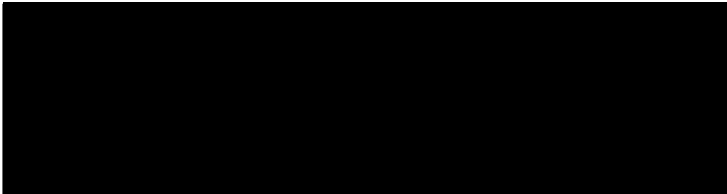


RECEIVED ON
29 NOV 2013 (pm)
LAND CHARGES



The Section 106 Agreement in respect of the above has now been completed and accordingly I attach a copy for your records.
I shall be pleased if you will register this as a land charge forthwith.
I would be grateful if you could acknowledge receipt by returning a signed copy of this memorandum.

DATE: 27th November, 2013

SUBJECT: SECTION 106 AGREEMENT - WASHDYKE LANE, HUCKNALL - WILLIAM MAY DEVELOPMENTS LIMITED

YOUR REF:

OUR REF: JA/TP.21 (329)

FROM: Assistant Chief Executive
(Governance)

TO: Land Charges

Internal Memorandum

ASHFIELD DISTRICT COUNCIL

5106/439

Section 106 Agreement relating to land at Washdyke Lane Workshops Washdyke
Lane Hucknall Nottinghamshire

William May Developments Limited

and

Ashfield District Council

Dated 27th November 2013

following meanings:

1.1 In this Agreement, the following words and expressions have the

1. INTERPRETATION

OPERATIVE PROVISIONS

The parties have agreed to enter into this Agreement under Section 106 of the Local Government Act 1990, Section 111 of the Local Government Act 1972, Section 2 of the Local Government Act 2000 and Section 1 of the Localism Act 2011 and all other enabling powers with the intention that the obligations contained herein may be enforced by the Council against the Owner and its successors in title.

not have been acceptable. On the the Council acting through the delegated powers of its Director (Economy) has resolved to grant outline planning permission subject to, amongst other things, the prior completion of this Agreement securing all matters herein referred to, without which the Development would

outline planning permission for the Development. Pursuant to the Planning Application the Owner has applied to the Council for encumbrances that would prevent the Owner entering into this Agreement.

The Owner is the freehold owner of the whole of the Site free from for the area within which the Site is located.

For the purposes of the 1990 Act, the Council is the local planning authority

BACKGROUND

- (1) ASHFIELD DISTRICT COUNCIL of Urban Road, Kirkby in Ashfield, Nottinghamshire NG17 8DA ("the Council")
- (2) WILLIAM MAY DEVELOPMENTS LIMITED (Company Registered No. 7136310) of 92 Moor Lane, Bramcote, Nottingham NG9 3FH ("the Owner")

BETWEEN:

THIS AGREEMENT is made on 27th November

means occupation of the Development for the purposes permitted by the Planning Permission but shall not include occupation for the purposes of construction stocking

“Occupation”

means interest to be calculated at the London Interbank Offered Rate

“Interest”

means as set out in Schedule 2 of this Agreement

“Index”

means any house flat bungalow or maisonette to be constructed on the Site as part of the Development pursuant to the Planning Permission

“Dwelling” “Dwellings”

means the construction of up to 11 Dwellings on the Site

“Development”

- 1.1.1 site investigations or surveys;
- 1.1.2 site decontamination;
- 1.1.3 construction of haul roads, access and service roads;
- 1.1.4 the clearance of the Site;
- 1.1.5 works connected with ground profile remodelling of the Site ; or
- 1.1.6 works for the provision of drainage or mains services to prepare the Site for development

means the earliest date on which any material operations (as defined by Section 56(4) of the 1990 Act) pursuant to the Planning Permission is begun on the Site with the exception of:

“Commencement of Development”

the Town and Country Planning Act 1990

“1990 Act”

1.2.1 the clause headings do not affect its interpretation;

1.2 In this Agreement:

“Specialist”

has the meaning in clause 6.2

“Site”

the freehold property known as Washdyke Lane Workshops Washdyke Lane Hucknall Nottinghamshire registered at the Land Registry under title numbers NT370643 and shown for identification purposes only edged red on the plan appended to this Agreement

“Planning Permission”

the planning permission that may be granted in pursuance of the Planning Application

“Planning Application”

an application for outline planning permission for the carrying out of the Development made by the Owner validated on 10th September 2013 carrying reference V/2013/0493

“Open Space Contribution”

means the sum of £2500.00 per Dwelling to be built in accordance with the Planning Permission and to be paid in accordance with Schedule 1 to be used by the Council towards general landscape improvements at the Washdyke Lane Recreation Ground Hucknall within the District of Ashfield in accordance with Schedule 1 of this Agreement

fitting out or decoration, marketing or display or occupation in relation to security and Occupy and Occupied shall be construed accordingly



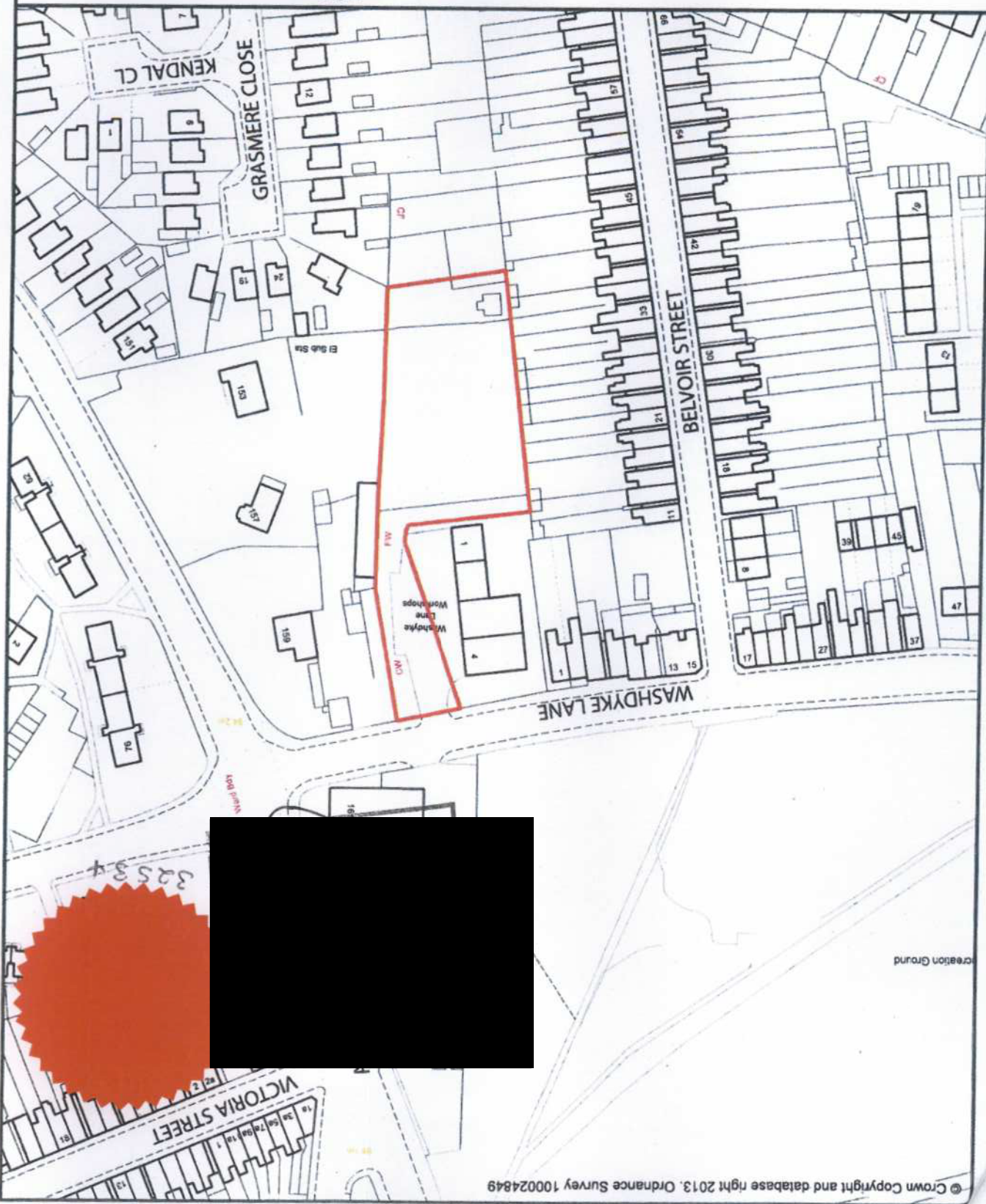
Ashfield



Adjacent Unit 2 Washdyke Lane Workshops, Washdyke Lane, Hucknall

V/2013/0493

Section 106 Plan



creation Ground

- 1.2.2 unless otherwise indicated, references to clauses and Schedules are to clauses of and Schedules to this Agreement and references in a Schedule to a Part or paragraph are to a Part or paragraph of that Schedule;
 - 1.2.3 references to any statute or statutory provision include references to:
 - 1.2.3.1 all Acts of Parliament and all other legislation having legal effect in the United Kingdom as directly or indirectly amended, consolidated, extended, replaced or re-enacted by any subsequent legislation; and
 - 1.2.3.2 any orders, regulations, instruments or other subordinate legislation made under that statute or statutory provision; - 1.2.4 references to the Site include any part of it;
 - 1.2.5 references to any party in this Agreement include the successors in title of that party. In addition, references to the Council include any successor local planning authority exercising planning powers under the 1990 Act.
 - 1.2.6 any covenant by the Owner not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing;
 - 1.2.7 if any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of the Agreement is to be unaffected; and
 - 1.2.8 where the context so admits the masculine feminine and neuter genders include each of the other genders and the singular includes the plural and vice versa.
- 1.3 The parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

2. EFFECT OF THIS AGREEMENT

- 2.1 This Agreement is made pursuant to section 106 of the 1990 Act. To the extent that they fall within the terms of section 106 of the 1990 Act, the obligations contained in this Agreement are planning obligations for the purposes of section 106 of the 1990 Act and are enforceable by the Council.
- 2.2 To the extent that any of the obligations contained in this Agreement are not planning obligations within the meaning of the 1990 Act, they are entered into pursuant to the powers contained in section 111 Local Government Act 1972, section 2 Local Government Act 2000 and all other enabling powers.
- 2.3 Nothing in this Agreement restricts or is intended to restrict the proper exercise at any time by the Council of any of its statutory powers, functions or discretions in relation to the Site or otherwise.
- 2.4 This Agreement will be registered as a local land charge by the Council
- 2.5 The obligations in this Agreement will not be enforceable against:
 - 2.5.1 the buyers of an individual Dwelling; or
 - 2.5.2 a statutory undertaker after the transfer of the statutory apparatus and any land upon or in which the statutory apparatus is situated by the Owner to that statutory undertaker.
- 2.6 Nothing in this Agreement prohibits or limits the right to develop any part of the Site in accordance with a planning permission, other than one relating to the Development as specified in the Planning Application, granted after the date of this Agreement, whether or not pursuant to an appeal.

2.7 The obligations in this Agreement (save for clause 1.3) shall (unless otherwise specified) be conditional upon the grant of Planning Permission.

3. OBLIGATIONS OF THE PARTIES

3.1 The Owner agrees with the Council to comply with its obligations set out in this Agreement

3.2 The Council agrees with the Owner to comply with its obligations set out in this Agreement

3.3 The Owner agrees with the Council that it will act reasonably, properly and diligently in discharging its obligations under this Agreement. In particular, where any notice or agreement or other similar affirmation is required under the terms of this Agreement time shall be of the essence and the Owner will not unreasonably withhold or delay such notice agreement or other similar affirmation and shall use reasonable endeavours to provide such notice agreement or other similar affirmation promptly and without delay.

3.4 The Council agrees with the Owner to act reasonably, properly and diligently in exercising its discretion and discharging its obligations under this Agreement. In particular, where any notice, consent, approval, authorisation, agreement, issue of Certificates or other similar affirmation is required under the terms of this Agreement time shall be of the essence and the Council will not unreasonably withhold or delay such notice, consent, approval, authorisation, agreement, Certificate or other similar affirmation and shall use reasonable endeavours to provide such notice, consent, approval, authorisation, agreement, Certificate or other similar affirmation promptly and without delay.

3.5 No person will be liable for any breach of the terms of this Agreement occurring after the date on which they part with their interest in the Site or the part of the Site in respect of which such breach occurs, but they will remain liable for any breaches of this Agreement occurring

- 4.4 Where the Agreement is released in part by a future agreement, the Council will upon written request from the Owner place a note against the entry made in the Local Land Charges Register stating which obligations no longer have effect.
- 4.3 Where this Agreement comes to an end under clause 4.1 the Council shall upon written request from the Owner vacate or cancel the entry made in the Local Land Charges register in relation to this Agreement or otherwise record the fact that it has come to an end and no longer affects the Site.
- 4.2 Clause 4.1.1 will not apply in respect of any minor modifications to the Planning Permission or the Development under Section 96A of the 1990 Act.
- 4.1.2 the Planning Permission expires before the Commencement of Development without having been implemented;
- 4.1.1 subject to clause 4.2, the Planning Permission is quashed, revoked otherwise ceases to have effect at any time so as to render this Agreement or any part of it irrelevant, impractical or unviable; or
- 4.1 This Agreement will come to an end if:
4. TERMINATION OF THIS AGREEMENT
- 3.6 Any contributions or fees which are payable pursuant to the terms of this Agreement or any part or parts of any such contribution or fee which have not been spent applied or allocated for their intended purpose within the period of 5 years in relation to the Open Space Contribution from and including the date of payment shall be repaid to the party that made payment of the final instalment of such contribution together with accrued interest thereon within 28 days.
- Site will constitute an interest for the purposes of this clause 3.5. before that date. Neither the reservation of any rights or the inclusion of any covenants or restrictions over the Site in any transfer of the

4.5 If the Owner makes a request in writing for the Council to place a note against the entry made in the Local Land Charges Register stating which obligations under this Agreement have been discharged and complied with, the Council will place such a note against the entry only to the extent to which such obligations are deemed by the Council to have been discharged and complied with under the terms of this Agreement.

5. NOTICES

5.1 Any notice, demand or any other communication served under this Agreement will be effective only if delivered by hand or sent by first class post, pre-paid or recorded delivery.

5.2 Any notice, demand or any other communication served on the Owner is to be sent to the address of the Owner set out at the beginning of this Agreement or to such other address as the Owner may notify the Council in writing as its address for service.

5.3 Any notice, demand or any other communication served on the Council is to be sent to the address of the Council set out at the beginning of this Agreement marked for the attention of the Planning and Building Control Manager or to such other address as the Council may notify the parties in writing as its address for service.

5.4 Unless the time of actual receipt is proved, a notice, demand or communication sent by the following means is to be treated as having been served:

5.4.1 if delivered by hand, at the time of delivery;

5.4.2 if sent by post, on the second working day after posting; or

5.4.3 if sent by recorded delivery, at the time delivery was signed for.

5.5 If a notice, demand or any other communication is served after 4.00 pm on a working day, or on a day that is not a working day, it is to be treated as having been served on the next working day.

5.6 For the avoidance of doubt, where proceedings have been issued in the Courts of England and Wales, the provisions of the Civil

Procedure Rules must be compiled with in respect of the service of documents in connection with those proceedings.

6. DETERMINATION OF DISPUTES

6.1 Subject to clause 6.7, if any dispute arises relating to or arising out of the terms of this Agreement, any party may give to the other written notice requiring the dispute to be determined under this clause 6. The notice is to propose an appropriate Specialist and specify the nature and substance of the dispute and the relief sought in relation to the dispute.

6.2 For the purposes of this clause 6 a "Specialist" is a person qualified to act as an expert in relation to the dispute having not less than ten years' professional experience in relation to developments in the nature of the Development.

6.3 Any dispute over the type of Specialist appropriate to resolve the dispute may be referred at the request of either party to the President or next senior available officer of the Law Society who will have the power, with the right to take such further advice as he may require, to determine the appropriate type of Specialist and to arrange his nomination under clause 6.4.

6.4 Any dispute over the identity of the Specialist is to be referred at the request of either party to the President or other most senior available officer of the organisation generally recognised as being responsible for the relevant type of Specialist who will have the power, with the right to take such further advice as he may require, to determine and nominate the appropriate Specialist or to arrange his nomination. If no such organisation exists, or the parties cannot agree the identity of the organisation, then the Specialist is to be nominated by the President or next most senior available officer of the Law Society.

6.5 The Specialist is to act as an independent expert and:

6.5.1 each party may make written representations within ten working days of his appointment and will copy the written representations to the other parties;

6.5.2 each party is to have a further ten working days to make written comments on the others' representations and will copy the written comments to the other parties;

6.5.3 the Specialist is to be at liberty to call for such written evidence from the parties and to seek such legal or other expert assistance as he or she may reasonably require;

6.5.4 the Specialist is not to take oral representations from the parties without giving the parties the opportunity to be present and to give evidence and to cross-examine each other;

6.5.5 the Specialist is to have regard to all representations and evidence before him when making his decision, which is to be in writing, and is to give reasons for his decision; and

6.5.6 the Specialist is to use all reasonable endeavours to publish his decision within 30 working days of his appointment.

6.6 Responsibility for the costs of referring a dispute to a Specialist under this clause 6, including costs connected with the appointment of the Specialist and the Specialist's own costs, but not the legal and other professional costs of any party in relation to a dispute, will be decided by the Specialist.

6.7 This clause 6 does not apply to disputes in relation to matters of law or the construction or interpretation of this Agreement which will be subject to the jurisdiction of the courts.

7. INDEXATION

7.1 All monies payable pursuant to clause 3 and Schedule 1 of this Agreement shall be adjusted by reference to the Index from the date of the Planning Permission until the date(s) payment is actually made in accordance with Schedule 2.

8. COSTS

8.1 The Owner shall pay to the Council its legal costs for preparing this Agreement in accordance with Schedule 3.

The parties have executed this Agreement as a deed and it is delivered on the date set out above.

9. EXECUTION

Public Open Space

SCHEDULE 1

1. The Owner shall not allow or permit the first occupation or disposal of any Dwelling to be constructed on the Site pursuant to the Planning Permission until it has paid to the Council the Open Space Contribution
 2. The Owner shall pay the Open Space Contribution to the Council prior to the first occupation or disposal of any Dwelling to be constructed on the Site pursuant to the Planning Permission
 3. The Council hereby covenants with the Owner pursuant to Section 106 of the 1990 Act to apply the Open Space Contribution only towards general landscape improvements at the Washdyke Lane Recreation Ground Hucknall within the District of Ashfield
- PROVIDED ALWAYS if the Open Space Contribution or any part thereof shall not be paid before the first Occupation or disposal of any Dwelling to be constructed on the Site pursuant to the Planning Permission it shall carry interest at 8% per annum from the date of the first Occupation or disposal of any Dwelling to be constructed on the Site pursuant to the Planning Permission until actual payment and the Owner shall not permit the first Occupation or disposal of any further Dwellings to be built upon the Site whilst the Open Space Contribution or any part thereof (including interest as aforesaid) remains unpaid.

SCHEDULE 2

Indexation Provisions

"Index" means the All Items Retail Prices Index published by the Office for National Statistics 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 therefore

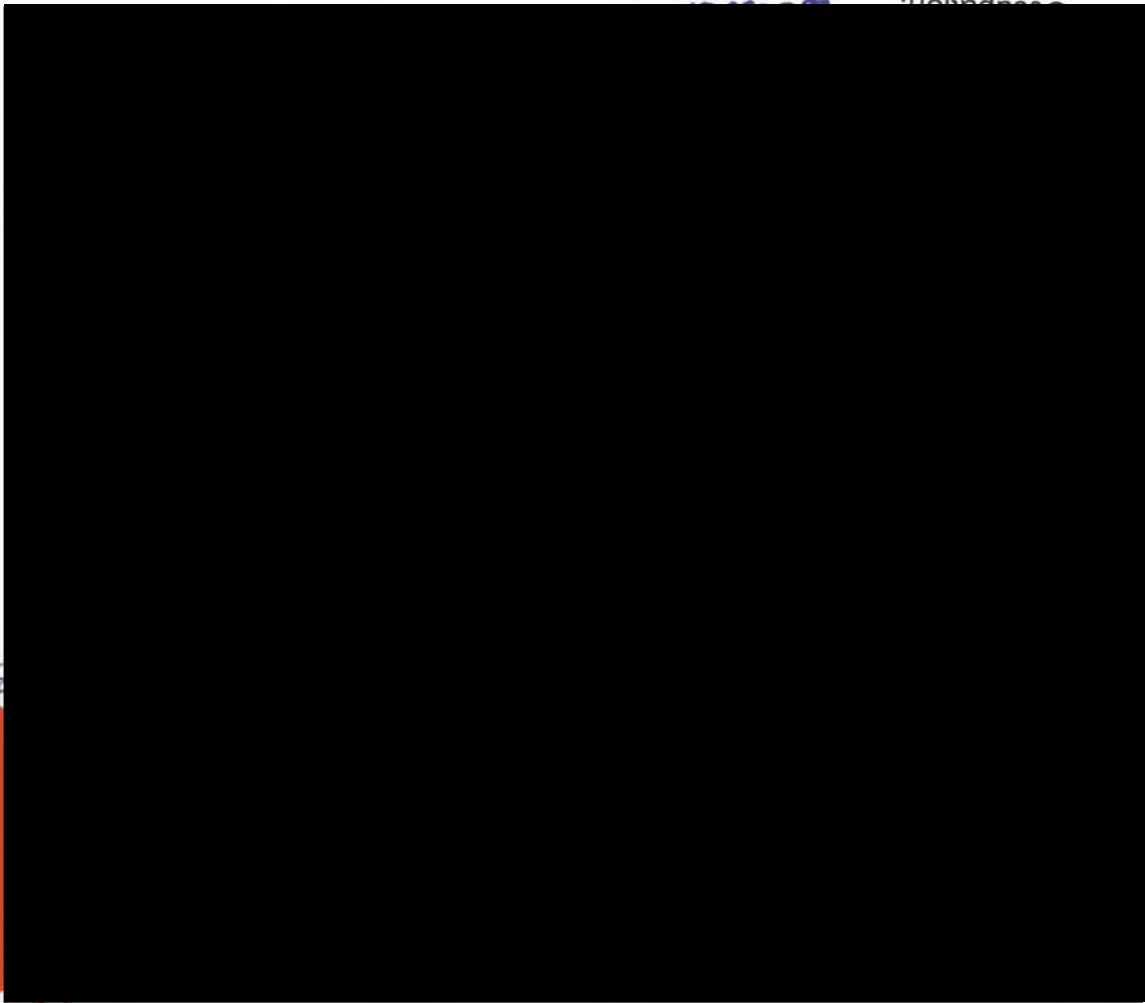
"Index Linked" means such increase or decrease to sums payable to the Council as the case may be under this Agreement on an annual basis or pro rata per diem from the date of grant of the Planning Permission until such time that payment of any sums in this Agreement are made such index linking to be 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 issued in substitution for it PROVIDED no contribution shall carry interest and also be Indexed Linked

1. On completion of this Agreement the Owner shall pay to the Council the sum of £495.00 towards the Council's legal costs in preparation of this Agreement.

MISCELLANEOUS PAYMENTS TO COUNCIL

SCHEDULE 3

1998-08-08



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