

DATED: 10 May 2002

RECEIVED
23 APR 2002
REGISTERED

SOUTHAMPTON CITY COUNCIL (1)

- and -

BEAZER HOMES LIMITED (2)

Dr. [unclear]

eth4/18/81 25

**Agreement pursuant to
Section 106 of the Town and Country Planning Act 1990 and
Section 111 of Local Government Act 1972
in relation to development at
43-45 Vespasian Road, Southampton**

We hereby certify this to be
a true copy of the original
BP
Berwin Leighton Paisner
Adelaide House
London Bridge
London EC4R 9HA

*berwin leighton paisner

THIS AGREEMENT is made the 10th day of May 2002

BETWEEN:

- (1) **SOUTHAMPTON CITY COUNCIL** of Civic Centre Southampton SO14 7PE ("the Council") and
- (2) **BEAZER HOMES LIMITED** whose registered office is situate at Persimmon House Fulford York YO19 4FE ("the Owner")

RECITALS

- (A) The Council is the local planning authority for the purposes of Section 106 of the Act for the area within which the Site is situated and by whom the obligations contained in this Agreement are enforceable
- (B) The Owner is the owner in fee simple of the Site subject to restrictive covenants
- (C) The Planning Application was made to the Council for the Development by the Owner's predecessor in title
- (D) The Council has resolved that the Planning Permission be granted in accordance with the Planning Application subject to the making of this Agreement without which planning permission for the Development would not have been granted

OPERATIVE PART

1 Statutory Powers

This Agreement is a planning obligation for the purposes of Section 106 of the Act and is entered into pursuant also to Section 111 of the Local Government Act 1972 and it is acknowledged by the parties that the obligations contained within it are enforceable by the Council as local planning authority against the Owner and its successors in title in respect of its interests in the Site

2 Interpretation

2.1 In this Agreement unless the context otherwise requires the following terms (arranged in alphabetical order) shall have the following meanings:

"the Act"	the Town and Country Planning Act 1990 (as amended)
-----------	---

"Affordable Housing"	the provision of affordable housing available to households whose incomes do not enable them to obtain adequate housing accommodation locally consistent with their needs on the open market in accordance with Policy H2 of the City of Southampton Adopted Local Plan (1996)
"the Contribution"	the sum of £30,000 (thirty thousand pounds) plus the difference between (1) the cost of removing a slipway and pontoons which are located on the river frontage of the Site and (2) £10,000 (ten thousand pounds)
"the Development"	the redevelopment of the Site in the manner and for the uses specified in the Planning Application
"Linked Property"	the land known as 37-39 Vespasian Road Southampton shown coloured blue and edged red on Plan B
"Plan A"	the plan marked "Plan A" attached to this Agreement
"Plan B"	the plan marked "Plan B" attached to this Agreement
"the Planning Application"	the planning application reference number 00/00320/FUL for the construction of five two-bedroom flats with allocated parking facilities
"the Planning Permission"	planning permission for the Development in the form of the model decision notice attached to this Agreement
"Registered Social Landlord"	a housing association or other non-profit making body either of which being registered or eligible to register as a social landlord as defined by the Housing Act 1996

copy has been
on the Cr
instead re
by may n

4313SW/SE
1:1250



**AUTHORISED
SIGNATORY**



This copy has been reproduced specifically for Planning and Building Control purposes only. No further copies may be made.
This is a reproduction of the Ordnance Survey's 1999 map with the permission of the Controller of Her Majesty's Stationery Office, Crown Copyright Reserved.
Any other reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings. Southampton City Council License No 079340, 1999.
This copy may not have been reproduced exactly to scale. Southampton City Council accept no responsibility in the event of inaccuracy or omissions.





Sheet No.
Scale

**AUTHORISED
SIGNATORY**
Landing Stage



This copy has been reproduced specifically for Planning and Building Control purposes only. No further copies may be made.
Based on the Ordnance Survey's 1999 map with the permission of the Controller of Her Majesty's Stationary Office, Crown Copyright Reserved.
Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings. Southampton City Council License No 079340, 1999.
This copy may not have been reproduced exactly to scale. Southampton City Council accept no responsibility in the event of inaccuracy or omissions.

"the Site"	the land known as 43-45 Vespasian Road Southampton shown edged red on Plan A
------------	---

- 2.2 References in this Agreement to "the Owner" shall include its successors in title to the Site and its assigns
- 2.3 References in this Agreement to "the Council" shall include any successor to its functions as local planning authority
- 2.4 The clause headings in this Agreement are for convenience only and do not form part of the Agreement
- 2.5 References to clauses paragraphs and schedules shall (unless the context otherwise requires) be references to clauses paragraphs and schedules in this Agreement
- 2.6 References to the singular shall include the plural and vice versa

3 **Conditionality**

The covenants contained in this Agreement shall take effect upon the grant of the Planning Permission PROVIDED THAT in the event of the Owner not implementing the Planning Permission by the carrying out of specified operations as defined by Section 56(4) of the Act nothing in this Agreement shall oblige the Owner to carry out any works or pay any monies to the Council

4 **Owner's Covenants**

The Owner **COVENANTS** with the Council to observe and perform the restrictions and obligations set out in the Schedules below:

First Schedule – general covenants as to the Development

Second Schedule – Affordable Housing

5 **Council's Covenants**

(Subject to the due performance by the Owner of its obligations under this Agreement) the Council **HEREBY COVENANTS** with the Owner that it will as soon as possible after completion of this Agreement grant and issue the Planning Permission

6 **Release and Lapse**

6.1 No person shall be liable for breach of a covenant contained in this Agreement after he shall have parted with all interest in the Site or the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach prior to parting with such interest

6.2 If the Planning Permission granted pursuant to the Planning Application shall expire before the Development is begun as defined above or shall at any time be revoked this Agreement shall forthwith determine and cease to have effect

6.3 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 one relating to the Development as specified in the Planning Application) granted (whether or not an appeal) after the date of this Agreement

7 **Local Land Charge**

7.1 This Agreement is a local land charge and shall be registered as such by the Council

7.2 The Council will upon the written request of the Owner at any time after the obligations of the Owner under this Agreement have been fulfilled issue written confirmation thereof and thereafter entries in the Register of Local Land Charges

8 **No Fetter on Discretion**

Nothing contained in this Agreement shall cancel all related prejudice or affect the Council's rights powers duties and obligations in the exercise of their functions as a Local Authority and the rights powers duties and obligations of the Council under all public and private statutes byelaws and regulations

9 **Legal Costs**

The Owner **COVENANTS** with the Council that it will on or before the date of this Agreement pay the Council's reasonable costs in connection with the preparation and completion of this Agreement

10 **Contracts (Rights of Third Parties) Act 1999**

Notwithstanding the provisions of the Contracts (Rights of Third Parties) Act 1999 no part of this Agreement shall be enforceable by a third party who is not a party to the Agreement and for the avoidance of doubt the terms of the Agreement may

be varied by agreement between the parties without the consent of any such third party

IN WITNESS WHEREOF the parties have executed this Agreement as a Deed on the date written above

The First Schedule

(general covenants as to the Development)

- 1 Within 12 months from the date of commencement of the Development of the Site to create and thereafter maintain to the reasonable satisfaction of the Council pedestrian and cycle access (the walkway) running along the full length of the river frontage of the Site ~~with access along north east boundary of the Site~~ *SW*
- 2 The Owner hereby grants to the Council its successors in title all those authorised by it and the general public at large the right to use the walkway for recreational purposes at all times
- 3 On the date hereof the Owner shall pay to the Council a financial contribution of £4,200.00 (four thousand two hundred pounds) (receipt of which is acknowledged) towards the securing by the Council under the Private Street Works Code of a pedestrian footway link to the public highway of Englefield Road/Vespasian Road
- 4 The Owner shall on the date hereof pay to the Council the sum of £800 (eight hundred pounds) (receipt of which is acknowledged) to enable the Council to procure a pair of dropped kerbs across Vespasian Road near the junction with Englefield Road

Note

Any payments to be made under this First Schedule to be by way of cheque payable to Southampton City Council and sent to the Highways Development Control Team Leader.

The Second Schedule

(Affordable Housing)

1 Affordable Housing

- 1.1 The Site shall not be used other than for the provision of Affordable Housing
- 1.2 Prior to the occupation of the 17th (seventeenth) dwelling on the Linked Property the Owner shall transfer the freehold or grant a long leasehold interest (for a period of not less than 99 years) in the Site to a Registered Social Landlord on terms that ensure the Affordable Housing is and remains bound by the obligations in this First Schedule and the Owner shall forthwith on completion of the transfer or grant (as the case may be) notify the Council in writing that it has occurred

2 Affordable Housing : General Provisions

- 2.1 The Affordable Housing to be provided shall be used for Affordable Housing only
- 2.2 The Owner shall use its reasonable endeavours to dispose of the Affordable Housing to a Registered Social Landlord by way of transfer of the freehold or the grant of a long lease (for a period of not less than 99 years) within six months from the date of this Agreement
- 2.3 In the event that the Affordable Housing is owned or leased by the Registered Social Landlord and there is a default under any legal charge or mortgage of the Affordable Housing then any chargee or mortgagee ("the Chargee") shall be entitled to exercise its power of sale free from the restrictions set out in paragraphs 1 and 2 of this Schedule provided that the Chargee shall first have followed the procedure set out below:-
- 2.3.1 The Chargee shall give written notice ("the Sale Notice") to the Council of its intention to exercise its power of sale
- 2.3.2 At the same time as giving the Sale Notice the Chargee shall make an offer ("the Offer") to sell the Affordable Housing to the Council for an amount to be agreed or determined in accordance with sub-paragraph 2.3.5.2 ("the Purchase Price")
- 2.3.3 The Council may notify the Chargee in writing within one month of the date of the Offer whether or not it wishes to accept the Offer (in

the case of an acceptance such acceptance to be conditional upon the Purchase Price being acceptable to the Council)

2.3.4 If the Council shall notify the Chargee within the time specified in sub-paragraph 2.3.3 that it does not wish to accept the Offer the Council shall then have one month from the date upon which it notifies in writing its refusal of the Offer within which to arrange for the transfer of the Affordable Housing in consideration of the Purchase Price to a Registered Social Landlord

2.3.5 If either the Council shall notify the Chargee within the time specified within sub-paragraph 2.3.3 that it wishes to accept the Offer or if within the time specified in sub-paragraph 2.3.4 the Council gives written notice to the Chargee that arrangements can be made in accordance with sub-paragraph 2.3.4 then:

2.3.5.1 the Chargee shall co-operate with the Council to secure the transfer; and

2.3.5.2 the Council and the Chargee shall endeavour to agree the Purchase Price which shall represent the open market value of the Affordable Housing but subject to all or any tenancies of the Affordable Housing as may be subsisting at the date of the Sale Notice and disregarding the provisions of paragraphs 2.1 and 2.2 of this Schedule AND in default of such agreement the Purchase Price shall be determined on the same basis of valuation by an independent surveyor ("the Surveyor") experienced in valuing residential land and property who shall act as an expert and whose costs shall be borne by the Council and the Chargee in equal shares and the Surveyor shall be appointed in default of agreement between the parties on the application of either party by or on behalf of the President for the time being of the Royal Institution of Chartered Surveyors and the Surveyor's determination shall be binding on both parties

2.3.6 Subject to the provisions of sub-paragraph 2.3.7 the transfer to the Council or to a Registered Social Landlord shall be completed within

two months of the date the Purchase Price is agreed or determined in accordance with sub-paragraph 2.3.5.2 ("the Completion Period")

2.3.7 If the Chargee does not wish to exercise its power of sale at any time after giving the Sale Notice or the Council does not wish to continue with the exercise of its power under the provisions of this paragraph 2 that party shall give to the other not less than seven days' written notice of its intention to discontinue

2.3.8 If either:

2.3.8.1 the Council fails to give notification to the Chargee within the time specified in sub-paragraph 2.3.3 or

2.3.8.2 having given notification of refusal of the Offer in accordance with sub-paragraph 2.3.3 the Council fails to give notification to the Chargee within the time specified in sub-paragraph 2.3.4 or

2.3.8.3 the Council having complied with the time periods specified in sub-paragraph 3.3.3 and (in the case of a refusal of the Offer) sub-paragraph 3.3.4 the transfer to either the Council or to the Registered Social Landlord shall not be completed within the Completion Period or

2.3.8.4 the Council shall serve notice of its intention to discontinue under sub-paragraph 2.3.7 then

the Chargee shall be under no obligation to sell the Affordable Housing either to the Council or to a Registered Social Landlord and shall be entitled to exercise its powers of sale without any of the provisions of the Second Schedule of this Agreement being binding on the purchaser or purchasers of the Affordable Housing or any part thereof or any successor in title hereto

2.3.9 The Council shall in formulating or promoting any arrangements referred to in sub-paragraph 2.3.4 give consideration to protecting the interests of the Chargee in respect of monies outstanding under the charge or mortgage

2.4 The sale price for the transfer of the Site by the Owner to the Registered Social Landlord shall be £1 (one pound) plus the Contribution which shall be payable by the Owner to the Registered Social Landlord

2.5 In the event that:

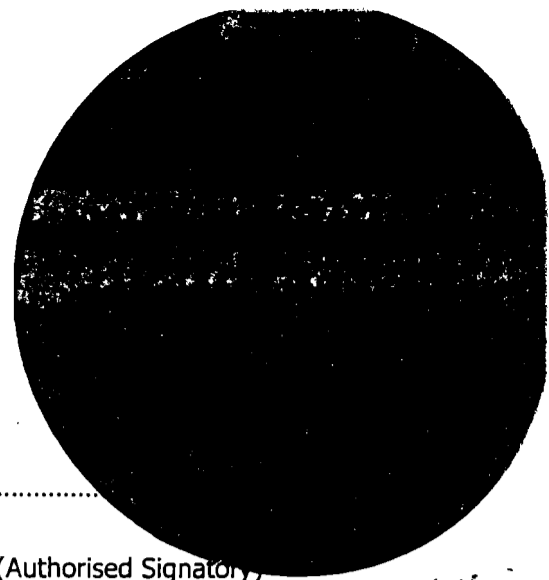
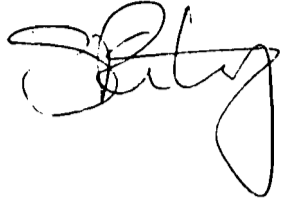
2.5.1 the Owner has not been able to transfer the Site to a Registered Social Landlord within 6 months from the date of this Agreement AND

2.5.2 the Planning Committee of the Council (the Committee) have previously consented to this provision

the Owner shall at the Owner's absolute discretion pay to the Council within 14 days of a request in writing the sum of £22,500 in lieu of its obligations in paragraph 2.2 of this Schedule and upon payment of such sum the Site shall be released from the provisions in this Schedule and the Site may be developed or sold free from such provisions

2.6 For the purpose of clarification the Committee has not at the date of this Agreement consented in the form required by paragraph 2.5.2 above and the Committee is under no obligation to give such consent.

THE COMMON SEAL of
SOUTHAMPTON CITY COUNCIL was
hereunto affixed in the presence of:



.....
(Authorised Signatory)

8/11/02

EXECUTED AS A DEED by
BEAZER HOMES LIMITED acting
by its Attorneys Alastair John Dineen
and Allen William Smith in the
presence of:



C. Light
CLAIRE LIGHT
c/o PERSIMMON HOUSE
18 HIGH STREET
FAREHAM PO16 7AF