

DEED UNDER SECTION 106 OF THE TOWN AND COUNTRY
PLANNING ACT 1990 RELATING TO LAND AT EASTERN
QUARRY, DARTFORD

Dated 13 NOVEMBER 2007

Ravenside Investments Limited and Coutts & Co
(The Owner)

Dartford Borough Council
(The Borough Council)

Kent County Council
(The County Council)

LS/A/80303/297

CERTIFIED A TRUE COPY
OF THE ORIGINAL


.....
DENTON WILDE SAPTE LLP
1 FLEET PLACE
LONDON EC4M 7WS
TEL: 020 7246 7000

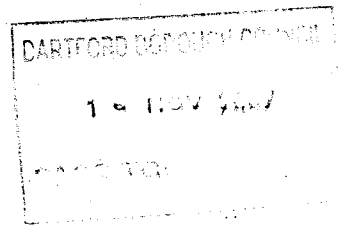
Denton Wilde Sapte LLP
One Fleet Place
London EC4M 7WS
United Kingdom

T +44 (0)20 7242 1212
F +44 (0)20 7246 7777
Telex 887793
DX 242

info@dentonwildesapte.com
www.dentonwildesapte.com

International Lawyers

Contents



1	Definitions and Interpretation	2
2	Statutory Authorities	9
3	Conditionality	9
4	Planning obligations	10
5	The Borough Council's Covenants and the County Council's Covenants	11
6	Obligations after Disposal of Whole or Part	11
7	Reasonableness and Approvals	11
8	Good Faith	12
9	Notices	12
10	Third Party Rights	12
11	VAT and Taxes	12
12	Planning Gain Supplement Tax	13
13	Certification of Practical Completion	15
14	Dispute Resolution	16
15	Remedies	17
16	Notice/Monitoring	18
17	Use of Payments	18
18	Miscellaneous	19
19	Other Consents	19
20	Indexation and Interest	20
21	Third Party Land	20
22	Statutory Functions	20
23	Discharge by Performance	20
24	Suspension of Obligations	20
25	Dual Use of Facilities	21

26	Appointment of Co-ordinators	21
	Schedule 1 – General Provisions	23
	Schedule 2 – Strategy Review Mechanism	32
	Schedule 3 – Affordable Housing	34
	Schedule 4 – Landscape/Open Space	61
	Schedule 5 – Pitches and Sports Hall	70
	Schedule 6 – Local Facilities	81
	Annex 1 to Schedule 6 – Community Facility Lease Terms	85
	Schedule 7 – Education	89
	Annex 1 to Schedule 7 - County Council Constructs Agreement for Lease Core Terms	112
	Annex 2 to Schedule 7 - Owner Constructs Agreement for Lease Core Terms	113
	Annex 3 to Schedule 7- Construction Licence Core Terms	114
	Annex 4 to Schedule 7- School Lease Core Terms	115
	Annex 5 to Schedule 7 - Fair and Equitable Proportion	120
	Annex 6 to Schedule 7 - Consultation Protocol	122
	Annex 7 to Schedule 7 - Lease Terms for the Interim LLLC, and the LLLC	129
	Schedule 8 – Retail	133
	Schedule 9 – On Site Transport	134
	Annex 1 to Schedule 9 – NWSS Connection Plan	157
	Schedule 10 – Off-Site Transport Improvements	158
	Annex 1 to Schedule 10 – Kent Thameside Transport Programme	162
	Schedule 11 – Site Plan	163
	Schedule 12 – Suspension and Conditionality	164

Deed Under Section 106 of the Town and Country Planning Act 1990 relating to land at Eastern Quarry, Dartford

Dated 13 NOVEMBER 2007

Between

- (1) **Ravenside Investments Limited (RIL)** registered in England with number 1015140 whose registered office is at 5 Strand, London, WC2N 5AF; and
- (2) **Dartford Borough Council (The Borough Council)** of Civic Centre, Home Gardens, Dartford, Kent, DA1 1DR ; and
- (3) **Kent County Council (The County Council)** of County Hall, Maidstone, Kent, ME14 1XQ; and
- (4) **Coutts & Co (The Trustee)** registered in England with number 36695 whose registered office is at 440 Strand, London, WC2R 0QS being the bare trustee of Colyer Greenhithe Estate

Recitals

- A The Borough Council is the local planning authority for the purposes of the Act for the area within which the Site is situated.
- B The County Council is at the date of this Deed the highway authority and the education authority for the County of Kent and also the authority responsible for the provision of library, adult education, youth and social care services within Kent.
- C Blue Circle Industries Plc (which on 8 November 2008 changed its name to Lafarge Cement UK plc) is the registered freehold owner (and Ravenside Investments Limited is the beneficial owner) of that part of the Site shown shaded blue on the Site Plan with title absolute at HM Land Registry under title numbers K927602, K927549, K927482, K927526 and K927529 and is the registered leasehold owner at HM Land Registry of the area with title number K927623. The Trustee is the freehold owner of the land covered by title K927623. Lafarge Cement UK plc and RIL entered into a transfer of all Lafarge Cement UK plc interests in the Site dated
- D The Trustee is the registered freehold owner of that part of the Site shown shaded brown on the Site Plan with title absolute at HM Land Registry under title number K921413.
- E The obligations on the Owner contained in this Deed are planning obligations within the meaning of Section 106 of the Act and subject to the provisions of this Deed shall bind the Site and be enforceable by the Councils.
- F On behalf of RIL, the Planning Application was submitted to the Borough Council who then resolved (at meetings on 13 July 2005 and 5 July 2007) to grant the Planning Permission subject to the completion of this Deed.
- G The Parties are authorised to enter into this Deed on the terms set out below.
- H In the interests of the proper planning of the area and the Site, and to secure an acceptable form of development consistent with the Planning Application, the purposes of this Deed are to secure in accordance with the provisions that follow:
- (a) affordable housing;
 - (b) education provision, constituting primary schools and a secondary school together with life long learning provision;

- (c) highways and transportation improvements and the delivery of a transport strategy;
- (d) the provision of a range of community facilities;
- (e) the provision of sports and recreation facilities;
- (f) the provision of leisure facilities;
- (g) the provision of retail floorspace;
- (h) the provision of health and social care facilities;
- (i) the provision of public art, open space, landscaping and areas of public realm;
- (j) the management and maintenance of the facilities to be provided;
- (k) a contribution towards a heritage facility;
- (l) a contribution towards the Councils' officer time costs;
- (m) provision for monitoring of the construction of the Development;
- (n) delivery of various environmental monitoring and mitigation measures, including appointment of suitably qualified co-ordinators.

It is agreed:

1 Definitions and Interpretation

In this Deed, where the context so admits, the following expressions shall have the following meanings:

Act means the Town and Country Planning Act 1990 as amended.

Affordable Housing Unit means a Dwelling to be made available in accordance with this Deed for the purposes of Affordable Housing and **Affordable Housing Units** shall be construed accordingly.

Affordable Housing means housing to either purchase or rent at a sale price or rent level below that associated with open market housing and shall include the following tenures (each as defined in Schedule 3 (Affordable Housing) of this Deed):

- (a) Discounted Market Housing;
- (b) New Build Homebuy;
- (c) Shared Ownership Housing;
- (d) Social Rented Housing;
- (e) any other tenure from time to time consistent with any definition or interpretation of affordable housing in the Borough Council's adopted planning policy;
- (f) any other tenure from time to time proposed by the Owner and Approved by the Borough Council; and
- (g) where permitted under this Deed, Affordable Housing Equivalents.

Approval means approval by the Relevant Authority or a duly authorised person on their behalf or by the Expert following submission of the relevant plan, document, details or other matter by the Owner under the terms of this Deed or under the Planning Permission and the term **Approved** and **Approve** shall be construed accordingly.

Area Master Plan means an area master plan submitted by the Owner or someone associated with the Owner to the Borough Council and approved pursuant to Planning Condition 19.

Business Day means a day other than a Saturday or Sunday or a public holiday in England and Wales and **Business Days** shall be interpreted accordingly.

Category A Finish means the fit-out of premises to include (unless otherwise agreed or expressed in this Deed) all floor, wall and ceiling finishes, including suspended ceilings, raised access floors, carpets, life safety systems, toilets, and the extension of mechanical and electrical services into the accommodation areas including (unless the building specification specifies otherwise) information and communication technology backbone wiring, data points and wiring, telephone, cooling (if necessary), heating, lighting, fire alarms and controls, finishes to and within the building but to exclude fit out to the occupier's specific requirements, furniture or equipment (other than as provided for by the building specification in a relevant Strategy, Schedule of this Deed or other agreed or Approved design specification).

Cessation of Development means a declaration by the Owner that construction of the Development has been completed or has ceased permanently and that there will be no further First Occupations of any Dwellings or Commercial Units within the Development.

Clearance means formal acknowledgement from HMRC as to PGST not being payable or as to the amount or basis on which PGST would be payable in any case such as to enable the Common Objectives to be met.

Common Objectives means the following objectives:

- (a) to ensure that obligations which are financially and practically no less advantageous and no more onerous to each Party than the terms of this Deed at the date of this Deed;
- (b) that the planning benefits secured by this Deed should continue to be secured and delivered;
- (c) that the Owner should not be in a position where it is:
 - (i) required to pay PGST and to perform planning obligations under this Deed in relation to matters covered by PGST; and
 - (ii) in a financially worse position than is presently contemplated in consequence of paying PGST and performing the obligations under this Deed.

Common PGST Infrastructure means Infrastructure which would (disregarding the effect and operation of Clause 12) be provided for or subject to a contribution under this Deed and be funded by PGST.

Commercial Unit means any building within the Site built or used pursuant to the Planning Permission for commercial purposes and which is not a Dwelling or a Community Facility or a School or the Interim LLCC or the LLLC or the Health and Social Care Centre.

Community Centre means a community centre as described in the Community and Leisure Facilities Strategy and **Community Centres** shall be construed accordingly.

Community Facility means one or more of the following:

- (a) the Community Centres;
- (b) courts for tennis and netball;
- (c) multi-use games areas;
- (d) neighbourhood play spaces;
- (e) local play spaces;
- (f) allotments;
- (g) the job centre;
- (h) churches / places of worship;
- (i) pavilions

each of which is defined in greater detail in the Community and Leisure Facilities Strategy.

Community and Leisure Facilities Strategy means the Community and Leisure Facilities Strategy dated November 2007 or as such strategy is amended from time to time in accordance with the Review Mechanism.

Community Pitch has the same meaning given to the term in the Community and Leisure Facilities Strategy to the extent that it describes a single community grass senior football pitch or its equivalent including, where appropriate, an All Weather Pitch (or part thereof) together with changing rooms, parking (to the extent that provision is in accordance with the Approved parking strategy and other Approved documents relating to the Development (as applicable)) and storage necessary for such pitch and **Community Pitches** shall be construed accordingly.

Completion of Development means the earlier of:

- (a) the First Occupation of the final Commercial Unit or Dwelling (whichever is the later); and
- (b) the Owner declaring Cessation of Development.

Councils means the Borough Council and the County Council.

Development means development on the Site pursuant to the Planning Permission.

Dispute Resolution Procedure means the dispute resolution procedure set out at Clause 14 of this Deed and the term **Dispute Resolution** shall be construed accordingly.

Dwelling means a unit to be Occupied for residential purposes falling within Class C3 of the Town and Country Planning (Use Classes) Order 1995 (as amended) at the date of this Deed.

Expert means an expert with at least 10 (ten) years experience of the matter in dispute appointed pursuant to the Dispute Resolution Procedure.

Fastrack Infrastructure means the completed works identified in Paragraph 12 of Schedule 9 (On Site Transport).

First Occupation means Occupation for the first time.

HMRC means Her Majesty's Revenue and Customs or any successor to its functions or any other person responsible for collecting PGST or distributing PGST revenues.

Implementation means the carrying out of a material operation (as defined in Section 56(4) of the Act) forming part of the Development other than (for the purposes of this Deed and for no other purpose) operations consisting of:

- (a) site access roads, works areas and site establishment, site offices, site clearance, preparation and ground remodelling or regrading;
- (b) dewatering and drainage;
- (c) demolition work;
- (d) archaeological investigations or works;
- (e) ecological, landscaping or noise attenuation mitigation measures;
- (f) investigations for the purpose of assessing ground conditions;
- (g) remedial works in respect of any contamination or other adverse ground conditions;
- (h) diversion and laying of services;
- (i) erections of any temporary means of enclosure, or boundary structures or other security or safety measures;
- (j) the temporary display of site notices or advertisements;
- (k) cliff stabilisation works;
- (l) any operations undertaken by or on behalf of the Borough Council or the County Council;
- (m) any operations (other than those in (a) – (k)) that the Owner can demonstrate were not authorised by the Owner

and **Implemented** and **Implementing** shall be construed accordingly.

Independent Assessor means an independent architect, engineer or other certifying professional with not less than 10 (ten) years' relevant experience selected in accordance with Paragraph 13.2.

Index-linked means that the sum referred to or (if relevant) the remaining balance of it shall be linked to movements in the relevant index.

Index-linked (AEI) means linked to the rate of inflation as measured by the Average Earnings Index (as published by the Office of National Statistics) or such other index agreed between the Parties.

Index-linked (BCIS) means linked to the rate of inflation as measured by the All-in Tender Price Index (as published by the Building Costs Information Service on behalf of the Royal Institution of Chartered Surveyors) to include any applicable local or regional weighting or such other index agreed between the Parties.

Index-linked (RCI) means linked to the rate of inflation as measured by the Road Construction Tender Price Index as published by the Department of Business Enterprise and Regulatory Reform to include any applicable local or regional weighting or such other index agreed between the Parties.

Index-linked (RPI) means linked to the rate of inflation as measured by the All Items Retail Prices Index published by the Office of National Statistics or by any other department ministry or other government body upon which the duties in connection with the index devolves to include any applicable local or regional weighting or such other index agreed between the Parties.

Infrastructure means works, measures, materials, services, improvements, apparatus or infrastructure of a type included in the purposes for which PGST has been brought into effect (as stated in enabling PGST legislation any guidance from time to time relating to PGST or issued by HMRC or any PGST Infrastructure Funding Body).

Interest means 2% (two per cent) above LIBOR and for the avoidance of doubt where provisions in this Deed requiring payment from the Owner do not refer to "Interest" interest will be payable in accordance with Clause 20.

Interim LLLC means serviced building space of up to 200 (two hundred) square metres to be provided by the Owners.

Land Use Disposition Plan means the plan submitted to the Borough Council with the Planning Application and approved pursuant to the Planning Permission, or as subsequently submitted to and Approved by the Borough Council

LLLC means the life long learning centre to be provided on the Site as described in the Community and Leisure Facilities Strategy.

Local Centre means the area of mixed use development located within the east Village and the west Village shown on an Approved Area Master Plan.

Management and Maintenance Scheme means a scheme for the management and maintenance of an area or areas of Open Land and Public Art, such scheme to be in substantial accordance with the standards and principles set out in the Biodiversity Action Plan the Public Realm Strategy and the Landscape and Open Space Strategy (as appropriate) or such alternative scheme as may from time to time be Approved by the Borough Council under Planning Condition 4.

Market Centre means the area of mixed use development located in the central Village as indicated on the Land Use Disposition Plan and shown on an Approved Area Master Plan for that Village.

Occupation means the beneficial occupation (excluding all squatters and trespassers) of the relevant building within the Development for the purpose for which it was built and for the avoidance of doubt shall not include occupation or occupants who occupy for the purposes of works carried out prior to or during construction, fitting out, decoration, commissioning, advertising, marketing, security, management of the Site or parking relating to those purposes and **Occupancy, Occupy and Occupied** shall be construed accordingly.

Off Site means not within the Site.

Owner means both RIL and the Trustee.

Parties means the parties to this Deed and their successors and assigns and **Party** shall be construed accordingly.

PGST means any 1 (one) or more of the following whether alone or in combination (a) the proposed tax described in "Planning Gain Supplement: a Consultation" as jointly published in December 2005 by HM Treasury, HMRC and the Office of the Deputy Prime Minister the purpose of which is to tax increases in the value of land as a result of the grant of planning permission in order wholly or partly to finance delivery of Infrastructure (b) the proposed "planning charge" announced in the written statement of Yvette Cooper to the House of Commons on 9 October 2007 or (c) any other tax tariff or charge (whether local or national)

levied on a substantially similar basis to either PGST or the said planning charge and with substantially similar objectives to either that may from time to time be levied in relation to planning gain or the provision of Infrastructure.

PGST Infrastructure Funding Body means HMRC or the community infrastructure fund or such other body empowered to allocate PGST revenues once received.

PGST Relief means relief waiver exemption transitional provision or allowance the direct or indirect consequence of which is to result in no liability to pay PGST or liability to pay less PGST or liability to pay PGST at a lower rate than if such relief waiver exemption transitional provision or allowance had not been applied.

Planning Application means the outline planning application submitted by the Owner with reference number 03/01134/OUT seeking permission for development on the Site.

Planning Condition means a condition on the Planning Permission.

Planning Permission means a planning permission granted pursuant to the Planning Application.

Practical Completion means completed as described in Clause 13 and **Practically Complete** and **Practically Completed** shall be interpreted accordingly.

Quarter means the period of 3 (three) months immediately preceding a Quarter Date.

Quarter Dates are the first day of January, the first day of April, the first day of July and the first day of October in each calendar year or the next Business Day if any such day falls on a Saturday, Sunday or Bank Holiday.

Relevant Authority means:

- (a) the Borough Council in relation to all obligations given directly by the Owner to the Borough Council under this Deed (whether or not also given to other Parties); or
- (b) the County Council in relation to all obligations given directly by the Owner to the County Council under this Deed (whether or not also given to other Parties);
- (c) both the Borough Council and the County Council where the relevant provision in this Deed requires it;
- (d) following call in (or appeal) by the Secretary of State for Communities and Local Government (or its successor).

Reserved Matters means details of siting and/or (where appropriate) any 1 (one) or more of design, external appearance, means of access and landscaping of buildings and other open space/landscaping reserved under the terms of the Planning Permission for subsequent Approval.

Reserved Matters Approval means an Approval of a Reserved Matters Application.

Reserved Matters Application means the submission by the Owner or someone associated with the Owner of any applications for Approval of any Reserved Matters.

Review Mechanism means the provisions in Schedule 2 (Strategy Review Mechanism) of this Deed for the review of the Strategies as applicable and as set out therein.

Serviced means the provision (to adoptable standard where applicable) and all necessary rights of access, gas, electricity, water, foul sewerage and telecommunications infrastructure to the extent necessary so that it is adequate for the proposed use and where the utility is to

be adopted with an executed agreement with the relevant body confirming that the infrastructure will be adopted without further payment to the relevant body.

Site means the land shown edged red on the Site Plan.

Site Plan means the plan at Schedule 11 (Site Plan).

Site Wide Master Plan means the plan submitted to the Borough Council and Approved pursuant to the Planning Permission, or as subsequently submitted to and Approved by the Borough Council.

Strategies means the:

- (a) Community and Leisure Facilities Strategy;
- (b) Community Participation Strategy;
- (c) Education Delivery Strategy;
- (d) Landscape and Open Space Strategy;
- (e) Phasing Strategy;
- (f) Public Art Strategy;
- (g) Public Realm Strategy;
- (h) Site Wide Design Strategy;
- (i) Sustainable Development Strategy;
- (j) Transport Strategy

or such of these documents as the context requires and **Strategy** means 1 (one) such document.

Suspend means suspend construction of the Development as contemplated by Clause 24.1.

Suspension Notice means notice of intention to Suspend as contemplated by Clause 24.2(a).

Threshold means any number of First Occupations of Dwellings prior to or following which a planning obligation has to be performed relating to the following obligations:

- (a) the provision of the major urban park and local parks in Paragraph 2 of Schedule 4 (Landscape/Open Space) and as described in the Landscape and Open Space Strategy;
- (b) the provisions in Schedule 5 (Pitches and Sports Hall);
- (c) the provision of Community Centres in Schedule 6 (Local Facilities);
- (d) the provision of School Sites and the LLLC in Schedule 7 (Education);
- (e) the provision of the Fastrack Infrastructure in Schedule 9 (On Site Transport).

Transfer means a transfer of a freehold interest or grant of a leasehold interest and **Transferred** shall be construed accordingly (with the choice of whether the transfer is freehold or leasehold to be at the absolute discretion of the Owner)