

Planning Obligation by Deed of Agreement under Section 106 of the

Town and Country Planning Act 1990

Relating to application for demolition of existing buildings/structures and erection of industrial and logistics warehouse units (use class B2 and/or B8 and or E(G)(iii)), with ancillary offices, including provision of revised access arrangements from Alchemy Way and all associated works of landscaping, car parking and servicing arrangements

on land to the East of Moorgate Point, Alchemy Way, Knowsley Industrial Park. Kirkby, Knowsley

Planning Application 25/00464/FUL

Dated 202~~6~~⁵

- (1) Knowsley Metropolitan Borough Council
- (2) Indurent Propco A3 Ltd
- (3) CBRE Loan Services Limited

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EXECUTION OF DEED

DATE

2026⁵

PARTIES

- (1) **KNOWSLEY METROPOLITAN BOROUGH COUNCIL** of Municipal Buildings Archway Road Huyton Knowsley Merseyside L36 9YU ("Council")
- (2) **INDURENT PROPCO A3 LTD** of (Co. Regn. No. OE001690) of 33-37 Athol Street, Douglas, Isle Of Man, IM1 1LB (the "Owner")
- (3) **CBRE LOAN SERVICES LIMITED** (Co. Regn. No. 05469838) of Henrietta House, Henrietta Place, London W1G 0NB (the "Chargee")

Commented [LA1]: USUAL LEGAL OPINION NEEDED FROM ADVOCATE IN ISLE OF MAN

Commented [GWL2R2]: noted

Commented [GWL3]: The deed will be sent to CBRE for approval once agreed

INTRODUCTION

- 1 The Council is the local planning authority for the purposes of the Act for the area in which the Site is situated.
- 2 The Owner is the freehold owner of that part of the e Site registered under title number MS362926 (as detailed in the First Schedule).
- 3 The Chargee has an interest in the Site by virtue of having the benefit of a legal charge which is recorded on the Charges Register of title MS362926 dated 22 February 2023.
- 4 Indurent Management Limited has submitted the Application to the Council.
- 5 The parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed.
- 6 The Council is minded to grant planning permission subject to the prior completion of this Deed.
- 7 The parties to this Deed agree that the planning obligations contained in this Deed are necessary to comply with the requirements of regulation 122 of the Community Infrastructure Regulations 2010 (as amended).

NOW THIS DEED WITNESSES as follows:

OPERATIVE PART

1 DEFINITIONS

- 1.1 "Act" means the Town and Country Planning Act 1990

- 1.2 **“Application”** means the application for planning permission submitted to the Council for the Development and allocated reference number 25/00464/FUL
- 1.3 **“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 other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, site preparation, demolition work, 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 (including temporary hoardings), the temporary display of site notices or advertisements and **“Commence Development”** shall be construed accordingly
- 1.4 **“Committed”** means any amount which the Council has allocated for expenditure relevant to the purpose for which the sum was paid and such amount has been authorised by the relevant committee, or Council member or Council officer or has contracted to expend where such contract provides for payment contingent on the provision of works and/or services and/or supplies
- 1.5 **“Development”** means application for demolition of existing buildings/structures and erection of industrial and logistics warehouse units (use class B2 and/or B8 and or E(G)(iii)), with ancillary offices, including provision of revised access arrangements from Alchemy Way and all associated works of landscaping, car parking and servicing arrangements
- 1.6 **“Index”** means All Items Index of Retail Prices issued by the Office for National Statistics
- 1.7 **“Indexation Date”** means the date immediately preceding the date hereof when the last firm figure was published for the Index unless expressly stated otherwise in this Deed
- 1.8 **“Index Linked”** means the contribution is to be adjusted by reference to the amount of any increase in the Index over the period from the Indexation Date to the last, firm figure published for the Index for the month immediately prior to payment of the relevant contribution to the Council (or where the Owner is required by this Deed to apply a specified sum or make a specified sum available for a specified purpose the date of application of such sum for the specified purpose) and **“Indexation”** shall be construed accordingly
- 1.9 **“Interest”** means interest at 4% (four per cent) above the base lending rate of Barclays Bank PLC from time to time
- 1.10 **“Plan”** means the plan at Annex 2
- 1.10 **“Planning Permission”** means the planning permission for the Development subject to conditions to be granted by the Council pursuant to the Application a draft of which is at Annex 1 to this Deed
- 1.11 **“Site”** means the property (including land and any buildings) against which this Deed may be enforced as shown edged red on the Plan and more particularly described in the First Schedule
- 1.12 **“Working Day”** means any day which is not a Saturday, a Sunday, or a bank holiday or public holiday in England.

2 INTERPRETATION

- 2.1 Where in this Deed 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 Deed.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 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.
- 2.4 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 against each individually unless there is an express provision otherwise.
- 2.5 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.
- 2.6 References to any party to this Deed shall include the successors in title to that party and to any person deriving through or under that party any title interest or estate in any part of the Site and in the case of the Council the successors to its relevant statutory functions.
- 2.7 The headings and contents list are for reference only and shall not affect construction.

3 LEGAL BASIS

- 3.1 This Deed is made pursuant to Section 106 of the Act and Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other enabling powers.
- 3.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council as local planning authority against the Owner.

4 CONDITIONALITY

This Deed is conditional upon the grant of the Planning Permission save for the provisions of this clause 4 and clauses 1, 2, 3, 5.2, 7 - 16 which shall come into effect immediately upon completion of this Deed.

5 THE OWNER'S COVENANTS AND WARRANTY

- 5.1 The Owner covenants with the Council as set out in the Second Schedule.
- 5.2 The Owner hereby warrants and confirms that apart from the parties hereto there are no other persons with a legal estate equitable or beneficial interest in the rents and profits or proceeds of sale of the Site or any part thereof.

6 THE COUNCIL'S COVENANTS

The Council covenants with the Owner to observe the restrictions and perform the obligations as set out in the Third Schedule.

7 MISCELLANEOUS

- 7.1 The Owner shall pay to the Council on completion of this Deed
- 7.1.1. the reasonable legal costs of the Council incurred in the negotiation, preparation and execution of this Deed; and
- 7.1.2 the sum of £500 in respect of the Council's administrative costs for registering the obligations contained in this Deed
- 7.2 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 7.3 This Deed shall be registrable as a local land charge by the Council.
- 7.4 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction shall be given on behalf of the Council by the Head of Planning Services, or in the event of any restructuring of posts by the Council such successor as the Council may from time to time determine, and any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party.
- 7.5 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall forthwith secure the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.
- 7.6 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.
- 7.7 This Deed shall cease to have any effect (insofar only as it has not been complied with) if the Planning Permission shall be quashed revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development.
- 7.8 No person shall be liable for any breach of any planning obligations or other provisions of this deed after parting with its entire interest in the Site or its interest in that part of the Site on which the breach occurs, but without prejudice to liability for any subsisting breach arising before parting with that interest
- 7.9 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.
- 7.10 Nothing contained or implied in this Deed grants planning permission or other consent or shall prejudice or affect the rights powers duties and obligations of the Council in the exercise of its functions as a Local Authority and its rights powers duties and obligations under any statute

byelaw or regulation may be as fully and effectually exercised as if the Council were not a party to this Deed.

7.11 The planning obligations in this Deed shall not be enforceable against:

7.11.1 any statutory undertaker holding an estate easement or interest in the Site or part of the Site insofar as the relevant statutory undertaker is occupying the relevant part of the Site for its purposes as a statutory undertaker; nor

7.11.2 anyone whose only interest in the Site or any part of it is the nature of the benefit of an easement or covenant, or as the owner of the subsoil of any highway within the Site; ~~nor~~

~~7.11.3 the purchasers, Occupiers or lessees or tenants of any individual units and / or offices nor against any successors in title to the aforementioned.~~

7.12 Nothing contained or implied in this Deed shall prejudice 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.

7.13 Any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party as detailed in this Deed or such other address notified in writing to the other party from time to time. Provided however that

7.13.1 any notices to be served upon the Owner shall be sent to the address detailed in this Deed or such other address for service as shall have been previously notified to the Council in writing **and marked for the attention of []**;

7.13.2 any notices to be served upon the Council shall be marked for the attention of the Council's Head of Planning; and

7.13.3 any notices to be served upon the Chargee shall be marked for the attention of []

Commented [GWLG4]: Chargee to confirm

7.13 If the Council agrees pursuant to an application under section 73 of the Act to any variation or release of any condition contained in the Planning Permission or if any condition is varied or released following an appeal under section 78 of the Act the covenants or provisions of this Deed shall be deemed to bind the varied permission and to apply in equal terms to the new planning permission save where the Council in their determination of such an application for the new planning permission or the Secretary of State or inspector in their determination of such appeal indicate that consequential amendments are required to this Deed to reflect the impact of the section 73 application and in such circumstances a separate deed pursuant to section 106 of the Act will be required to secure relevant planning obligations relating to the new planning permission.

7.14 Upon the ~~proper~~ performance ~~or~~ discharge ~~or other fulfilment~~ of the obligations (or any of them) ~~by of~~ the Owner under the terms of this Deed ~~the obligation(s) in question such obligation or obligations~~ shall absolutely cease and determine save for the avoidance of doubt where such obligations shall be continuing obligations under this Deed.

8. WAIVER

No waiver (whether expressed or implied) by the Council or Owner of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council or Owner from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

9. CHANGE IN OWNERSHIP

The Owner agrees with the Council to give 14 days' written notice of any change in ownership of any of its interests in the Site occurring before all the obligations under this Deed 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 Site or unit of occupation purchased by reference to a plan.

10. INDEXATION

Any sum referred to in the Second Schedule (save for the Traffic Regulation Order Contribution which shall not be Index Linked) shall be Index Linked and where the Owner is required by this Deed to apply a specified sum or make a specified sum available for a specified purpose such sum shall also be Index Linked

11. INTEREST

If any payment due under this Deed is paid late, Interest will be payable from the date payment is due to the date of payment.

12. VAT

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

13. DISPUTES

- 13.1 In the event of any dispute or difference arising between the parties to this Deed in respect of any matter contained in this Deed such dispute or difference shall be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in England with such matters as may be in dispute and such person shall act as an expert whose decision shall be final and binding on the parties in the absence of manifest error and any

costs shall be payable by the parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the parties in equal shares.

- 13.2 In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to Clause 13.1 or as to the appropriateness of the professional body then such question may be referred by either party to the president for the time being of the Law Society for him to appoint a solicitor to determine the dispute such solicitor acting as an expert and his decision shall be final and binding on all parties in the absence of manifest error and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties in equal shares.
- 13.3 Any expert howsoever appointed shall be subject to the express requirement that a decision was reached and communicated to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty Working Days after the conclusion of any hearing that takes place or twenty Working Days after he has received any file or written representation.
- 13.4 The expert shall be required to give notice to each of the said parties requiring them to submit to him within ten Working Days of notification of his appointment written submissions and supporting material and the other party will be entitled to make a counter written submission within a further ten Working Days.
- 13.5 The provisions of this clause shall not affect the ability of the Council to apply for and be granted any of the following: declaratory relief, injunction, specific performance, payment of any sum, damages, any other means of enforcing this Deed and consequential and interim orders and relief.

14 CHARGE

- 14.1 The Chargee acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Site shall be bound by the obligations contained in this Deed and that the security of the mortgage over the Site shall take effect subject to this Deed PROVIDED THAT the Chargee shall otherwise have no liability to discharge the obligations contained in this Deed unless it takes possession of the Site in which case it too will be bound by the obligations as if it were a person deriving title from the Owner.
- 14.2 The provision and obligations in this Deed shall not enforceable against any future mortgagee or chargee unless or until it takes possession of the Site (or part thereof) in which case it too will be bound by the obligations as if it were a person deriving title from the Owner.

15 JURISDICTION

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

16 DELIVERY

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.

IN WITNESS whereof the parties hereto have executed this Deed on the day and year first before written.

Draft

FIRST SCHEDULE

Details of the Owner's Title, and description of the Site

Details of the Owner's Title

The freehold land within title number:

MS362926 being Moorgate Point, Moorgate Road, Knowsley Industrial Park, Liverpool, L33 7XW

Description of the Site

Land to the East of Moorgate Point, Alchemy Way, Knowsley Industrial Park, Kirkby, Knowsley and shown edged red on the Plan at Annex 2.

SECOND SCHEDULE

Owner's Covenants to the Council

Interpretation

PART 1

In this Part 1 the following words and phrases shall have the meanings:

"Social Value Strategy" means a strategy for providing training programmes and delivering social value during construction and end use phases of the Development as required and described in the SPD and which:

- (i) has been submitted by the Owner in support of the Application;
- (ii) has been approved by the Council as part of the Planning Permission; and
- (iii) is annexed to this Deed at Annex 3 (and as may be varied with the prior written ~~of agreement~~ approval of the Council)

"Social Value Contribution" means the sum of £18,533 (eighteen thousand five hundred and thirty three pounds) to be used by the Council's approved partner organisation to support and monitor the provision of social value activity relevant to the Development in accordance with the approved Social Value Strategy

"SPD" means the Council's adopted SPD "Adding Social Value to Development: Employment and Skills" September 2018

The Owner covenants with the Council as follows:

1. prior to the Commencement of Development the Owner shall pay the Social Value Contribution to the Council and the Owner shall not Commence the Development until the Social Value Contribution has been paid to the Council.
2. from the Commencement of Development the Owner shall implement the approved Social Value Strategy and shall provide regular reports when reasonably requested by the Council or its authorised agents on the employment and training opportunities arising in the course of the construction of the Development and the end use phase of the Development.
3. to co-operate with the Council and its authorised agents and otherwise facilitate the monitoring by the Council of the delivery by the Owner of the Social Value Strategy.

TRAFFIC REGULATION ORDER CONTRIBUTION

PART 2

Interpretation

In this Part 2 the following words and phrases shall have the meanings:

“Traffic Regulation Order Contribution” means the sum of £6,500 (six thousand five hundred pounds) or such other fee as may be published by the Council from time to time in the relevant version of what is currently described on its website as ‘Highway fees and charges’ towards the costs of managing indiscriminate parking and maintenance of free access along Alchemy Way for HGVs required under the terms of the Planning Permission

The Owner covenants with the Council as follows:

1. to pay the Traffic Regulation Order Contribution to the Council prior to Commencement of Development.
2. not to Commence Development until the Travel Regulation Order Contribution has been paid to the Council.

TRAVEL PLAN CONTRIBUTION

PART 3

Interpretation

In this Part 3 the following words and phrases shall have the meanings:

“Travel Plan Contribution” means the sum of £15,000 (fifteen thousand pounds) towards the costs of reviewing and monitoring any travel plan required under the terms of the Planning Permission

The Owner covenants with the Council as follows:

- 1 to pay the Travel Plan Contribution to the Council prior to the first Occupation of the Development.
- 2 not to Occupy the Development until the Travel Plan Contribution has been paid to the Council.

MONITORING CONTRIBUTION

PART 4

Interpretation

1. In this Part 4 the following words and phrases shall have the meanings:

1.1 **“Biodiversity Net Gain Monitoring Fee”** the sum of £10,926.00 (ten thousand nine hundred and twenty six pounds) payable by the Owner to the Council in accordance with this Part 4 of the Second Schedule to be applied by the Council to undertake the statutory monitoring and reporting functions required over the 30-year period.

The Owner covenants with the Council as follows –

1.1.1 to pay to the Council on or before the date of this Deed the Biodiversity Net Gain Monitoring Fee.

MONITORING CONTRIBUTION

PART 54

Interpretation

In this Part 54 the following words and phrases shall have the meanings:

"Monitoring Contribution" means the sum of £43,000,750 (four~~three~~ thousand ~~seven hundred and fifty~~ pounds) towards the additional resource costs arising from the monitoring of the Development and the obligations arising under this Deed

The Owner covenants with the Council as follows:

1. to pay the Monitoring Contribution to the Council prior to Commencement of Development.
2. not to Commence Development until the Monitoring Contribution has been paid to the Council.

THIRD SCHEDULE

Council's Covenants to the Owner

The Council hereby covenants with the Owner:

- 1 to use all sums received from the Owner under the terms of this Deed for the purposes specified in this Deed for which they are to be paid or for such per other purposes for the benefit of the Development as the Owner and the Council shall agree
- 2 that it will pay to the Owner such amount of any payment made by the Owner to the Council under this Deed which has not been expended in accordance with the provisions of this Deed (and money shall be deemed to be expended if such sum has been Committed to be spent by the Council) within 15 (fifteen) years of the date of receipt by the Council of the payment such payments to be paid together with interest at Barclay's Bank PLC base rate from time to time for the period from the date of payment to the date of refund
- 3 that it will provide to the Owner such evidence as the Owner shall reasonably require in order to confirm the expenditure of the sums paid by the Owner under this Deed

ANNEX 1 The Draft Planning Permission

Draft

ANNEX 2 The Plan

Draft

Draft

EXECUTION

THE COMMON SEAL OF THE COUNCIL)
was affixed in the presence of:)

Authorised Signatory:

EXECUTED as a Deed)
(but not delivered until dated) by)
INDURENT PROPCO A3 LTD)
acting by a director and its secretary or)
two directors)

Director

Director/Secretary

Signed as a deed by)
.....)
_____ as attorney for) Attorney for Indurent Propco A3 Ltd
INDURENT PROPCO A3 LTD)
)
Under a power of attorney dated)
_____)
)

In the presence of:
Witness signature
Name
Address
.....
Occupation

CBRE Execution Clause

Commented [GWL5]: Mortgagee to confirm

EXECUTION BLOCK FOR OWNER

Commented [LA6]: Correct execution clauses for Owner and Chargee required. Applicant's solicitor to confirm. If there are PoAs then the Council will require certified copies of these

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