00/00207/OUT

DATED 6th September 2002

BROOKHOUSE GROUP LIMITED (1)

to

KNOWSLEY METROPOLITAN BOROUGH COUNCIL (2)

PLANNING OBLIGATION BY WAY OF UNDERTAKING PURSUANT TO SECTION 106 OF THE TOWN & COUNTRY PLANNING ACT 1990 RELATING TO THE DEVELOPMENT OF LAND AND RETAIL UNITS AT STELEY WAY, PRESCOT, MERSEYSIDE

(Application Reference 00/00207/OUT)
(Appeal Reference APP/V4305/A/01/1074480)
("Appeal A")

Jim Banfi

Jones Maidment Wilson

Market Court, 20-24 Church Street, Altrincham, Cheshire WA14 4DW

Telephone : 0161 926 9663

Fax : 0161 926 8331

E-mail : JimB@jmw.co.uk

THIS DEED OF UNDERTAKING is given this 6th day of September 2002

BY:

BROOKHOUSE GROUP LIMITED having its registered office at Mercury Park Mercury Way Manchester M41 7LY ("the Developer")

to

KNOWSLEY METROPOLITAN BOROUGH COUNCIL of Municipal Buildings, Archway Road, Huyton, Knowsley, L36 9YU ("the Council")

RECITALS

A Words and Phrases used in this Deed are defined in Clause 2.1

B The Developer is the freehold owner of the Site

C The Council is a Local Planning Authority for the purposes of Section 106 of the Act for the area within which the Site is situated and is the party by whom the obligations in this Deed are enforceable

D The Developer has submitted the Application to the Council for the Permission in respect of the Site

E The Council has refused the Application and the same is the subject of an appeal under reference APP/V4305/A/01/1074480

F The Developer is prepared to make available the Station Contribution the Town Centre Contribution and the Leisure Centre Site upon the terms set out in this undertaking

1 **OPERATIVE PART**

1.1 This Deed is made pursuant to Section 106 of the Act and is a planning obligation for the purposes of that Section of the Act

1.2 Subject to the Conditions Precedent the Obligations shall be enforceable by the Council as local planning authority as is provided in this Deed against the Developer and its successors in title in respect of the Site

2 **INTERPRETATION**

2.1 In this Deed the following expressions shall unless the context otherwise requires have the following meanings:

"the Act"

the Town & Country Planning Act 1990 (as amended)

"the Application"

the application submitted by the Developer to the Council on 30 July 2001 and given reference numbers 00/00207/OUT

"the Bus Stop Contribution"

the sum of Twenty Five Thousand Pounds (£25,000)

"the Conditions Precedent"

the conditions precedent set out in Clause 3

"the Bus Stop Improvements"

enhancements to the design of two existing bus stops on Manchester Road including raised kerbs and better canopies

"the Station Contribution"

the sum of Three Hundred Thousand Pounds (£300,000.00)

"the Development"

the erection of retail units and the construction of a new roundabout

"Implementation"

commencement of development by the carrying out of a "material operation" as defined in Section 56 of the Act save that the definition shall not include works of demolition site clearance ground investigations site surveys laying of services and service media construction of boundary fencing or hoardings or archaeological investigation works (and "Implement" and "Implemented" shall be construed accordingly)

"the Leisure Centre"

the Scotchbarn Leisure Centre Prescot and the Scotchbarn Swimming Pool

"the Leisure Centre Site"

the site being the land shown hatched on the Site Plan or such part of it as shall be required by the Council acting reasonably to relocate the Leisure Centre which in any event has an area of not less than 1.62 hectares having an access to the public highway and capable of being serviced with water gas electricity and telephone data services such access and services to be of sufficient standard to facilitate the construction of a leisure centre upon the Leisure Centre Site

"the Leisure Centre Contribution"

means the sum of Five Hundred Thousand Pounds (£500,000.00)

"the Long Lease"

a lease for a term of 125 years of the Leisure Centre Site to be made between the Developer and the Council which shall provide for:-

- the demise at a peppercorn rent of the Leisure Centre Site to the Council
- a covenant on the part of the Council that the Leisure Centre Site shall not be used for any purpose other than as a leisure centre
- such other terms as the Council and the Developer shall agree

"the Obligation"

the covenants on the part of the Developer in Clause 4 of this Deed

"the Permission"

planning permission for the Development which is granted pursuant to the Application

"Prescot Station"

the station shown edged blue on the Site Plan

"the Site"

all that land at Steley Way Prescot shown for the purposes of identification only edged in red on the Site Plan

"the Site Plan"

the plan annexed hereto and marked "the Site Plan"

"the Town Centre Contribution"

the sum of One Hundred Thousand Pounds (£100,000.00)

"Working Days"

any day(s) upon which banks in the City of London are open to the general public

2.2 Where in this Deed reference is made to a Clause it is a reference to a Clause in this Deed

2.3 Where reference is made in this Deed to:

2.3.1 the Developer it shall (unless the context otherwise requires) include its successors in title; and

2.3.2 the Council it shall include any successor as Local Planning Authority

3 **CONDITIONALITY**

The Obligation is conditional upon:

3.1 the grant of the Permission; and

3.2 Implementation of the Permission

4 **THE OBLIGATION**

Subject to satisfaction of the Conditions Precedent the Developer covenants with the Council that it will prior to any part of the Development opening for trade:-

4.1 pay to the Council the Station Contribution **ON CONDITION THAT** the Station Contribution shall only be used by the Council towards securing general ~~improvements~~ to Prescot Station including one or more of the following:

4.1.1 the provision of disabled access to the platforms and other facilities at Prescot Station; and/or

4.1.2 the improvement of parking facilities at Prescot Station including provision of disabled parking facilities

4.1.3 such other purposes as may be agreed between the Developer and the Council

Provided that if any part of the Station Contribution is unexpended at the date five years after the date on which it has been paid it shall be repaid to the Developer by the Council within twenty Working Days together with any accrued interest

4.2 pay to the Council the first instalment of the Town Centre Contribution being the sum of Ten Thousand Pounds (£10,000.00) with the subsequent nine instalments being paid annually thereafter on the condition that the Town Centre Contribution shall only be used by the Council towards general improvements to Prescot Town Centre including one or more of the following:-

4.2.1 the provision and ongoing management of CCTV equipment

4.2.2 the management of Prescot Town Centre

4.2.3 such other purpose as may be agreed between the Developer and the Council

4.3 use all reasonable endeavours to agree the Long Lease with the Council and thereafter execute and deliver to the Council the Long Lease provided that if the Council do not execute a counterpart of the Long Lease and complete the Long Lease within twenty Working Days of delivery by the Developer (time being of the essence) this obligation shall cease to be of effect without any further act or deed on the part of either the Council or the Developer and the Council shall forthwith return the part of the Long Lease executed by the Developer to the Developer

4.4 pay to the Council the Leisure Centre Contribution to be used to provide a replacement for the Leisure Centre on the Leisure Centre Site or such apportioned part thereof in the event that only part of the development permitted by the Permission is to be open for trade such apportioned part to be calculated by applying to the Leisure Centre Contribution the ratio which the gross internal floor area of that part of the Development which is to be open for trade bears to the gross internal floor area of the Development

Provided that if the Leisure Centre Contribution or any part of it is unexpended at the date five years after the date on which it has been paid it shall be repaid to the Developer by the Council within twenty Working Days together with any accrued interest

4.5 Pay to the Council the Bus Stop contribution on condition that the Bus Stop contribution shall only be used to effect the Bus Stop Improvements provided that if the Bus Stop Contribution or any part of it is unexpended at the date five years after the date on which it has been paid it shall be repaid to the Developer by the Council within twenty working days together with any accrued interest

5 **RELEASE AND REVOCATION**

5.1 The Developer shall on parting with the whole of its interest in the Site be released from all liability under the terms of this Deed (save in respect of antecedent breaches)

5.2 This Deed shall be deemed to have been revoked and be of no effect (without any further act or deed on the part of either the Council or the Developer) if the Conditions Precedent shall not have been satisfied within 5 years after the date of this Deed

6 **GENERAL**

6.1 Unless the right of enforcement is expressly granted it is not intended that a third party should have the right to enforce a provision of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999

6.2 The parties may agree to rescind or vary this Deed without the consent of a third party to whom an express right to enforce any of its terms has been provided

6.3 Any notice or other written communication to be served by one party upon another under this Deed shall be deemed to have been validly served if delivered by hand or sent by pre-paid registered or recorded delivery post or using the Document Exchange service or sent by facsimile transmission (provided in the latter case a hard copy of the notice or written communication is sent by first class post or Document Exchange the same day and the sender has received and produced if required the facsimile transmission report indicating that all pages of the notice or other written communication have been sent) and that :

6.3.1 in the case of the Council they are addressed to the Head of Planning and Building Control Services;

6.3.2 in the case of the Developer they are addressed to the Developer marked for the attention of the Company Secretary bearing the reference "Prescot – Unilateral Undertaking"

6.4 nothing in this Deed shall require the performance of any obligation whatsoever in upon or under land outside the ownership of the party to perform the obligation unless such land shall be within the public highway

EXECUTED AS A DEED by the Developer on the date written above

EXECUTED AS A DEED by **BROOKHOUSE**)

GROUP LIMITED in the presence of)

[redacted]