

DATED

29 june, 2021

**PLANNING OBLIGATION UNDER SECTION 106 OF THE TOWN AND COUNTRY
PLANNING ACT 1990**

RELATING TO LAND AT

**FOUR STONES RESTAURANT, ADAMS HILL, CLENT, STOURBRIDGE DY9
9PS**

between

COUNCIL

and

OWNER

and

MORTGAGEE

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THIS DEED is dated *the 29th July*, 2021

- (1) Bromsgrove District Council of Parkside, Market Street, Bromsgrove, Worcs. B61 8DA (**Council**).
- (2) AMRIK SINGH BHANDAL, BALBIR SINGH BHANDAL and BALJIT SINGH BHANDAL care of The Bhandal Dental Practice, 74 Birmingham Road, Rowley Regis B65 9BA. (**Owner**).
- (3) LLOYDS BANK PLC (Co. Regn. No. 2065) of Dept. No.9612 of Pendeford Securities Centre, Pendeford Business Park, Wobaston Road, Wolverhampton WV9 5HZ (**Mortgagee**).

BACKGROUND

- (A) The Council is the local planning authority for the purposes of the TCPA 1990 for the area in which the Property is situated.
- (B) The Owner is the freehold owner of the Property subject to a mortgage in favour of the Mortgagee but otherwise free from encumbrances.
- (C) The Owner has made the Planning Application and is proposing to carry out the Development.
- (D) The Mortgagee is the registered proprietor of the charge dated 26 February 2016 referred to in entry number 1 of the charges register of Title number HW98537 and has agreed to enter into this Deed to give its consent to the terms of this Deed.
- (E) The Council having regard to the provisions of relevant planning policy and to all other material considerations considers that Planning Permission should be granted for the Development subject to the prior completion of this Deed.

AGREED TERMS

1. INTERPRETATION

The following definitions and rules of interpretation apply in this Deed:

1.1 Definitions:

Challenge Period: the date falling 6 weeks and 10 Working Days following the issue of the Planning Permission.

Commencement of Development: the carrying out in relation to the Development of any material operation as defined by section 56(4) of the TCPA 1990 but disregarding for the purposes of this Deed and for no other purpose, the following operations: demolition works; site clearance; ground investigations; site survey works; temporary access construction works;

archaeological investigation; and erection of any fences and hoardings around the Property.

Commence and Commences shall be construed accordingly.

Commencement Date: the date Development Commences.

Development: the development of the Property authorised by the Planning Permission.

Enforcement Notice: the notice issued by the Council dated 27 November 2018 under reference 17/00076/PLAN requiring the removal of the Sun Room

Finally Determined: the earlier of the following:

- a) the date when the Challenge Period has expired without any Third Party Application having been made; or
- b) where a Third Party Application has been made permission to bring a Third Party Application (where required) has not been granted and the period within which an application for permission to appeal against such refusal has expired without a further Third Party Application being made; or
- c) the Planning Permission is finally determined such that the Planning Permission or any further redetermination decision following any referral of the matter to the High Court or Court of Appeal is issued so that all rights of appeal or challenge are exhausted finally withdrawn finally dismissed or finally discontinued

and **Final Determination** shall be construed accordingly.

Plan: the plan attached as Annex A.

Planning Application: the application for planning permission made on 13 April 2020 for Glazed sun room (part retrospective): remove sloped roof and replace with flat aluminium-framed glazed roof, retaining the remaining structure as existing', registered by the Council under reference number 20/00443/FUL.

Planning Permission: the planning permission to be granted by the Council in respect of the Planning Application in the form of the draft attached as **Annex B**.

Property: the land at Four Stones Restaurant, Adams Hill, Clent, Stourbridge Worcestershire DY9 9PS shown edged red on the Plan and registered at HM Land Registry with absolute title under title number HW98537.

Sun Room: the glazed extension to the front of the restaurant building located on the Property at the date hereof

TCPA 1990: Town and Country Planning Act 1990.

Third Party Application: a third party's application for judicial review of the Planning Permission (as applicable) including an application to a higher

court appealing against a judgment in respect of a Third Party Application given in a lower court.

Working Day: any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England.

Works: the works to be undertaken on the Property comprising the removal of the sloping glazed roof to the Sun Room and its replacement with a flat glazed roof in substitution therefore pursuant to the Planning Permission.

- 1.2 Clause headings shall not affect the interpretation of this Deed.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to any party shall include that party's personal representatives, successors and permitted assigns and in the case of the Council the successors to its respective statutory functions.
- 1.8 Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.9 Unless the context otherwise requires, a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.10 A reference to **writing** or **written** excludes faxes and e-mail.
- 1.11 A reference to **this Deed** or to any other Deed or document referred to in this Deed is a reference to this Deed or such other Deed or document as varied or novated (in each case, other than in breach of the provisions of this Deed) from time to time.

- 1.12 References to clauses and Schedules are to the clauses and Schedules of this Deed.
- 1.13 An obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.14 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.15 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.

2. **STATUTORY PROVISIONS**

- 2.1 This Deed constitutes a planning obligation for the purposes of section 106 of the TCPA 1990, section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and any other enabling powers.
- 2.2 The covenants, restrictions and obligations contained in this Deed are planning obligations for the purposes of section 106 of the TCPA 1990 and are entered into by the Owner with the intention that they bind the interests held by those persons in the Property and their respective successors and assigns.
- 2.3 The covenants, restrictions and obligations contained in this Deed are enforceable in relation to the Property by the Council in accordance with section 106 of the TCPA 1990.

3. **CONDITIONALITY**

The provisions of this Deed shall have immediate effect upon the completion of the Deed save that Clause 4 shall not have effect unless and until the Council has issued the Planning Permission

4. **COVENANTS TO THE COUNCIL**

The Owner and the Mortgagee covenant with the Council to observe and perform the covenants, restrictions and obligations contained in Schedule 1.

5. **COVENANTS BY THE COUNCIL**

The Council covenants with the Owner to observe and perform the covenants, restrictions and obligations contained in Schedule 2.

6. **MORTGAGEE'S CONSENT**

6.1 The Mortgagee consents to the completion of this Deed and declares that its interest in the Property shall be bound by the terms of this Deed as if it had been executed and registered as a land charge prior to the creation of the Mortgagee's interest in the Property.

6.2 The Mortgagee shall have no liability under this Deed unless and until it becomes a mortgagee in possession of the Property (or part of it) or appoints a receiver or administrative receiver under the charge or exercises its power of sale; in which event (and in respect only of breaches occurring between that date and the date on which it ceases to be a mortgagee in possession of the Property (or part of it) or until the end of the period of receivership or the completion of the exercise of the power of sale), it and its successors in title will be bound by the obligations as if it were a person deriving title from the Owner.

7. **RELEASE**

No person shall be liable for any breach of a covenant, restriction or obligation contained in this Deed after parting with all of its interest in the Property, or the part of the Property in respect of which such breach occurs, except in respect of any breach subsisting prior to parting with such interest.

8. **DETERMINATION OF DEED**

The obligations in this Deed (with the exception of clause 10) shall cease to have effect if before the Commencement of Development, the Planning Permission:

- (a) expires;
- (b) is varied or revoked other than at the request of the Owner; or
- (c) is quashed following a successful legal challenge.

9. **LOCAL LAND CHARGE**

This Deed is a local land charge and shall be registered as such by the Council.

10. **COUNCIL'S COSTS**

The Owner shall pay to the Council on or before the date of this Deed its monitoring fee in the sum of £440.00 and the Council's reasonable and proper legal costs together with all disbursements incurred in connection with the preparation, negotiation, completion and registration of this Deed in the sum of £534.00.

11. **OWNERSHIP**

11.1 The Owner warrants that no person other than the Owner and the Mortgagee has any legal or equitable interest in the Property.

11.2 Until the covenants, restrictions and obligations in Schedule 1 have been complied with, the Owner will give to the Council within 20 Working Days, the following details of any conveyance, transfer, lease, assignment, mortgage or other disposition entered into in respect of all or any part of the Property:

- (a) the name and address of the person to whom the disposition was made; and
- (b) the nature and extent of the interest disposed of.

12. **REASONABLENESS**

Any approval, consent, direction, authority, agreement or action to be given by the Council under this Deed shall not be unreasonably withheld or delayed.

13. **CANCELLATION OF ENTRIES**

13.1 On the written request of the Owner at any time after each or all of the obligations have been performed or otherwise discharged or cease to have effect (and subject to the payment of the Council's reasonable and proper costs) the Council will issue a written confirmation of such performance or discharge.

13.2 Following the performance and full satisfaction of all the terms of this agreement or if this Deed is determined pursuant to clause 8 or if the Owner's obligations cease and determine pursuant to paragraph 1 of Schedule 1 below (and subject to the payment of the Council's reasonable and proper costs and charges) the Council will on the written request of the Owner cancel all entries made in the local land charges register in respect of this Deed.

14. **DISPUTES**

- 14.1 This clause does not apply to disputes in relation to matters of law or the construction or interpretation of this Agreement which will be subject to the jurisdiction of the courts.
- 14.2 In the event of any dispute or difference arising between any of the parties to this Deed in respect of any matter contained in this Deed (including any agreement approval consent or expression of satisfaction) any party may give notice to the others to refer such dispute or difference for determination of the matter in question to an independent and suitable person.
- 14.3 The notice shall propose an appropriate expert who shall hold appropriate professional qualification to determine the matter in question and shall specify the nature and substance of the dispute and the relief sought in relation to the dispute.
- 14.4 The parties shall endeavour to agree on the identification and appointment of the person to determine the dispute but in the absence of agreement the person shall be appointed by or on behalf of the President or equivalent officer of the relevant professional body operating in England and Wales for the regulation of that profession (or in the event of any dispute over the appointment by the President or next most senior available officer of the Law Society)
- 14.5 The appointed person is to act as an independent expert and shall act on the following basis (without prejudice to the ability of the parties to agree an alternative timetable or basis or for the appointed person to direct an alternative timetable):
- (a) each party may make written representations to the appointed person within ten Working Days of his appointment and will copy the written representations to the other party;
 - (b) each party is to have a further ten Working Days to make written comments on the other's representations to the appointed person and will copy the written comments to the other party;
 - (c) the appointed person is to be at liberty to call for such further written evidence from the parties and to seek such legal or other expert assistance as he or she may reasonably require;
 - (d) the appointed person is not to take oral representations from the parties without giving both parties the opportunity to be present and to give evidence and to cross examine each other;

- (e) the appointed person is to have regard to all representations and evidence before him when making his decision, which is to be in writing, and is to give reasons for his decision;
- (f) the appointed person is to use all reasonable endeavours (allowing for the complexity and nature of the dispute) to publish his decision within 30 working days of his appointment, but the appointed person shall in any event give written notice of his decision not more than 30 days after the conclusion of any hearing that takes place or after the final written representation provided for in any timetable set by the appointed person.

14.6 The parties agree that the appointed person's determination shall be final and binding on the parties in the absence of manifest error

14.7 The responsibility for the costs of referring a dispute to an appointed person, including costs connected with the appointment of the appointed person and the appointed person's own costs, and the legal and other professional costs of any party in relation to a dispute, will be decided by the appointed person.

15. **NO FETTER OF DISCRETION**

Nothing (contained or implied) in this Deed shall fetter or restrict the Council's statutory rights, powers, discretions and responsibilities.

16. **WAIVER**

No failure or delay by the Council to exercise any right or remedy provided under this Deed or by law shall constitute a waiver of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

17. **FUTURE PERMISSIONS**

Nothing in this agreement shall prohibit or limit the right to develop any part of the Property 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.

18. **NOTICES**

18.1 Any notice to be given under this Deed must be in writing and must be:

- (a) delivered by hand; or

- (b) sent by pre-paid first class post or other next working day delivery service.

18.2 Any notice to be given under this Deed must be sent to the relevant party as follows:

- (a) to the Council at Parkside, Market Street, Bromsgrove, Worcs. B61 8DA marked for the attention of Head of Legal and Democratic Services;
- (b) to the Owner at The Bhandal Dental Practice, 74 Birmingham Road, Rowley Regis B65 9BA marked for the attention of Mr Baljit Bhandal
- (c) to the Mortgagee at Lloyds Bank, 125 Colmore Row, Birmingham, West Midlands, B3 3SF marked for the attention of Jemal Omar Relationship Director, Commercial Banking, Mid Corporate, West Midlands

or as otherwise specified by the relevant party by notice in writing to each other party.

18.3 Any notice given in accordance with clause 18.1 and clause 18.2 will be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice or document is left at the address provided that if delivery occurs before 9.00 am on a Working Day, the notice will be deemed to have been received at 9.00 am on that day, and if delivery occurs after 5.00 pm on a Working Day, or on a day which is not a Working Day, the notice will be deemed to have been received at 9.00 am on the next Working Day; or
- (b) if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Working Day after posting.

18.4 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

19. **THIRD PARTY RIGHTS**

A person who is not a party to this Deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed.

20. **GOVERNING LAW**

This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

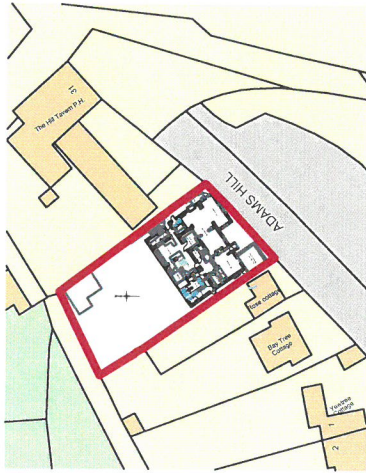
This document has been executed as a Deed and is delivered and takes effect on the date stated at the beginning of it.

Schedule 1 Covenants by the Owner to the Council

1. To undertake and complete the Works by the date falling 6 calendar months from the date on which the Planning Permission is Finally Determined PROVIDED THAT in the event that within the 6 month period referred to in this paragraph 1 planning permission is granted in connection with the Property (other than the Planning Permission) the implementation of which would preclude or impede the implementation of the Works, the Owner shall not be obliged to undertake the Works and the obligations on the Owner in this Deed shall cease and determine with effect from the date of implementation of such planning permission and the Council shall withdraw the Enforcement Notice pursuant to paragraph 4 of Schedule 2 below; and
2. Upon completion of the Works to serve a Notice of Completion on the Council (**"the Owner's Notice of Completion"**)

Schedule 2 Covenants by the Council

1. To issue the Planning Permission as soon as practicable and within 14 days from the date of this Deed; and
2. Within 10 Working Days of receipt of the Owner's Notice of Completion referred to in paragraph 2 of Schedule 1 above to inspect the Works and:
 - (i) (if applicable) notify the Owner forthwith of any remedial works required to procure that the Works are fully completed pursuant to the Planning Permission and thereafter re-inspect the Works within 10 Working Days of any subsequent Owner's Notice of Completion until such time as the Works are completed pursuant to the Planning Permission; and
 - (ii) issue written confirmation to the Owner that the Works are completed (the "**Council's Notice of Completion**"); and
3. If the Council fails to inspect or re-inspect or notify the Owner of any remedial works required within the timescales specified in paragraph 2 of this Schedule 2, and/or if it fails to issue a Notice of Completion within the timescales specified in paragraph 2 of this Schedule 2 following a satisfactory inspection it shall be deemed to have issued a Council's Notice of Completion upon the expiry of the relevant timescale referred to in paragraph 2 of this Schedule 2
4. Within 10 Working Days of the earlier of
 - (i) the Council's Notice of Completion (whether issued pursuant to 2(ii) of this Schedule 2 or deemed to have been issued pursuant to paragraph 3 of this Schedule 2); or
 - (ii) the date of implementation of such planning permission (other than the Planning Permission) as is referred to at paragraph 1 of Schedule 1to withdraw the Enforcement Notice pursuant to s173A TCPA



O.S. Plan 1:1250

AB
X

PS
X

PS
X

J. H.

near Clonagran.

TITLE:	Location Plan	DRAWING NO:	FS/22	REV:	-
	The Four Stones Restaurant	DATE:	March 2020		
	Adams Hill	SCALE:	1:1250		
	Client				
	DY9 9PS				
NCR ARCHITECTURAL DESIGN & TOWN PLANNING 8 Windsor Road Halesowen West Midlands B63 4BE Mob : 07956 805316 neilranford@bunternet.com					

Annex B. Draft Planning Permission

BROMSGROVE DISTRICT COUNCIL

Messrs AS, BS and BS Bhandal
C/O Miss Suzanne Tucker
FBC Manby Bowdler LLP
Routh House Hall Court
Hall Park Way
Telford
TF3 4NJ

Grant of Planning Permission subject to Conditions

APPLICATION:	20/00443/FUL
LOCATION:	Four Stones Restaurant, Adams Hill, Clent, Stourbridge
PROPOSAL:	Glazed sun room (part retrospective): remove sloped roof and replace with flat aluminium-framed glazed roof, retaining the remaining structure as existing
DECISION DATE:	Date missing

Bromsgrove District Council as the Local Planning Authority grants planning permission in accordance with the Town and Country Planning Act 1990 and The Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended) for the proposal described above. This permission is subject to conditions which must be complied with and are set out below:

Conditions

- 1) The development to which this permission relates must be begun within 4 months from the date of the grant of this permission.

Reason: In accordance with the requirements of Section 91(1) of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

- 2) The development hereby approved shall be carried out in accordance with the following plans and drawings:

Site location plan Dwg. No. FS/22

Proposed alterations to sunroom Dwg. No. FS/21 Rev.a

Reason: To provide certainty to the extent of the development hereby approved in the interests of proper planning.

- 3) Materials to be used externally on the walls and roofs shall be in accordance with those annotated on Dwg. No. FS/21 Rev.a. The development shall be carried out in accordance with those details.

Reason: To ensure that the development is satisfactory in appearance, to safeguard the visual amenities of the area.

Signature missing

Reason

This proposal has been assessed against the following documents

Bromsgrove District Plan

BDP1 Sustainable Development Principles

BDP4 Green Belt

BDP19 High Quality Design

BDP20 Managing the Historic Environment

Others

Bromsgrove High Quality Design SPD

NPPF National Planning Policy Framework (2019)

NPPG National Planning Practice Guidance

DRAFT

The common seal of BROMSGROVE
DISTRICT COUNCIL
was affixed to this document in the
presence of:



Leanne Gearagan

Authorised signatory

Signed as a Deed by AMRIK
SINGH BHANDAL in the presence
of:

AS
X *[Signature]*

SIGNATURE OF OWNER

X *[Signature]*

SIGNATURE OF WITNESS

WITNESS NAME FRANCESCA BULL

WITNESS ADDRESS 32 JOHN ST, ROWLEY REGIS
B65 0EP

WITNESS OCCUPATION

Signed as a Deed by BALBIR
SINGH BHANDAL the presence of:

BB
X *[Signature]*

SIGNATURE OF OWNER

[Signature]

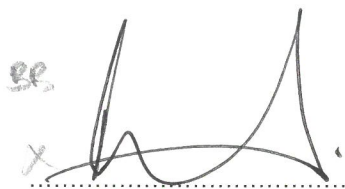
SIGNATURE OF WITNESS

WITNESS NAME FRANCESCA BULL

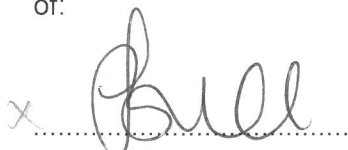
WITNESS ADDRESS 32 JOHN ST, ROWLEY REGIS
B65 0EP

WITNESS OCCUPATION DENTAL NURSE

Signed as a Deed by BALJIT
SINGH BHANDAL in the presence
of:

A handwritten signature in black ink, appearing to be 'BALJIT SINGH BHANDAL', written over a dotted line.

SIGNATURE OF OWNER

A handwritten signature in black ink, appearing to be 'Francesca Bull', written over a dotted line.

SIGNATURE OF WITNESS

WITNESS NAME PRANCESCA BULL

WITNESS ADDRESS 32 JOHN ST, ROWLEY REGIS
B65 0EP

WITNESS OCCUPATION DENTAL NURSE

Executed as a Deed by LLOYDS
BANK PLC acting by

Jordan Taylor
NAME OF DIRECTOR

[Signature]
Signature of Director

a director, in the presence of:

[Signature]

SIGNATURE OF WITNESS:

WITNESS NAME :

Hannah Taylor.

WITNESS ADDRESS :

125 Colmore Row
BIRMINGHAM
B3 3SE

WITNESS OCCUPATION:

TEACHER