

DATED 19 SEPTEMBER 2012

(1) SIR PHILIP VYVIAN NAYLOR-LEYLAND and ROBERT WILLIAM DALGLIESH

TO

(2) NORTH YORKSHIRE COUNTY COUNCIL

AND

(3) RYEDALE DISTRICT COUNCIL

PLANNING OBLIGATION BY WAY OF UNILATERAL
UNDERTAKING
under Section 106 of the Town and Country
Planning Act 1990 (as amended)
relating to Livestock Market Site, Malton, North Yorkshire



Pinsent Masons

THIS DEED is made on

19 SEPTEMBER

2012

BY WAY OF UNILATERAL UNDERTAKING BY:-

(1) **SIR PHILIP VYVIAN NAYLOR-LEYLAND and ROBERT WILLIAM DALGLIESH** both of The Estate Office, 88 Old Maltongate, Malton, North Yorkshire YO17 7EG (the "**Owner**");

TO:-

(2) **NORTH YORKSHIRE COUNTY COUNCIL** of County Hall, Northallerton, North Yorkshire, DL7 8AD (the "**County Council**"); and

(3) **RYEDALE DISTRICT COUNCIL** of Ryedale House, Malton, North Yorkshire, YO17 7HH (the "**District Council**").

WHEREAS:-

- (A) By virtue of the 1990 Act the District Council is the local planning authority for the purposes of this Deed for the area in which the Land is situated and is the authority by whom the planning obligations hereby created are enforceable.
- (B) By virtue of the 1980 Act the County Council is the local highway authority for the area in which the Land is situated.
- (C) The Owner is the registered proprietor with absolute title of the Land registered at HM Land Registry under Title Number NYK338565 (which includes also other land) and as bare trustees act only by direction of the Company.
- (D) Fitzwilliam (Malton) Estates submitted the Application to the District Council and has submitted the Appeal to the Secretary of State.
- (E) The Owner by entering into this Deed does so to create planning obligations in respect of the Land and each part of it in favour of the District Council and the County Council pursuant to section 106 of the 1990 Act and to be bound by and observe and perform the covenants, agreements, conditions and stipulations hereinafter contained.

IT IS AGREED as follows:-

1. INTERPRETATION

1.1 In this Deed:-

"1980 Act"	means the Highways Act 1980
"1990 Act"	means the Town and Country Planning Act 1990
"A64 Contribution"	means the sum of £135,000 (one hundred and thirty five thousand pounds) to be paid by the Owner to the County Council and to be used by the County Council for highways improvements to the A64 at Brambling Fields
"Appeal"	means the appeal submitted by Fitzwilliam (Malton) Estates to the Secretary of State for Communities and Local Government under section 78 of the 1990 Act and allocated reference APP/Y2736/A/12/2174677 against the refusal by the District Council of the Application
"Application"	means the planning application for the Development submitted by Fitzwilliam (Malton) Estates to the District Council and given reference number 11/00412/MOUT

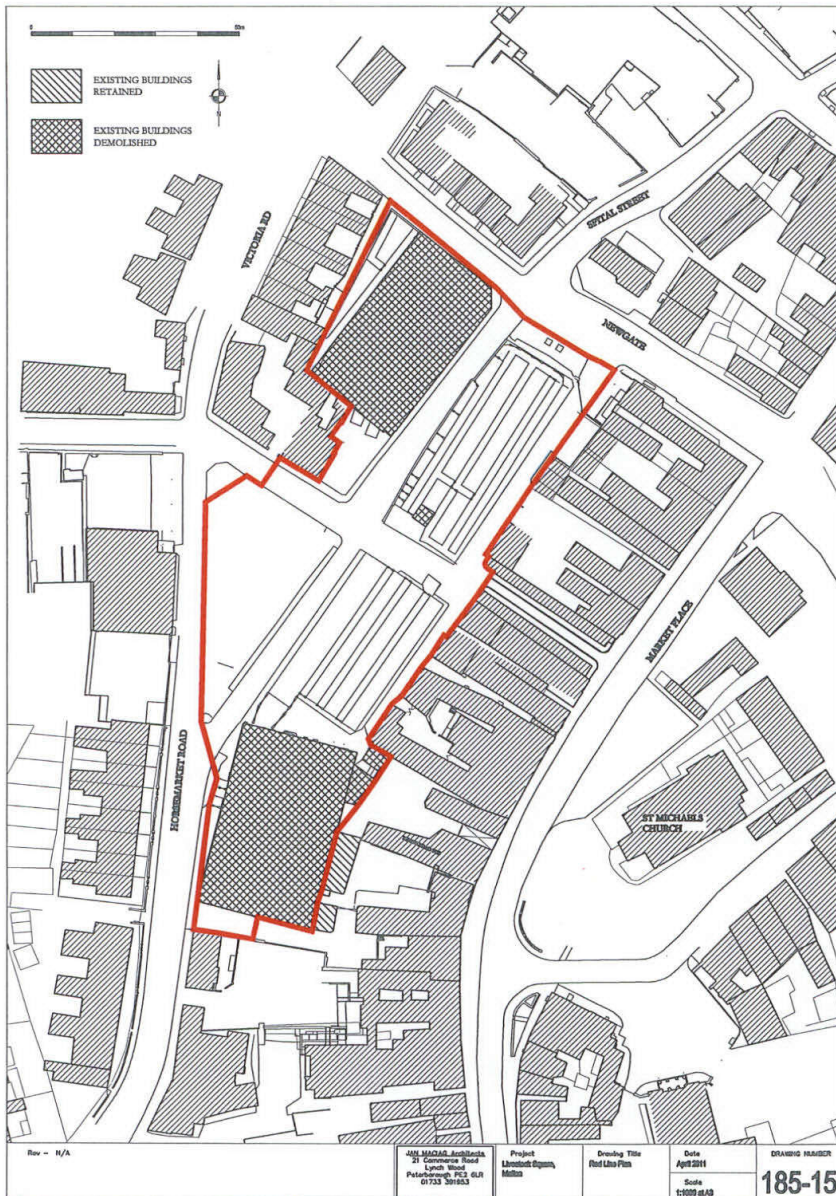
"Commencement of Development"	means the date upon which the Development shall commence by the carrying out on the Land pursuant to the Planning Permission of a material operation as specified in section 56(2) of the 1990 Act Save That the term " <i>material operation</i> " shall not include operations in connection with any work of or associated with demolition, site clearance, remediation works, environmental investigation, site and soil surveys, erection of contractors work, compound erection of site office, erection of fencing to site boundary and " Commence the Development " shall be construed accordingly
"Company"	means Milton (Peterborough) Estates Company (company number 286146) whose registered office is The Estate Office, Milton Park, Peterborough, Cambridgeshire PE3 9HD
"Development"	means the development of the Land by demolition of existing livestock market and associated outbuildings and re-development for retail use together with three-storey car park and public square
"Land"	means all that land at the site known as the Livestock Market site, Malton, North Yorkshire shown edged red on Plan 1
"Local Highways Contribution"	means the sum of £35,000 (thirty five thousand pounds) to be paid by the Owner to the County Council and to be used by the County Council towards the implementation of a one way system and pavement improvements to Finkle Street, Newgate and Spital Street, Malton
"Occupation"	means first occupation of a building which is part of the Development but excluding occupation for the purposes of construction, decoration, fit out, marketing or security and " Occupied " and " Occupy " shall be construed accordingly
"Plan 1"	means the plan attached to this Deed showing the Land and numbered 185-15
"Planning Permission"	means a planning permission granted pursuant to the Appeal
"TRO Contribution"	means the sum of £2,500 (two thousand five hundred pounds) to be paid by the Owner to the County Council and to be used by the County Council towards the cost of implementing traffic regulation orders required as a result of the Development

1.2 In interpreting this Deed:-

- 1.2.1 the singular includes the plural and vice versa and words importing the masculine gender only include the feminine gender and extend to include a corporation, sole or aggregate;
- 1.2.2 a reference to the 1990 Act refers to the 1990 Act as it applies at the date of this Deed;
- 1.2.3 references to Clauses, paragraphs and Schedules are references to Clauses, paragraphs and Schedules to this Deed unless expressly stated otherwise.

R. W. Maynor - Maynard

R. W. Maynard



2. OPERATIVE PROVISIONS

- 2.1 This Deed is by way of a unilateral planning obligation made in pursuance of section 106 of the 1990 Act and the obligations in this Deed are enforceable against the Owner by the District Council as local planning authority.
- 2.2 The planning obligations comprised in Schedule 1 to this Deed shall not become effective until the date of this Deed and are conditional on the Commencement of the Development pursuant to the Planning Permission.
- 2.3 The Owner hereby covenants with the District Council and the County Council that the Land shall be permanently subject to the obligations and restrictions specified in Schedule 1.
- 2.4 The Owner covenants not to implement the Planning Permission unless and until those persons with a leasehold interest in the Land (at the time of implementation) have entered into a supplemental agreement or undertaking pursuant to section 106 of the 1990 Act in order to secure that their interests in the relevant area of the Land are bound by the planning obligations in Schedule 1 to this Deed PROVIDED THAT if the District Council notifies the Owner in writing that one or more persons shall not be required to enter into a supplemental agreement or undertaking then this Clause 2.4 shall not apply to such persons or their interest in the Land.
- 2.5 It is agreed and declared as follows:-
- 2.5.1 in this Deed the expression "the Owner" shall be deemed to include its successors in title and the expressions the "County Council" and the "District Council" shall include their respective successors to their statutory functions;
- 2.5.2 no party shall be bound by the terms of this Deed or be liable for the breach of any covenants, restrictions or obligations contained in this Deed occurring after he or it has parted with his or its interest in the Land or the part in respect of which such breach occurs (but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest);
- 2.5.3 if the Planning Permission shall expire before its implementation or shall at any time be revoked or modified (without the consent of the Owner) this Deed shall terminate and cease to have effect and the District Council and the County Council (as relevant) shall immediately remove any entry relating to this Deed from the register of local land charges;
- 2.5.4 nothing in this Deed shall be construed as restricting the exercise by the County Council or the District Council of any power or discretion exercisable by them under the 1990 Act or the 1980 Act or under any other Act of Parliament nor prejudicing or affecting the County Council's or the District Council's rights, powers, duties and obligations in any capacity as a local or public authority;
- 2.5.5 the obligations hereby created shall be registered as a local land charge;
- 2.5.6 no person who is not a party to this Deed may enforce any terms hereof pursuant to the Contracts (Right of Third Parties) Act 1999 provided that this Clause shall not affect any right of action of any person to whom this Deed has been lawfully assigned or becomes vested in law;
- 2.5.7 nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission relating to the Development);
- 2.5.8 this Deed is governed by and interpreted in accordance with the law of England and Wales;

- 2.5.9 insofar as any Clause or Clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed;
- 2.5.10 the Company indemnifies the Owner in respect of any claim demand expenses liability or cost in connection with this Deed or any breach of any of the covenants herein on the part of the Owner save in the case of fraud wrongful act or default;
- 2.5.11 While the Owner acts in the capacity of trustees no individual trustee is to be personally liable for any breach of their obligations under this Deed except to the extent of the value of the trust fund or estate held by them at the time they receive written notice of any claim;
- 2.5.12 the provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

EXECUTED AS A DEED by the parties on the date which first appears in this Deed.

SCHEDULE 1
THE OWNER'S COVENANTS

1. The Owner hereby covenants:-
 - 1.1 to pay to the County Council the Local Highway Works Contribution prior to Commencement of Development;
 - 1.2 to pay to the County Council the A64 Highway Works Contribution prior to Occupation; and
 - 1.3 to pay to the County Council the TRO Contribution prior to Commencement of Development.

EXECUTED AS A DEED (but not delivered until dated) by
SIR PHILIP VYVIAN NAYLOR-LEYLAND
in the presence of:

P. V. Naylor-Leyland

Signature of witness

P. A. Scott

Name (in BLOCK CAPITALS)

P. A. Scott

Address

**Estate Office, Milton Park
Peterborough PE3 9HD**

Occupation

Secretary

EXECUTED AS A DEED (but not delivered until dated) by
ROBERT WILLIAM DALGLIESH
in the presence of:

R. W. Dalgliesh

Signature of witness

P. A. Scott

Name (in BLOCK CAPITALS)

P. A. Scott

Address

**Estate Office, Milton Park
Peterborough PE3 9HD**

Occupation

Secretary