

DATED 24th December 2009

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PLANNING

- (1) SAINSBURY'S SUPERMARKETS LTD
- (2) SHEPWAY DISTRICT COUNCIL

PLANNING OBLIGATION BY AGREEMENT
UNDER SECTION 106 OF
THE TOWN AND COUNTRY PLANNING ACT 1990
relating to land at
Military Road
Hythe
Kent
CT21 5BN

LG

THIS AGREEMENT is dated *24 December* 2009
BETWEEN

- (1) **SAINSBURY'S SUPERMARKETS LTD** (Co Reg No. 3261722) of 33 High Holborn London EC1N 2HT ("the Owner") and
- (2) **SHEPWAY DISTRICT COUNCIL** of Civic Centre Castle Hill Avenue Folkestone CT20 2QY ("the Council")

WHEREAS:

- (A) The Council is the Local Planning Authority for the purposes of the 1990 Act for the area within which the Site is situated
- (B) The Owner owns the freehold interest in the Site registered at the Land Registry under title number K375897.
- (C) The Owner is willing to enter this Agreement in order to make contributions to mitigate the impact of the Development

NOW THIS DEED WITNESSETH as follows:

1. ENABLING POWERS

This Agreement is made pursuant to section 106 of the 1990 Act and is enforceable by the Council

2. DEFINITIONS

In this Agreement the following expressions shall have the meanings given to them in this clause:

"1990 Act" the Town and Country Planning Act 1990 or any statutory re-enactment thereof

"Additional Sum" a sum equal to the difference between the Contribution and a sum arrived at by increasing the Contribution by the percentage by which the General Index of Retail Prices (all items) published by the Office of National Statistics or any successor office ministry or agency had increased between the date of this Deed and the date the Contribution is paid to the Council (and for the purpose of calculating the increase the General Index of Retail Prices (all items) for which most recent official figures published by the Office of National Statistics are available shall be deemed to be the Index prevailing at the date of payment) provided that in the event of any change after the date of this Deed in the reference base used to compile the said Index a figure taken to be shown in the said Index after such change shall be the figure which would have been shown in the said Index if the reference base current at the date of this Deed had been retained

"Application" the application for the Development submitted by the Owner and bearing reference YO9/0627/SH

"Development"	demolition of the existing buildings and construction of a new Class A1 retail store together with associated car parking, delivery yard and vehicular access
"Implementation Date"	the date on which the first Material Operation is carried out on the Site pursuant to the Planning Permission
"Material Operation"	<p>a material operation as defined by section 56(4) of the 1990 Act in relation to the Development but disregarding any of the following</p> <ul style="list-style-type: none"> (a) demolition of existing structures on the Site (b) decontamination treatment of the Site (c) site remediation work (d) ground works associated with decontamination treatment of the Site and site remediation works or archaeological investigation (e) the erection of boundary structures or other site security or safety measures (f) diversion and laying of services
"Occupation"	the opening for trade to the public of the Development
"Plan"	the plan annexed hereto
"Planning Permission"	planning permission granted pursuant to the Application under reference Y09/0627/SH
"Residential Improvement Contribution"	the sum of £85,000 to be used for the Residential Improvement Purposes
"Residential Improvement Contribution Purposes"	improvements to nearby residential properties in the amount of £10,000 for each of the properties at 3 5 7 9 11 13 15 and 17 Military Terrace and £5,000 for 1a Military Terrace in order to mitigate the effects of the Development
"Secretary of State"	the Secretary of State for Communities and Local Government or any other minister charged with performing the functions of the secretary of state under the 1990 Act
"Site"	the land edged red on the Plan
"Town Centre Contribution"	the sum of £200,000 to be used for Town Centre Purposes
"Town Centre Purposes"	(1) the establishment of a fund to enable the holding of public events in Hythe Town Centre (such fund to be administered by Hythe Town Council and Shepway District

615400.000

615500.000

Plan referred to in Section 106 Agreement
Smith Industries
Military Road
Hythe

Application Y09/0627/SH

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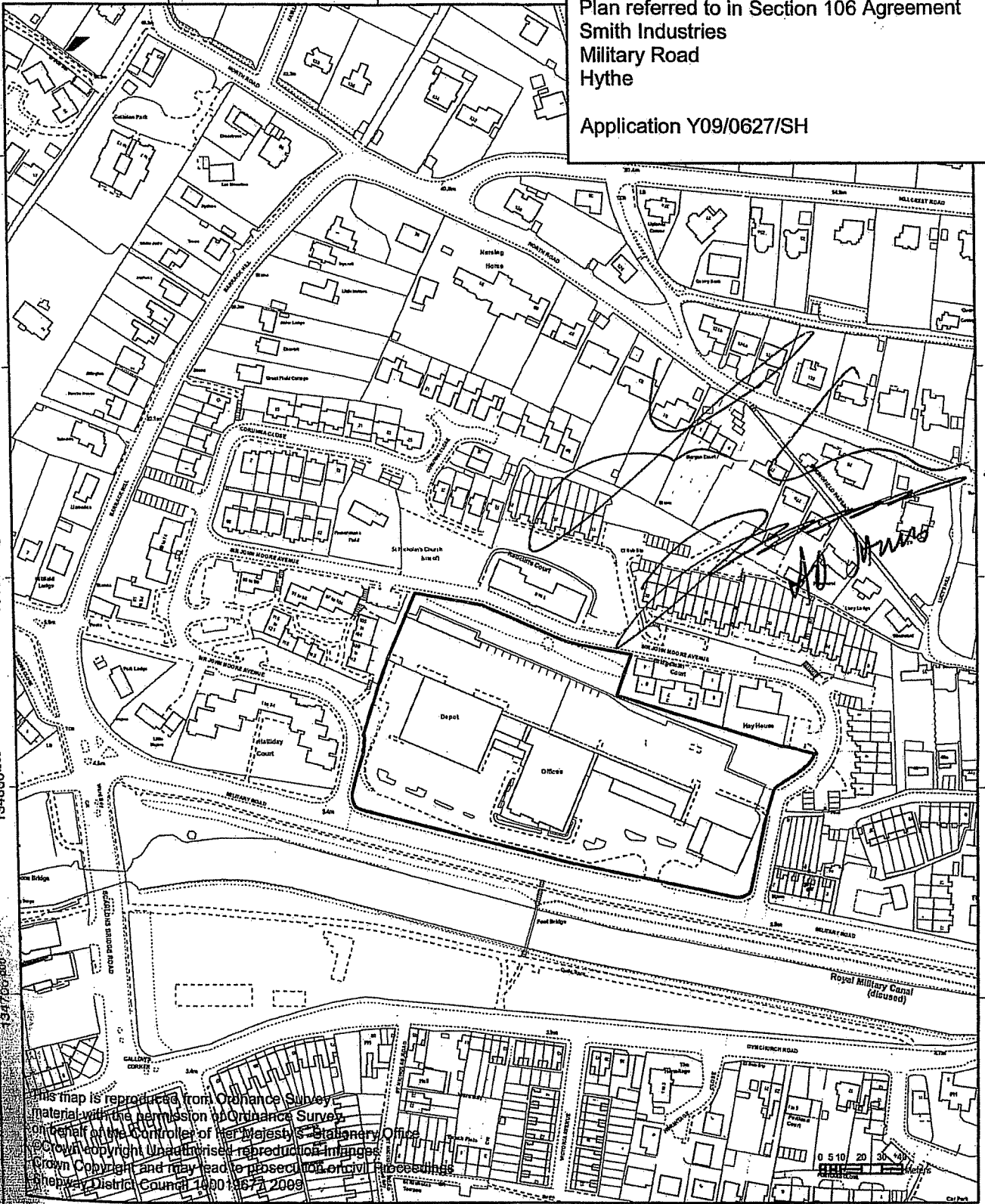
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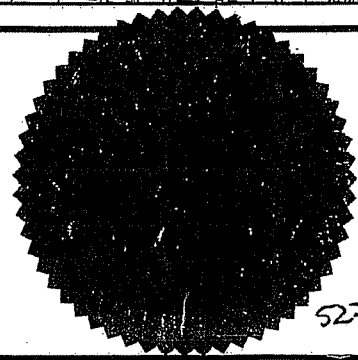


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THE COMMON SEAL OF THE DISTRICT OF SHEPWAY
was here unto affixed in the presence of:-

[Handwritten signature]

Solicitor



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Council) for a minimum period of 3 years

- (2) public realm improvements within Hythe Town Centre, to include road, pavement, street and decorative lighting, street furniture, public art and signage improvements

"Traffic Management Contribution" the sum of £35,000 to fund traffic management improvements at the Scallons Bridge/ Dymchurch Road Junction

Any reference in this Agreement to any Act of Parliament shall be deemed to include a reference to any Act amending or replacing the same

3. COVENANTS AND LEGAL EFFECT

3.1 This Agreement shall not take effect until:

3.1.1 the grant of the Planning Permission and

3.1.2 the implementation of the Planning Permission by the carrying out of a Material Operation by the Owner or by any other person authorised by it

3.1.3 No person shall be liable for any breach of the covenants restrictions or obligations contained in this Agreement occurring after it has parted with its interest in the Site or the part in respect of which such breach occurs (but without prejudice to the liability of such person for any breach occurring prior to its parting with such interest)

3.2 Nothing in this Agreement shall be construed as prohibiting limiting or affecting any right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted by the Council or the Secretary of State on appeal or by reference to him after the date of this Agreement and for the avoidance of doubt any operations works or development in accordance with such a planning permission shall not constitute a Material Operation under the terms of this Agreement

3.3 If the Planning Permission shall expire within the meaning of sections 91 92 and 93 of the 1990 Act or be quashed by a court of law revoked modified or otherwise withdrawn by the Council or the Secretary of State then (if the s so elect) this Agreement shall cease to have further effect

3.4 Where any approval licence consent or agreement is required pursuant to this Agreement such approval licence consent or agreement shall not be unreasonably withheld or delayed

4. COVENANTS BY THE OWNER

The Owner hereby covenants with the Council that it will not carry out continue or procure the Development without performing and observing the obligations stipulations and other matters set out in this Agreement and the schedule annexed hereto

5. PAYMENT

5.1 The Council covenants with the Owner that upon receipt of any payments under this Agreement they will apply the principal and interest of such sums exclusively towards the purposes set out in this Agreement only **PROVIDED THAT** if the whole

or any part of such sums have not been expended by the Council for the purposes set out in this Agreement at the expiration of a period of seven years from receipt of the payments the Council will forthwith pay the unexpended balance together with duly apportioned interest (such interest to be calculated from the date of payment to the Council to the date of repayment at the base rate from time to time of Lloyds TSB Bank plc) to the person who paid the financial contributions

- 5.2 The Council may either spend a contribution or sum it has received under this Deed itself for the purposes for which it was paid or pass it to a third party to spend on its behalf provided that such contribution or sum may only be applied by the third party for the purpose for which it was paid to the Council and the Council shall procure that the third party complies with the relevant terms of this Deed in relation to such sum or contribution

6. NOTICES

- 6.1 Any notice or other communication to be given under or in connection with this Agreement shall be in writing which for this purpose shall not include e-mail and may be addressed as provided in clause 6.3.
- 6.2 Any such notice or other communication, if so addressed, shall be deemed to have been received as follows:
- 6.2.1 if delivered by hand, upon delivery at the relevant address;
- 6.2.2 if sent by first class post, at 9.00 a.m. on the second working day after the date of posting; and
- 6.3 The address for service of any such notice consent or approval as aforesaid shall be Civic Centre Castle Hill Avenue Folkestone Kent CT20 2QY and any such notice or other communication shall be addressed to the Planning Manager

7. REGISTRATION

The covenants on behalf of the parties hereto to be observed and performed under this Agreement shall be treated as Local Land Charges and registered at the Local Land Charges Registry for the purposes of the Local Land Charges Act 1975

8. THIRD PARTY RIGHTS

The provisions of this Agreement shall not be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person (other than the Council) not a party to it

9. CLAUSE HEADINGS ETC

- 9.1 The clause headings within this Agreement and the schedule hereto are intended for ease of reference only and shall not be deemed to affect the meaning thereof
- 9.2 Reference in this Agreement to clauses are (unless otherwise expressly provided) references to the relevant clauses contained in this Agreement
- 9.3 Words importing the singular include the plural and vice versa and words importing the masculine neuter or feminine genders shall include the other such genders

10. VAT

All consideration given in accordance with the terms of this Agreement shall be exclusive of any value added tax properly payable

11. INTEREST

If any payment due under this Agreement is paid late interest will be payable from the date payment is due to the date of payment at the rate of 4% above the Bank of England's base rate

IN WITNESS whereof this Agreement has been executed as a deed by the parties hereto and is intended to be and is hereby delivered on the date first before written

SCHEDULE

1. To pay to the Council on the date hereof its reasonable legal costs in relation to negotiation and completion of this Agreement
2. To pay to the Council the Residential Improvement Contribution and the Additional Sum prior to the first opening for trade of the Development
3. To pay to the Council the Town Centre Contribution and the Additional Sum prior to the first opening for trade of the Development
4. To pay the Council the Traffic Management Contribution and the Additional Sum prior to the first opening for trade of the Development
5. To pay the Council upon the Implementation Date the monitoring fee of £3,000 being the reasonable estimate of the cost to the Council of monitoring compliance with this agreement

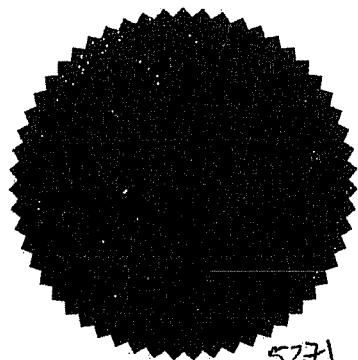
Executed as a deed by affixing the common seal of **SAINSBURY'S SUPERMARKETS LTD** in the presence of:

[Handwritten Signature]
.....
Authorised Signatory

[Handwritten Signature]
.....
Authorised Signatory

The common seal of **SHEPWAY DISTRICT COUNCIL** was hereto affixed in the presence of:

[Handwritten Signature]
.....
.....



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