

DATED

25th November

2016

- (1) SINBAD PLANT LIMITED
- (2) MCCARTHY & STONE RETIREMENT LIFESTYLES LIMITED
- (3) BROXTOWE BOROUGH COUNCIL

**Planning obligation under section 106 of the Town and Country
Planning Act 1990 relating to Land at the Former Sinbad Hire Plant,
Hickings Lane, Stapleford**

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Real Estate Team

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Ref: RBA.MCC.33.2091

THIS AGREEMENT is made the 25th day of November 2016

BETWEEN

- (1) **SINBAD PLANT LIMITED** : incorporated and registered in England and Wales with company number 00872963 whose registered office is 12 Bridgford Road, West Bridgford, NG2 6AB
("the Owner")
- (2) **MCCARTHY & STONE RETIREMENT LIFESTYLES LIMITED** : incorporated and registered in England and Wales with company number 06622231 whose registered office is at 4th Floor, 100 Holdenhurst Road, Bournemouth, BH8 8AQ
("the Developer")
- (3) **BROXTOWE BOROUGH COUNCIL** : of Foster Avenue, Beeston, NG9 1AB
("the Council")

BACKGROUND

- (1) The Council is the local planning authority for the purposes of Section 106 of the Act for the area within which the Land is located and the local planning authority by whom the planning obligations in this Agreement are enforceable.
- (2) The Owner is the freehold owner of the Land.
- (3) The Developer has entered into a conditional contract to purchase the Land from the Owner, dated 26 November 2015.
- (4) The Developer has by planning application reference number 16/00107/FUL and dated 8 February 2016 ("the Planning Application") applied to the Council for permission to develop the Land in the manner and for the uses set out in the Planning Application and in the plans specifications and particulars deposited with the Council and forming part of the Planning Application.
- (5) The Council having regard to all material considerations resolved at its Planning Committee on 15th June 2016 that Planning Permission should be granted for the Development subject to prior completion of this Agreement.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

In this Agreement

- 1.1 the following words and expressions shall have the following meanings unless otherwise stated:

"Act" : means the Town and Country Planning Act 1990 (as amended).

- "Agreement"** : means this document, including the schedules.
- "Commencement of Development"** : means 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 pursuant to the Planning Permission granted in respect of the Planning Application other than (for the purposes of this Agreement and for no other purpose) operations consisting of site clearance, demolition work, works to remove the existing substation, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and "Commence Development" and "Commenced Development" shall be construed accordingly.
- "Development"** : means the erection of 48 retirement living apartments including associated communal facilities, landscaping and car parking and as more particularly described in the Planning Application.
- "Dwelling"** : means any dwelling (including a house flat or maisonette) constructed pursuant to the Planning Permission.
- "Expert"** : means such expert as may from time to time be appointed for the purposes of resolving a relevant dispute in relation to this Agreement and/or the Development as follows:
- (a) if the dispute relates to transport or highway works, engineering, demolition, or construction works, a chartered civil engineer being a member of the Institution of Civil Engineers (having not less than 10 years' relevant experience in the public or private sector) agreed by the parties to the dispute but in default of agreement appointed at the request of any of the parties by or on behalf of the President from time to time of the Institution of Civil Engineers;
 - (b) if the dispute relates to any building within the Development or any similar matter, a chartered surveyor (having not less than 10 years' relevant experience)

agreed by the parties to the dispute but in default of agreement appointed at the request of either party by or on behalf of the President from time to time of the Royal Institution of Chartered Surveyors;

- (c) if the dispute relates to financial matters or matters of accounting usually and properly within the knowledge of a chartered accountant, a chartered accountant (having not less than 10 years' relevant experience) agreed by the parties to the dispute but in default of agreement appointed at the request of either party by or on behalf of the President from time to time of the Royal Institute of Chartered Accountants in England and Wales; and
- (d) if the parties to the dispute fail to agree upon the nature of difference in question then it should be referred to a solicitor or barrister of at least 15 years' standing agreed by the parties but in default of agreement appointed at the request of either party by or on behalf of the President for the time being of the Law Society.

- "Land"** : means the land located at the former Sinbad Hire Plant, Hickings Lane, Stapleford, Nottinghamshire, NG9 8PJ registered under title numbers NT13157 and NT516405 and shown for the purposes of identification edged red on Plan 1.
- "Occupation" and "Occupied"** : means occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing and Occupy shall be construed accordingly.
- "Pedestrian Crossing Contribution"** : means the sum of forty thousand pounds (£40,000) to be applied towards the provision of a pedestrian crossing serving the Development.
- "Pedestrian Crossing Works"** : means the construction of a pedestrian crossing on Hickings Lane which is to be constructed as far as reasonably possible in the Preferred Location.

- “Planning Permission”** : means planning permission for the Development subject to conditions to be granted by the Council pursuant to the Planning Application in the form of the draft annexed to this Agreement.
- “Plan 1”** : means the plan numbered 1 attached to this Agreement.
- “Plan 2”** : means the plan numbered 2 attached to this Agreement.
- “Preferred Location”** : means the location hatched green on Plan 2 where the pedestrian crossing should be constructed.
- “Working Day”** : means any day from Monday to Friday (inclusive) that is not Christmas Day, Good Friday or a statutory Bank Holiday.

2. CONSTRUCTION OF THIS AGREEMENT

- 2.1 Where in this Agreement reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Agreement.
- 2.2 Clause headings shall not affect the interpretation of this Agreement.
- 2.3 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.4 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 2.5 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and severally unless there is an express provision otherwise.
- 2.6 An obligation in this Agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 2.7 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
- 2.8 References to any party to this Agreement shall (subject to clause 5.1 and 5.2 and except in respect of the Council's obligations in clause 1.2 of Schedule 2) include the successors in title to that party and to any person deriving title

through or under that party and in the case of the Council the successors to their respective statutory functions.

- 2.9 The headings and contents list are for reference only and shall not affect construction.

3. THE PLANNING OBLIGATIONS

- 3.1 This Agreement constitutes a planning obligation for the purposes of section 106 of the Act, section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and any other enabling powers.

- 3.2 The obligations set out in Schedule 1 of this Agreement constitute planning obligations for the purpose of section 106 of the Act and the planning obligations are to be discharged by the Owner and are enforceable against them and any person deriving title from them (subject to clause 5.1 and 5.2).

- 3.3 This Agreement shall come into effect upon the grant of the Planning Permission with the exception of the obligations contained in clause 4 and within schedule 1 which shall not come into effect until Commencement of Development and clauses 9 and 14 which shall come into effect on the date of this Agreement.

4. COVENANTS TO AND BY THE COUNCIL

- 4.1 The Owner covenants with the Council to observe and perform the covenants and obligations on their part contained within Schedule 1.
- 4.2 The Council covenants with the Owner to observe and perform the covenants and obligations on its part contained within Schedule 2.

5. ENFORCEABILITY

- 5.1 No person shall be liable for breach of a covenant, restriction or obligation contained in this Agreement after parting with its interest in the Land except in respect of any breach subsisting prior to parting with such interest and neither the reservation of any rights or the inclusion of any covenants or restrictions over the Land in any transfer of the Land will constitute the retention of an interest for the purposes of this clause.

- 5.2 This Agreement shall not be enforceable against

5.2.1 the owner-occupier, tenant or mortgagee of a Dwelling or any retail / commercial units to be constructed pursuant to the Planning Permission; or

5.2.2 a statutory undertaker (within the meaning of section 262 of the Act) who acquires any interest in the Land.

6. DEVELOPER CONSENT

The Developer consents to the completion of this Agreement and declares that its interest in the Land shall be bound by the terms of this Agreement PROVIDED THAT the Developer shall not be personally liable for any breach

of the obligations unless or until the Developer is the registered proprietor of the freehold interest in the Land.

7. DETERMINATION OF AGREEMENT

7.1 The obligations in this Agreement shall cease to have effect (insofar only as it has already been complied with) if prior to the Commencement of Development, the Planning Permission:

7.1.1. expires;

7.1.2. is varied or revoked other than at the request of the Owner;

7.1.3. is quashed or otherwise withdrawn; or

7.1.4. an alternative planning permission is granted in respect of the Land and that planning permission is implemented by the carrying out of a material operation pursuant to section 56(4) of the Act.

8. LOCAL LAND CHARGE

This Agreement shall be registered as a local land charge.

9. ISSUE OF PLANNING PERMISSION

The Council hereby covenants with the Owner to issue the Planning Permission within 3 Working Days of the date of this Agreement.

10. LEGAL CHALLENGE

10.1 Where the Permission is the subject of any judicial review proceedings or other legal challenge:

10.1.1. until such time as such proceedings or challenge including any appeal have finally been resolved the terms and provisions of this Agreement will remain without operative effect notwithstanding the grant of the Planning Permission unless the Development has been Commenced;

10.1.2. if following the conclusion of such proceedings or challenge the Planning Permission is quashed then this Agreement will cease to have any further effect as from the date upon which the Planning Permission is quashed

10.1.3. Wherever in this Agreement reference is made to a date on which "legal proceedings or challenge in relation to the Planning Permission are concluded" (or cognate expressions are used), the following provisions have application:

10.1.3.1 Proceedings by way of judicial review are concluded:

(a) when permission to apply for judicial review has been refused and no further application may be made; or

- (b) when the court has given judgment in the matter and the time for making an appeal expires without an appeal having been made or permission to appeal is refused; or
- (c) when any appeal is finally determined.

10.1.3.2 Proceedings under section 288 of the Act or in respect of any other legal challenge are concluded:

- (a) when the court has given judgment in the matter and the time for making an appeal expires without an appeal having been made or permission to appeal is refused; or
- (b) when any appeal is finally determined.

11. FUTURE PERMISSIONS

Nothing in this Agreement shall prohibit or limit the right to develop any part of the Land in accordance with any planning permission (other than the Planning Permission or modification, variation or amendment thereof) granted after the date of the Planning Permission.

12. NOTICES

12.1 Any notice required to be given under this Agreement shall be in writing and shall be delivered personally, or sent by pre-paid first class post or recorded delivery or by commercial courier, to any person required to receive the notice or communication at its address or as otherwise specified by the relevant person by notice in writing to each other person

12.2 Any notice shall be deemed to have been duly received:

12.2.1. if delivered personally, when left at the address set out in this Agreement;

12.2.2. if sent by pre-paid first class post or recorded delivery, on the second Working Day after posting; or

12.2.3. if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

13. DISPUTE RESOLUTION

13.1 In the event of any dispute or difference between the parties or any of them arising out of this Agreement (other than a dispute or difference relating to a question of law or in relation to the interpretation of the Agreement) the parties agree that the matter in dispute will on the application of either of them be referred to the Expert and it is further agreed that:

13.1.1. the determination of the Expert shall be final and binding on the parties save in the case of manifest error;

- 13.1.2. the parties shall be entitled to make representations and counter-representations in accordance with such timetable as the Expert shall direct;
- 13.1.3. the Expert's costs shall be borne in such proportions as he/she may direct failing which the parties shall each bear their own costs of the reference and determination and the Expert's costs calculated by dividing the Expert's costs by the number of sides to the reference; and
- 13.1.4. the Expert may be replaced by a fresh appointee in the event of his/her becoming at any time unable or unwilling for any reason to proceed to discharge his/her function and such fresh appointee shall be appointed in the same manner as the Expert.

14. MISCELLANEOUS

Nothing contained or implied in this Agreement shall prejudice or affect the rights discretions powers duties and obligations of the Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority.

15. COSTS

The Developer shall pay the Council's reasonable legal fees incurred in the negotiation preparation and execution of this Agreement on completion of this Agreement.

16. CHANGE OF OWNERSHIP

The Owner covenants to give the Council written notice within 10 days of any change in ownership of any of its freehold interest in the Land occurring before all the obligations under this Agreement have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Land or unit of occupation purchased by reference to a plan save for the transfer of any individual Dwelling.

17. THIRD PARTY RIGHTS

No provisions of this Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.

18. SEVERANCE

Insofar as any clause or clauses of this Agreement 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 Agreement.

19. VAT

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

20. JURISDICTION

This Agreement is governed by and interpreted in accordance with the law of England and the parties submit to the non-exclusive jurisdiction of the courts of England.

21. DELIVERY

The provisions of this Agreement (other than this clause which shall be of immediate effect) shall be of no effect until this Agreement has been dated.

IN WITNESS whereof the parties hereto have executed this Agreement as a deed on the day and the year first before written.

SCHEDULE 1 – COVENANTS BY THE OWNER

The Owner covenants with the Council as follows –

1. PEDESTRIAN CROSSING CONTRIBUTION

One month prior to the Commencement of the Development to pay the Pedestrian Crossing Contribution to the Council.

2. NOTIFICATIONS

To notify the Council of the intention to start work on the Development as soon as practicable and not less than one month prior to the Commencement of Development.

SCHEDULE 2 – COVENANTS BY THE COUNCIL

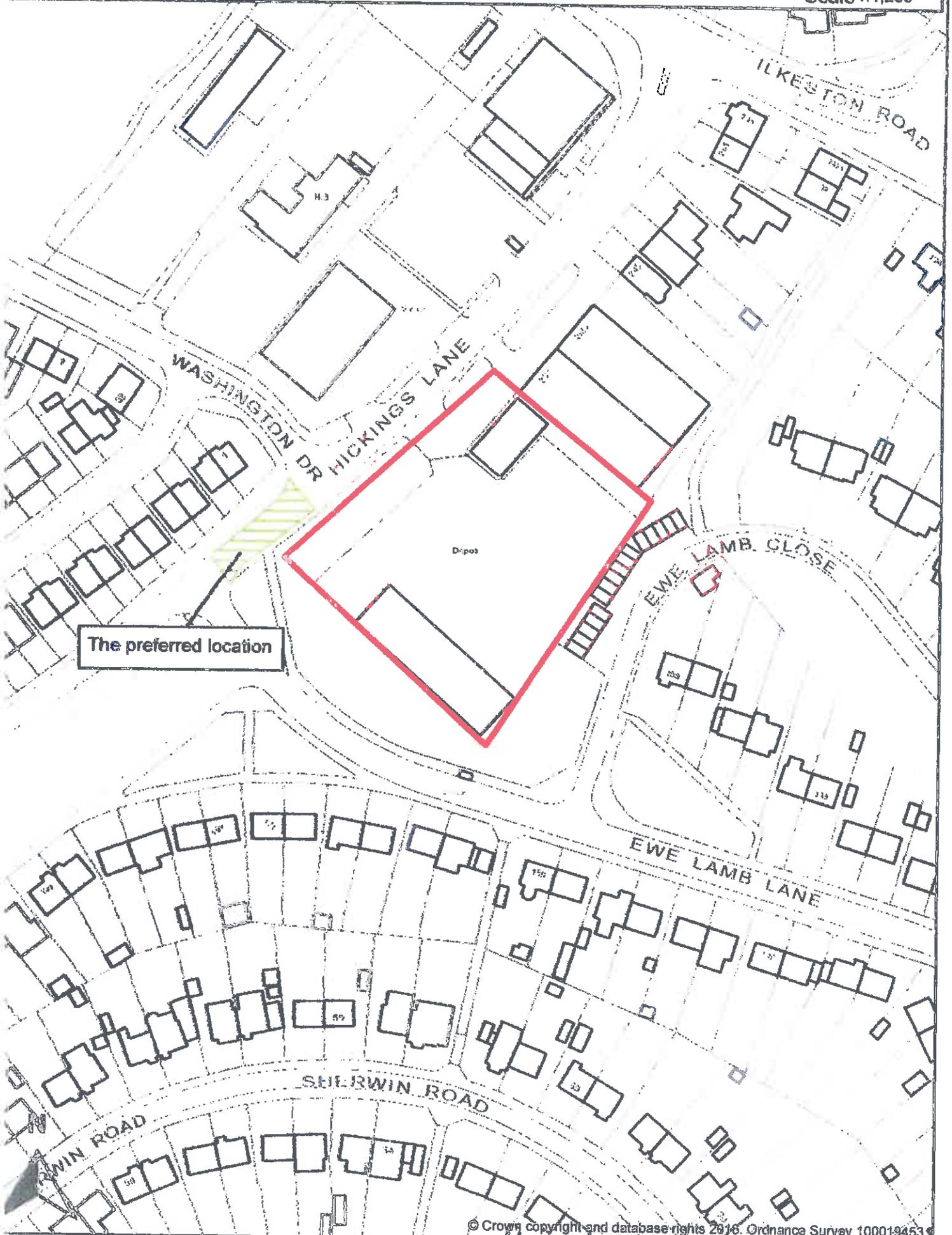
The Council covenants with the Owner as follows –

1. PEDESTRIAN CROSSING WORKS

- 1.1 As soon as reasonably possible following receipt of the Pedestrian Crossing Contribution from the Owner to commence the Pedestrian Crossing Works.
- 1.2 To commit all sums received in respect of the Pedestrian Crossing Contribution in constructing and satisfactorily completing the Pedestrian Crossing Works and within two months of completion of the Pedestrian Crossing Works to repay any monies which have not been used in carrying out these works to Sinbad Plant Limited (Company no 00872963) whether or not they remain the registered proprietor of the Land together with accrued interest from the date of receipt until and including the date of repayment.

SCHEDULE 3 – PLAN 1

SCHEDULE 4 – PLAN 2



SCHEDULE 5 - DRAFT PLANNING PERMISSION

16/00107/FUL

BROXTOWE BOROUGH COUNCIL

NOTICE OF DECISION

TOWN AND COUNTRY PLANNING ACT 1990

Application submitted by :
Mr Alex Mitchell
The Planning Bureau Ltd
Ross House
Harry Weston Road
Binley
Coventry
Warwickshire
CV3 2TR

BROXTOWE BOROUGH COUNCIL having considered an application by or on behalf of

Applicant : **McCarthy & Stone Retirement Lifestyles Ltd**
File Reference : **16/00107/FUL**
Proposal : **Construct of 48 retirement living apartments including communal facilities, landscaping and car parking**
Site Address : **Sinbad Plant Ltd Hickings Lane Stapleford Nottinghamshire NG9 8PJ**

as shown on the plans submitted with the application, which application and plans and any relevant correspondence are hereinafter referred to as "the application", HEREBY in pursuance of their powers under the above mentioned Act

GRANT PERMISSION

for the development in accordance with the application, subject to compliance with the Conditions imposed, and the subsequent approval of all matters referred to in the conditions, for the reasons set out below.

Conditions :

1. The development hereby permitted shall be commenced before the expiration of three years beginning with the date of this permission.
2. The development hereby permitted shall be carried out in accordance with site layout numbered: MI_2249_01_03_AC_002 C received by the Local Planning Authority on 24 May 2016, the Location and Context Plan numbered MI_2249_01_03_AC_001 B received by the Local Planning Authority on 27 May 2016 and drawings numbered: MI-2249-DE-02-150 P1 received by the Local Planning Authority on 2 March 2016 and drawings numbered: MI_2249_01_03_AC_008; MI_2249_01_03_AC_009; MI_2249_01_03_AC_010 A; MI_2249_01_03_AC_005 A; MI_2249_01_03_AC_003 A; MI_2249_03_AC_004 A; MI_2249_01_03_AC_011 received by the Local Planning Authority on 8 February 2016.
3. No building operations shall be carried out until details of the manufacturer, type and colour of the materials to be used in the facing walls and roofs have been submitted to and approved in writing by the Local Planning Authority, and the development shall be constructed only in accordance with those details.

16/00107/FUL



4. a) No part of the development hereby approved shall be commenced until an investigative survey of the site has been carried out and a report submitted to and approved in writing by the Local Planning Authority. The survey must have regard for any potential ground and water contamination, the potential for gas emissions and any associated risk to the public, buildings and/or the environment. The report shall include details of any necessary remedial measures to be taken to address any contamination or other identified problems.
- b) No building to be erected pursuant to this permission shall be occupied or brought into use until :-
- i) All necessary remedial measures have been completed in accordance with the details approved in writing by the local planning authority; and
- ii) It has been certified to the satisfaction of the local planning authority that necessary remedial measures have been implemented in full and that they have rendered the site free from risk to human health from the contaminants identified.

5. No development shall take place until a landscaping scheme has been submitted to and approved by the Local Planning Authority. This scheme shall include the following details:

- (a) trees, hedges and shrubs to be retained and measures for their protection during the course of development
- (b) numbers, types, sizes and positions of proposed trees and shrubs
- (c) proposed hard surfacing treatment
- (d) planting, seeding/turfing of other soft landscape areas
- (e) proposed retaining walls, if any, or similar structures, and boundary treatments including the details of the screening with the adjacent office building.

The approved scheme shall be carried out strictly in accordance with the approved details.

6. The approved landscaping shall be carried out not later than the first planting season following the substantial completion of the development and any trees or plants which, within a period of 5 years, die, are removed or have become seriously damaged or diseased shall be replaced in the next planting season with ones of similar size and species to the satisfaction of the Local Planning Authority, unless written consent has been obtained from the Local Planning Authority for a variation.
7. No unit constituting an individual unit of occupation shall be used for any purpose other than as a private residence for the occupation of an elderly person unless otherwise agreed in writing with the Council. An elderly person shall be defined as follows:
- (1) being a single resident any person who has attained the age of 60 years unless the survivor of those persons mentioned in (2);
- (2) being joint residents of whom one has attained the age of 60 years and the other of 55 years.
8. The windows in the most North Easterly side elevation serving apartments 2, 3, 21 and 22 shall be obscurely glazed and shall remain as such for the life of the development.
9. No part of the development hereby permitted shall be brought into use until the parking, turning and servicing areas are surfaced in a bound material with the parking bays clearly delineated in accordance with drawing number MI_2249_01_03_AC_002 REV C. The parking, turning and servicing areas shall be maintained in the bound material for the life of the development and shall not be used for any purpose other than the parking, turning and loading and unloading of vehicles.
10. No part of the development hereby permitted shall be brought into use until the pedestrian crossing and any associated works to the adjacent footways have been constructed in accordance with drawing number 050.00323.002 RevC.
11. The access arrangements shall be maintained as a dropped and tapered/flush kerb along the footway and the edge of the trafficked area.
12. No part of the development hereby permitted shall be brought into use until the access driveways and parking areas are constructed with provision to prevent the unregulated discharge of surface water from the driveways and parking areas to the public highway in accordance with details first submitted to and approved in writing by the LPA. The provision to prevent the unregulated discharge of surface water to the public highway shall then be retained for the life of the development.

13. No development hereby permitted shall commence until wheel washing facilities have been installed on the site in accordance with details first submitted to and approved in writing by the LPA. The wheel washing facilities shall be maintained in working order at all times and shall be used by any vehicle carrying mud, dirt or other debris on its wheels before leaving the site so that no mud, dirt or other debris is discharged or carried on to a public road.

Reasons :

1. To comply with S91 of the Town and Country Planning Act 1990 as amended by S51 of the Planning and Compulsory Purchase Act 2004.
2. For the avoidance of doubt.
3. No such details were submitted and to ensure the development presents a satisfactory standard of external appearance, in accordance with the aims of Policy 10 of the Broxtowe Aligned Core Strategy (2014)
4. In the interests of public health and safety.
5. To ensure the development presents a more pleasant appearance in the locality and in accordance with Policy 10 of the Broxtowe Aligned Core Strategy (2014).
6. To ensure the development presents a more pleasant appearance in the locality and in accordance with Policy 10 of the Broxtowe Aligned Core Strategy (2014).
7. In the interests of local amenity and highway safety.
8. In the interests of privacy and amenity for nearby residents and in accordance with the aims of Policy H7 of the Broxtowe Local Plan (2004) and Policy 10 of the Broxtowe Aligned Core Strategy (2014).
9. To ensure that adequate off-street parking provision is made and to reduce the possibilities of the proposed development leading to on-street parking in the area.
10. To ensure ease of passage along the footway for pedestrians, especially with motorised buggies etc.
11. To ensure a safe crossing point is available for pedestrians and uses of the retirement living apartments.
12. To ensure surface water from the site is not deposited on the public highway causing dangers to road users.
13. In the interests of Highway safety.

Note to Applicant

1. The Council has acted positively and proactively in the determination of this application in line with the guidance contained within paragraphs 186 and 187 of the National Planning Policy Framework, by communicating with the agent throughout the course of the application.
2. The proposed development lies within a coal mining area which may contain unrecorded coal mining related hazards. If any coal mining feature is encountered during development, this should be reported immediately to The Coal Authority on 01623 646 333. Further information is also available on The Coal Authority website at: www.gov.uk/government/organisations/the-coal-authority. Property specific summary information on past, current and future coal mining activity can be obtained from The Coal Authority's Property Search Service at www.groundstability.com
3. In order to carry out the off-site works required you will be undertaking work in the public highway which is land subject to the provisions of the Highways Act 1980 (as amended) and therefore land over which you have / no control. In order to undertake the works you will need to enter into an agreement under Section 278 of the Act. Please contact Daniel Sullivan on 0115 9773991 for details. It is an offence under S148 and S151 of the Highways Act 1980 to deposit mud on the public highway and as such you should undertake every effort to prevent it occurring.
4. It is an offence under S148 and S151 of the Highways Act 1980 to deposit mud on the public highway and as such you should undertake every effort to prevent it occurring.

Authorised Officer

Date:

Attention is drawn to the notes enclosed

EXECUTED as a deed by SINBAD)
PLANT LIMITED acting by one director)
in the presence of ~~DAVID~~ ~~SEBASTIAN~~)
) Director

.....
Witness Signature

Witness Name: AMANDA GARDNER

Witness Address: 20 REGENT ST NOTTINGHAM
SOLICITOR

Witness Occupation:

EXECUTED as a deed by MCCARTHY)
& STONE RETIREMENT LIFESTYLES)
LIMITED acting by one director in the)
presence of) Director

.....
.....

Witness Signature

Witness Name:

Witness Address: McCarthy & Stone
Retirement Lifestyles Ltd
4th Floor
100 Holdenhurst Road
Bournemouth BH8 8AQ

Witness Occupation: legal Assistant

EXECUTED as a deed by affixing the)
COMMON SEAL OF BROXTOWE)
BOROUGH COUNCIL in the presence)
of)



120604/b

.....
Mayor

.....
Authorised Signatory