

5) The parties have agreed to enter into this Agreement with the intention that the obligations contained in this Agreement may be enforced by the Council against the Owner her successors in title and assigns and with the intention that this Agreement shall bind the owner and occupiers of the Site other than the owners or occupiers of any Residential Units and any service authority and/or utility company

6) In this Agreement the following terms shall have the following meanings:

"the Act"

the Town and Country Planning Act 1990 (as amended)



means the All Items Retail Prices Index published by the Office for National Statistics (or contained in the monthly Digest of Statistics (or contained in any official publication substituted therefore) or such other index as may from time to time be published in substitution

Index

the date upon which the Development shall be commenced by the carrying out on the Site pursuant to the Planning Permission of a material operation as specified in Section 56 of the Act excluding any operations relating to the demolition of any existing buildings or clearance of the Site, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and - temporary means of enclosure, the temporary display of site notices or advertisements.

"Development"

"the Commencement Date"

the Application for planning permission made under the Council's reference V/2013/0431

"the Application"



Ashfield



Section 106 Plan  
Lowmoor Road Car Sales, Low moor Road, Kirby In Ashfield  
V/2013/0431

Date: 29 Aug 2013

Scale: 1 to 500



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PORTLAND STREET

LOW MOOR ROAD

66

113

113a

92

106

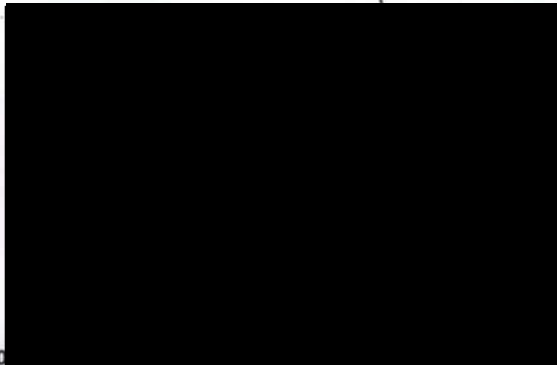
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"the Plan"

"the Off Site Open Space Contribution" instead of any open space or play equipment or the like being required as part of the Development on the Site the sum payable pursuant to Clause 3 of the First Schedule at the rate of £2,500 Index Linked per completed Residential Unit to be constructed pursuant to the Planning Permission the Plan annexed hereto

therefore

Index Linked

means such increase or decrease to sums payable to the Council under this Agreement on an annual basis or pro rata per diem from the date of grant of the planning permission until such time that payment of any sums in this Agreement is made such index linking to be equivalent to any inflationary increase or decrease on such sums in proportion to the increase or decrease taking as the measure of inflation the Index last published before the date of the Agreement or any publication substitution for it PROVIDED no contribution shall carry interest and also be indexed Linked



be done by a third party;

Agreement not to do something shall be construed as including a covenant, restriction or obligation not to permit or knowingly suffer it to be done by a third party;

otherwise expressly provided; stated in paragraph (5) and in operative clause 6 and where in title and assigns and all persons deriving title under it except as reference to the Owner in this Agreement shall include her successors

persons jointly and severally; of a party comprising more than one person are obligations of such the same covenants, restrictions, liabilities, obligations and liabilities otherwise would be inconsistent with the requirements or provisions of save as expressly provided in this Agreement or where to construe

genders and the singular includes the plural and vice versa; the masculine feminine and neuter genders include each of the other

Where the context so admits:-  
"Interest" means the LIBOR RATE for the time being in force

"the Site" ALL THAT freehold property situation the west side of Lowmoor Road Kirkby in Ashfield Nottinghamshire as shown edged red on the Plan

"Residential Unit" means a dwelling (including a house flat apartment or maisonette) to be constructed on the Site pursuant to the Planning Permission

"the Planning Permission" means the outline planning permission which may be granted pursuant to the Application

(d)

(c)

(b)

(a)

"9)

- OPERATIVE CLAUSES
1. This Agreement is made pursuant to Section 106 of the Act and this Agreement and the covenants restrictions liabilities and obligations contained in this Agreement or agreed or completed pursuant to it are planning obligations for the purposes of that section.
  2. In so far as any of the covenants, restrictions, liabilities and obligations contained in this Agreement are not planning obligations within the meaning of the Act they are entered into pursuant to the powers contained in Sections 111 and 120 of the Local Government Act 1972, Section 2 of the Local Government Act 2000, Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 and all other powers enabling the parties hereto to enter into the Agreement and in consideration of the covenants, restrictions, liabilities and obligations hereinafter contained
  3. The covenants, restrictions, liabilities and obligations in this Agreement shall only come into effect on the Commencement Date unless otherwise specifically indicated in this Agreement or to construe otherwise would be inconsistent with the requirements of any such covenants
  4. The Owner covenants with the Council so as to bind the Site and each and every part thereof to carry out and comply with the covenants restrictions liabilities and obligations contained mentioned or referred to in the First Schedule

- (e) reference to any statutory or other body or to the Head of Planning or Group Manager Planning shall include reference to its successors in function;
- (f) reference to a clause or schedule is a reference to a clause or schedule contained in this Agreement;
- (g) reference to Statutes Acts Orders Directions Regulations and Instruments includes (where appropriate) reference to their amendments and replacements



5. The Council covenants with the Owner to comply with the obligations set out in the Second Schedule
6. No person shall be liable for any breach of the covenants, restrictions, liabilities or obligations contained in this Agreement occurring after they have parted with all of their interest in the Site or the part of the Site in respect of which such breach occurs but without prejudice to their liability for any subsisting breach prior to parting with such interest
7. For the avoidance of doubt it is agreed and declared that if the Planning Permission shall expire before the Commencement Date or be quashed as a result of legal proceedings, then this Agreement shall forthwith determine and cease to have effect
8. All notices, approvals, consents or other documents to be served on or by the Council under the provisions of this Agreement shall as appropriate be issued by or served on the Head of Planning or Group Manager Planning as appropriate.
9. Any approval required pursuant to this Agreement must not be unreasonably withheld or delayed
10. Anything in this Agreement which has to be done to the Council's satisfaction must be done to the Council's reasonable satisfaction
11. Nothing in this Agreement shall be construed or implied so as to prejudice or affect the rights, discretions, powers, duties and obligations of the Council under all Statutes Byelaws Statutory Instruments Orders or Regulations or in the exercise of their statutory functions
12. This Agreement shall be registered as a Local Land Charge
13. Unless expressly stated otherwise, nothing in this Agreement will create any rights in favour of any person pursuant to the Contracts (Rights of Third Parties) Act 1999
14. Unless otherwise specifically indicated in this Agreement or to construe otherwise would be inconsistent with the requirements of this Agreement, nothing in this Agreement shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission

- (other than the Planning Permission) granted (whether or not on appeal) after the date of this Agreement
15. No waiver (whether expressed or implied) by the Council, or the Owner of any breach or default in performing or observing any of the covenants terms or conditions of this Agreement shall constitute a continuing waiver and no such waiver shall prevent the Council, or the Owner from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default
18. Any dispute under or arising out of the operation of this Agreement may be referred to a single arbitrator if both parties shall agree on one or in default of agreement to a single arbitrator 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
19. If any payment due under this Agreement is paid late interest will be payable from the due date of payment
20. All consideration given in accordance with the terms of this Agreement shall be exclusive of any value added tax properly payable
21. It is hereby agreed that none of the terms obligations and covenants in this Agreement shall to any degree be binding upon or enforceable against:-
- a) any owner of an interest in any part of the Site who occupies that part as a Residential Unit; and or
- b) any owner of an electricity sub-station and or gas governor site and or pumping station or other service supply installation
- and such persons are not to be treated as a person deriving title from the Owner for the purposes of Section 106(3) of the Act
22. Variations of the terms of this Agreement (other than minor amendments or variations of a transitory nature not affecting the nature or extent of liability hereunder) may be evidenced only by a



- supplemental deed executed as a deed of variation by the parties unless the Council otherwise indicates in writing and a copy of any supplemental agreement shall be sent to the Council for the purpose of amending the Local Land Charges Register
23. This Agreement is governed by and interpreted in accordance with the law of England and Wales
24. The provisions of this Agreement (other than this clause which shall be of immediate effect) shall be of no effect until this Agreement has been dated

THE FIRST SCHEDULE  
The Owners Obligations

1. For the purposes of monitoring compliance with this Agreement the Owner shall:

1.1 give the Council notice in writing within 14 days of the Commencement Date that Development has commenced on the Site

2. The Owner shall pay to the Council on completion of this Agreement the Council's reasonable legal costs and disbursements in connection with the negotiation, preparation and completion of this Agreement amounting to £495.00

3. The Owner shall :  
3.1 not commence development on the Commencement Date unless it has first paid to the Council the Off Site Open Space Contribution.  
3.2 pay the Off Site Open Space Contribution to the Council prior to the Commencement Date

THE SECOND SCHEDULE

The Council's Obligations:

1.1.1 To use the Off Site Open Space Contribution as follows:-

Towards improvements to Public Open Space within the District of Ashfield

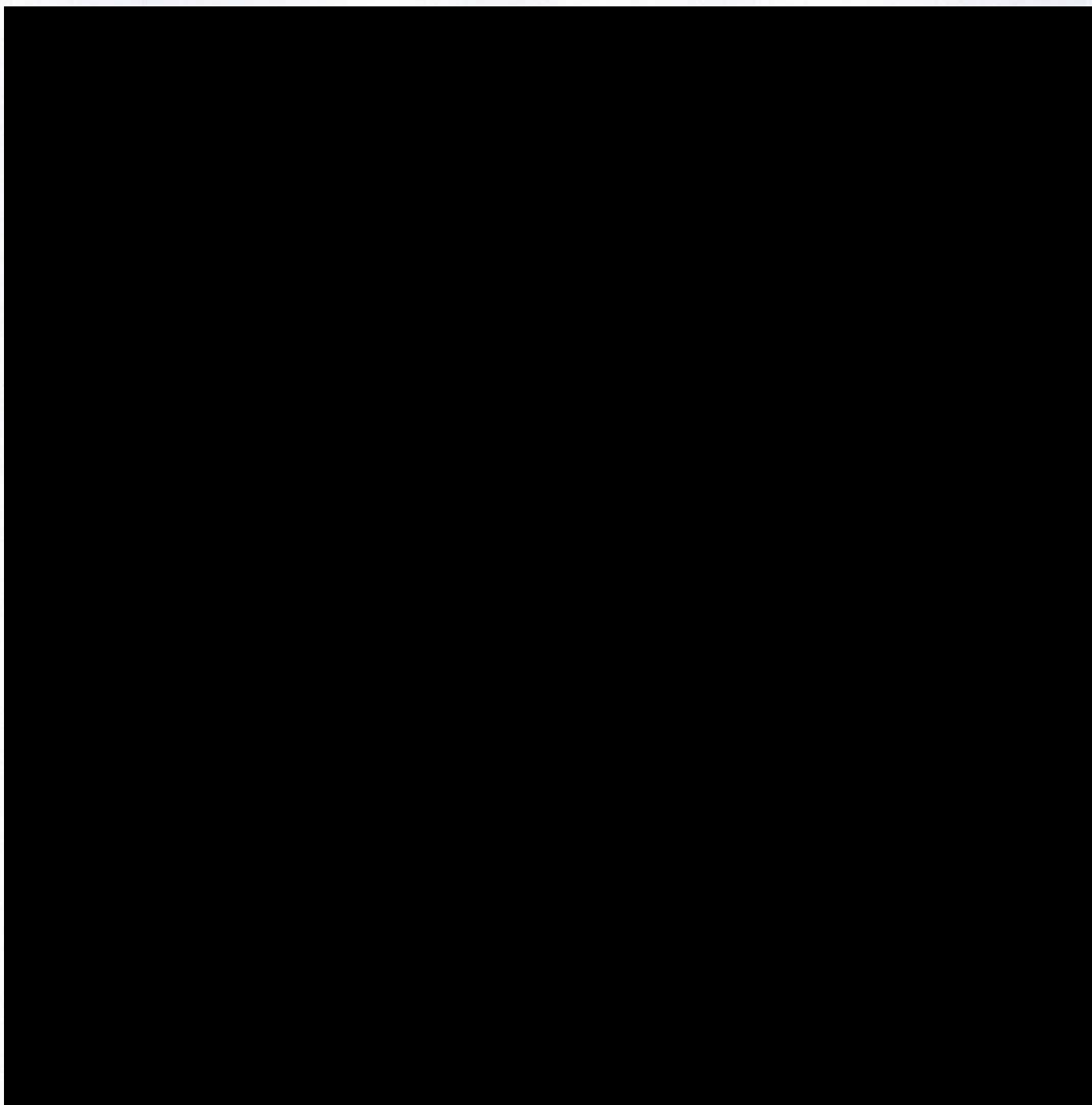
1.1.2 To provide to the Owner on request evidence as to how much of and how the Off Site Open Space Contribution has been spent expended or allocated

1.1.3 To refund the Owner (or otherwise the real or corporate person who has paid the Off Site Open Space Contribution to the Council) such part of the Off Site Open Space Contribution as has not been allocated committed or expended in accordance with paragraph 1.1.1 above within 5 years from the date of receipt by the Council of such contribution together with interest for the period from the date of payment to the date of refund

1.2 At the written request of the Owner the Council shall provide written confirmation of the discharge of the obligations on the part of the Owner contained in this Agreement subject to such obligations having been duly discharged.

IN WITNESS WHEREOF these presents have been duly executed as a Deed by the Parties hereto the day and year first before written





P. G. Marshall  
Chief Executive,  
Ashfield District Council

(under S106 of the Town and Country  
Planning Act 1990)  
Residential Development at Lowmoor  
Road Former Car Sales  
Kirkby in Ashfield Nottingham

AGREEMENT

HILARY JOY BROWN

and

ASHFIELD DISTRICT COUNCIL

2013

DATED