

4097

DATED 5th April 2007

ROSSENDALE BOROUGH COUNCIL

AND

BROTHER INVESTMENTS LTD

AND

NATIONAL WESTMINSTER BANK PLC

AGREEMENT

under section 106 of the Town and Country Planning Act 1990
re: Construction of Office Building and 15 Dwellings at Higher Mill Rawtenstall
(Planning Permission 2003/744)

LF/SS/Z.12/221

Linda Fisher,
Head of Legal and Democratic Services
Rossendale Borough Council,
P. O. Box 74,
Kingfisher Business Centre,
Futures Park,
Bacup. OL13 0WU

4097

THIS AGREEMENT is made the 5th day of April Two thousand and ~~six~~^{seven} between ROSSENDALE BOROUGH COUNCIL of P. O. Box 74 Kingfisher Business Centre Futures Park Bacup Lancashire OL13 0WU ("the Council") of the first part and BROTHER INVESTMENTS LIMITED whose Registered Office is situate at Todd Carr Road Waterfoot Rossendale Lancashire ("the Owner") of the second part and NATIONAL WESTMINSTER BANK PLC whose Registered Office is situate at P. O. Box 76 1st Floor 1-3 New Market Street Blackburn BB1 7EN ("the Chargee") of the third part

DEFINITIONS

- (i) "the Act" means the Town and Country Planning Act 1990 as amended
- (ii) "the Application" means the outline application made on behalf of B. & E. Boys Limited and received by the Council on 16th December 2003 reference 2003/744 and as subsequently amended for permission for the Development
- (iii) "Commencement Date" the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out
- (iv) "the Development" means the development of the Land and other land in the manner and for the uses set out in the plans, specifications and particulars deposited with the Council and referred to in the Second Schedule the detail of which will be subject to a Reserved Matters Approval
- (v) "the Owner" means the Owner, and where this Agreement provides for any obligation or covenant to be performed by the Owner such obligation or covenant

shall be treated as applying to the Owner (as the case may be) jointly and severally

- (vi) "the Permission" means the draft planning permission attached to this Agreement
- (vii) "the Plan" means the plan annexed to this Agreement
- (viii) "the Land" means the Land described in the First Schedule to this Agreement
- (iv) "Reserved Matters Approval" means the approval of the detail of the application to include exact details of all matters except siting and means of access these matters to be submitted and approved pursuant to the Application

WHEREAS:

- (i) The Council is the Local Planning Authority for the purposes of the Act for the District within which the Land is situated
- (ii) The Owner is the freehold owner in possession of all the land shown coloured red on the Plan of which with other land it is the registered proprietor at H. M. Land Registry under title numbers LA842903, LA657378, LA8773299, LA914285 and LA873299 free from incumbrances save for a registered charge in favour of the Chargee
- (iii) By the application Brother Investments Limited has applied to the Council for the Permission to carry out the Development
- (iv) The Council is of the opinion that in the event of the Land being developed in accordance with the Application it is desirable that there be provision for
 - (a) a contribution towards the improvement and maintenance of the Mill Row Recreation Area, Rawtenstall in lieu of the provision of open space within the Land and associated with the Development
 - (b) a payment towards the costs of advertising, making and signing a traffic regulation order introducing a prohibition or restriction of waiting on roads in or adjacent to the Land

- (v) The Council has no objection in principle to the Development and is prepared to approve the same subject to appropriate conditions but requires the Owner to enter into the covenants hereinafter contained
- (vi) The Chargee consents to the covenants contained within this Agreement and agrees to be bound by the covenants in this Agreement

NOW THIS DEED WITNESSETH:

1. This Agreement is made pursuant to section 106 of the Act as substituted by the Planning and Compensation Act 1991 and to all other enabling powers statutory or otherwise
2. This Agreement is conditional upon:
 - (a) the Permission being granted by the Council for the Development and
 - (b) the implementation of the Permission by the Commencement of the Developmentand in the event of the Development not being commenced in accordance with the provisions of Section 56 and Sections 91 to 93 of the Act so that the Permission shall lapse this Agreement shall absolutely determine and be of no effect
3. The Owner with the consent of the Chargee and with the intent to bind itself and the Owner's successors in title hereby covenant with the Council that the Owners shall within seven days of the Commencement Date to pay to the Council
 - (i) the sum of FIFTEEN THOUSAND POUNDS (£15,000) which shall be applied by the Council to the improvement and maintenance of Mill Row Recreation Area Rawtenstall and
 - (ii) the sum of THREE THOUSAND POUNDS (£3,000) towards the cost of advertising, making and signing a traffic regulation order introducing a prohibition or restriction of waiting on roads in or adjacent to the land
 - (iii) In the event that more than 15 dwellings are approved at Reserved Matters Approval the Owners agree to pay to the Council the sum of £1000 for each and every dwelling exceeding 15 in number such sums to

be used towards the improvement and maintenance of Mill Row Recreation Area and payable within seven days of the Commencement Date

- (iv) To serve written notice on the Council seven days prior to the Commencement Date
- 4. Nothing in this Agreement shall be construed as imposing any duty or obligation on the Council or any other public body to improve or maintain the said Mill Row Recreation Area or to make implement or enforce any traffic regulation order
- 5. The Council hereby covenants that it will grant planning permission in the form of the Permission forthwith upon the execution and completion of this Agreement
- 6. In this Agreement the expressions "the Council" "the Owner" and "the Chargee" shall where the context so admits include their respective successors in title and assigns
- 7. In this Agreement the words importing the masculine gender shall be deemed to include the feminine and the singular to include the plural and vice versa unless the contrary as to gender or number is expressly provided or unless the same is inconsistent with the context and where the expression "the Owner" comprises two or more persons, firms or companies the Owner's obligation shall be construed as joint and several
- 8. The obligations hereby entered into by the Owners are planning obligations for the purposes of the said section 106 and the Local Planning Authority by whom they are enforceable is the Council
- 9. The Chargee hereby consents to the execution of this Agreement and in so far as its Charge affect the Land acknowledge that subject as herein provided the Land shall be bound by the restrictions and obligations contained in this Agreement
- 10. Notwithstanding the terms contained herein the parties hereto agree that the Chargee shall be liable for any breach of any provisions of this Agreement only during such periods (if any) as it is a mortgagee in possession of the land and

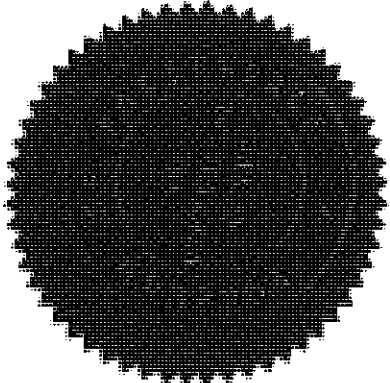
then only if as such mortgagee in possession it shall have caused such breach to have been occasioned and provided further for the avoidance of doubt that the Chargee shall in any event not be liable for any breach of this Agreement arising prior to its becoming a mortgagee in possession of the land regardless of whether or not such pre-existing breach shall continue for any period during which it is a mortgagee in possession of the land.

11. The Owner shall pay £1200.00 towards the Council's costs for the preparation and engrossment of this Agreement on the signature of this Agreement and shall be responsible for the payment of the reasonable costs of the Chargee in relation thereto
12. The Owner agrees with the Council to give the Council immediate written notice of any change in ownership of any of its interest in the Land occurring before all the obligations under this Agreement have been discharged. Such notice to give details of the transferees full name and registered office together with the area of the Land or unit of Occupation purchased by reference to a plan.
13. The Owner agrees to serve written notice on the Head of Legal and Democratic Services confirming the Commencement Date. Such notice to be given seven days prior to the Commencement Date
14. **Inflation/interest**
 - 14.1 the Commuted Sums referred to in Clause 3 (ii) and (iii) shall be uplifted by the amount which bears the same proportion to the Commuted Sums as the amount by which the all items figure of the Index of Retail Prices published by the Department of Employment or any successor Ministry or Department for the month at the date of payment exceeds the index figure of the said Index at the date of this Agreement
 - 14.2 if any sum shall remain unpaid after the same has become due the Owner shall pay interest thereon calculated in accordance with Clause 14.3 from the date the said sum becomes due to the date of payment thereof to the Council

14.3 any interest which becomes payable in accordance with Clause 14.2 shall:-

- (a) be at the rate 3% above the rate of interest from time to time (expressed as an annual rate) as determined by the Council to be the rate at which deposits in sterling of an amount equal to the sum due are offered for the same period as the sum due has been outstanding by the leading banks in the London Inter-Bank market for twelve month fixed term loans
- (b) be capitalised and added to the sum outstanding at the expiry of each period of twelve months from the date the said sum became payable
- (c) accrue from day to day up to the date payment is made to the Council or earlier capitalisation under sub-clause (b) of this Clause and be calculated on the basis of the actual number of days elapsed and a 365 day year

IN WITNESS whereof the Council has caused its Common Seal to be hereunto affixed and these presents have been executed as a deed on behalf of the Owner and the Chargee the day and year first before written



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



MAYOR

No. 114765
RECOVER

SIGNED as a Deed by BROTHER)
INVESTMENTS LIMITED acting by a)
director and its secretary)



Director

Secretary

IN WITNESS WHEREOF this document which is intended to take effect as a deed has been duly executed by a duly authorised Official of the Bank as Attorney of the Bank the day and year first above written

SIGNED AND DELIVERED by)
in the presence of)

Attorney of
National Westminster Bank plc

Witness :

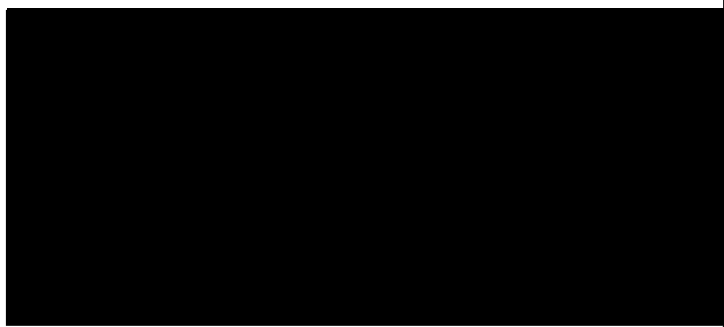
Address :

Occupation :

Signed and Delivered as a deed)
For and on behalf of)
The National Westminster Bank PLC)
By a duly authorised Attorney)



Witness' Signature-Bank employee



FIRST SCHEDULE

The Property

Land and premises adjacent to East Parade Millgate Road Newchurch Road Higher Mill Street Grange Terrace and Alder Bank Rawtenstall Rossendale more particularly delineated and shown edged red on the Plan

SECOND SCHEDULE

The Development

Construction of an office building and 15 dwellings

DRAFT

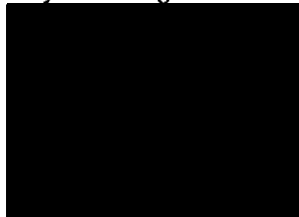
Rossendale Borough Council

Town and Country Planning Act 1990 Outline Planning Permission

PLA8526

Applicants Name : B & E Boys Ltd

Notice Recipient : Taylor Young Ltd
(Applicant/Agent)



Part 1 - Particulars of Application

Date Received : 16/12/2003

Application No : 2003/744

Proposed works : Outline application (siting and means of access details included) for the erection of an office building and 15 dwellings (Amended Plans)

Location : HIGHER MILL MILLGATE ROAD EAST PARADE RAWTENSTALL

Grid Reference : (E)23000000(N)81400000

Part 2 - Particulars of Decision

The Rossendale Borough Council hereby give notice that **outline planning permission has been granted** for the execution of works referred to in Part 1 hereof in accordance with the application and plans submitted **subject to the following conditions:**

- 1 Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of two years from the date of this permission.

Reason for this condition : Required by Section 51 of the Planning and Compulsory Purchase 2004 Act.

- 2 Approval of the details of the layout (except the siting of buildings), scale, appearance and landscaping (hereinafter called "the reserved matters") shall be obtained from the Local Planning Authority in writing before any development is commenced.

Reason for this condition : The application is in outline only and is not accompanied by detailed plans.

- 3 Plans and particulars of the reserved matters referred to in condition 2 above shall be submitted in writing to the local planning authority and shall be carried out as approved.

Reason for this condition : The application is in outline only and is not accompanied by detailed plans.

- 4 The development hereby permitted shall be begun either before the expiration of three years from the date of this permission, or before the expiration of one year from the date of approval of the last of the reserved matters to be approved, whichever is the later.

Reason for this condition : Required by Section 51 of the Planning and Compulsory Purchase 2004 Act.

- 5 The development shall be carried out in accordance with plan(s) numbered LA 079146 received and 2315 00.004 Rev F, both received on 18/3/04.

Reason for this condition : To ensure the development complies with the approved plans and for the avoidance of doubt.

- 6 Details of the proposed kerb and footpath along the south side of Higher Mill Street and a new 6 metre radius kerb and 1.8 metre footpath at its junction with Newchurch Road including a new gully street light upgrading or repositioning shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be carried out in accordance with the approved details prior to the first occupation of any of the dwellings hereby approved.

Reason for this condition : In the interests of pedestrian and highway safety in accordance with the criteria of Policy DC1 of the adopted Rossendale District Local Plan.

- 7 Details of the proposed extension of Higher Mill Street to link with East Parade, incorporating a 5.5 metre wide carriageway and 1.8 metre wide footpaths on both sides, shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be carried out in accordance with the approved details prior to the first occupation of any of the dwellings hereby approved.

Reason for this condition : In the interests of pedestrian and highway safety in accordance with the criteria of Policy DC1 of the adopted Rossendale District Local Plan.

- 8 Details of the proposed 1.8 metre wide footpath to run the full length of the north side of East Parade and east side of Grange Terrace shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be carried out in full accordance with the approved details prior to the first occupation of any of the dwellings hereby approved.

Reason for this condition : In the interests of pedestrian and highway safety in accordance with the criteria of Policy DC1 of the adopted Rossendale District Local Plan.

- 9 Within 6 months of the first occupation/use of the office building hereby permitted there shall have been submitted to and approved in writing by the Local Planning Authority (in consultation with Lancashire County Council) a Staff Travel Plan (including an Implementation Plan/Programme for a period of one year). The Travel Plan shall document the measures to be pursued to reduce the number and length of car trips; to the development and the active promotion of alternative methods of travel. The approved Travel Plan shall be implemented in full for a 12 month period following its approval. Within 18 months of the first occupation/use of the office building hereby permitted and every 12 months thereafter for a period of 5 years there shall have been submitted to and approved in writing by the Local Planning Authority an updated Staff Travel Plan (including an Implementation Plan/Programme for a period of one year and a monitoring/audit report detailing the achievements in carrying out the Implementation Programme for the previous one year period.

Reason for this condition : To reduce reliance on the private car and promote alternative modes of transport, in accordance with PPG13 and Policies 1 and 7 of the adopted Joint Lancashire Structure Plan.

- 10 The proposed dwellings shall not exceed the height of the terraced properties numbers 1-33 East Parade.

Reason for this condition : To ensure that the new buildings are in keeping with the scale of existing buildings and to prevent issues of overlooking and privacy in accordance with the criteria of Policy DC1 of the adopted Rossendale District Local Plan.

- 11 Two car parking spaces shall be provided for each of the dwellings, not more than 1 space per 35 square metres of office floor space (including in this overall provision 1 mobility impaired space per 10 car spaces) and, in addition, 1 bicycle space per 10 car spaces and 1 motorcycle space per 25 car spaces associated with the offices.

Reason for this condition : To secure the provision of satisfactory parking facilities, in the interests of highway safety and to accord with PPG13 and Policies 1 and 7 of the adopted Joint Lancashire Structure Plan.

- 12 Prior to the development commencing:

a) A contaminated land Phase I report to assess the actual/potential contamination risks at the site shall be submitted to, and approved in writing by, the Local Planning Authority (LPA).

b) Should the Phase 1 report recommend that a Phase II investigation is required, a Phase II investigation shall be carried out and the results submitted to, and approved in writing by, the LPA.

c) Should the Phase II investigations indicate that remediation is necessary, then a Remediation Statement shall be submitted to, and approved in writing by, the LPA. The remedial scheme in the approved Remediation Statement shall then be carried out.

Should remediation be required, a Site Completion Report detailing the conclusions and actions taken at each stage of the works including validation works shall be submitted to, and approved in writing by, the LPA prior to the first use or occupation of any part of the development hereby approved.

Reason for this condition : To ensure the development is suitable for its end use and the wider environment and does not create undue risks to site users or neighbours during the course of the development in accordance with the criteria of Policy DC1 of the adopted Rossendale District Local Plan.

- 13** Any construction works associated with the development hereby approved shall not take place except between the hours of 7:00 am and 7:00 pm Monday to Friday and 8:00 am and 1:00 pm on Saturdays. No construction shall take place on Sundays, Good Friday, Christmas Day or Bank Holidays.

Reason for this condition : To safeguard the amenities of nearby residential properties, in accordance with the criteria of Policy DC1 of the adopted Rossendale District Local Plan.

- 14** The office building hereby permitted shall be used for purposes in Class B1(a) and B1(b) of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order, and for no other purpose (including any other purpose in the said Class B1).

Reason for this condition : In the interests of residential amenity, in accordance with the criteria of Policy DC1 of the adopted Rossendale District Local Plan.

Summary of Reasons for Approval

- 1 To be Confirmed

Summary of the policies and proposals in the Development Plan(s) which are relevant to the decision

Local Plan

DC1 Development Criteria

Note:

Date:

Development Control
One Stop Shop
Town Centre Offices
Lord Street, Rawtenstall
Rossendale BB4 7LZ

Brian Sheasby
Team Manager - Development Control

Notes

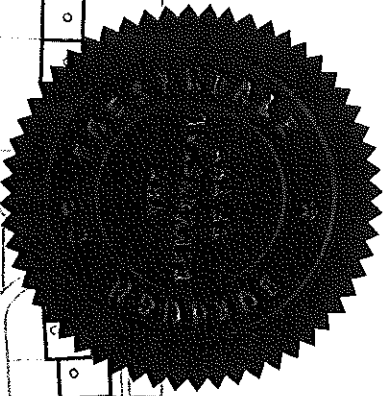
N.B. This permission refers only to that required under the Town and Country Planning Act 1990 and does not include any consent or approval under any other enactment, byelaw, order, regulation or Act. This consent does not constitute Listed Building Consent.

A) Appeals to the Secretary of State

If the applicant is aggrieved by the decision of the Local Planning Authority to refuse permission or approval for the proposed development, or to grant permission or approval subject to conditions, he or she may appeal to the Secretary of State in accordance with sections 78 and 79 of the Town and Country Planning Act 1990 within six months of the date of this notice. (Appeals must be made on a form which is obtainable from The Planning Inspectorate, Customer Support Unit, Temple Quay House, 2 The Square, Temple Quay, Bristol BS1 6PN or from the web site www.planning-inspectorate.gov.uk). The Secretary of State has the 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 permission for the proposed development could not have been so granted otherwise than subject to the conditions imposed by the Council. Appeals that are pursued unreasonably may be the subject of an award of costs in accordance with the provision of Circular 8/93.

B) Purchase Notices

If either the Local Planning Authority or the Secretary of State refuses permission to develop land or grants it subject to conditions, the owner may claim that he can neither put the land to a reasonably beneficial use in its existing state nor can he render the land capable of a reasonably beneficial use by the carrying out of any development which has been or would be permitted. In these circumstances, the owner may serve a purchase notice on the Council in whose area the land is situated. This notice will require the Council to purchase his interest in the land in accordance with the provisions of Part VI of the Town and Country Planning Act 1990.



MAYOR

