



## Response to Request for Information

Reference      FOI 0215140  
Date            24 February 2015

### ***Tesco Planning Application***

**Request:**

Regarding the announcement that Tesco will not be going ahead with planning application number 11/00367/LBC please answer:

- 1) If a Section 106 was attached to the development?  
No
- 2) Has Tesco completed all s.106 construction requirements as part of this development?  
The development has not triggered any S 106 requirements
- 3) and if not, by what date will they be completed?  
N/A
- 4) Were financial amounts set for these construction requirements and if so how much and what for?  
The Section 106 required a financial contribution of £3500 for fingerpost signage. This is not payable until pre-occupation of the store. As the store has not been built this contribution is not payable.
- 5) If Tesco will not be completing these agreements will there be a financial pay out/compensation from Tesco?  
No
- 6) If so how much?  
N/A
- 7) Has Tesco paid all s.106 financial amounts?  
N/A
- 8) If not, will it be doing so and by what deadline?  
See response to question 4

[NOT PROTECTIVELY MARKED]

- 9) If Tesco is not expected to pay any amounts or undertake the construction requirements will any legal action be taken?  
N/A
- 10) How many houses were purchased compulsorily?  
NONE
- 11) How many independent businesses were purchased compulsorily?  
NONE
- 12) How many other FOI enquiries have been received in relation to the s.106 obligations on this planning application?  
One
- 13) Please supply a copy of the s.106 agreement

ashurst

## Deed of Agreement

Between

Tesco Stores Limited

and

Wolverhampton City Council

made pursuant to Section 106 of the Town and Country Planning Act 1990 relating to development land at Royal Hospital Site, Cleveland Road/Sutherland Place, All Saints, Wolverhampton  
Planning Application Reference 11/00365/FUL

*8th Dec* 2011

THIS DEED OF AGREEMENT is made on the

8<sup>th</sup> day of *December* 2011

2011

**BETWEEN:**

- (1) **TESCO STORES LIMITED** whose registered office is at Tesco House Delamare Road Cheshunt Waltham Cross Hertfordshire EN8 9SL (the "**Developer**") and
- (2) **WOLVERHAMPTON CITY COUNCIL** of The Civic Centre St Peters Square (the "**Council**")

**RECITALS**

- (A) For the purposes of the 1990 Act the Council is the Local Planning Authority for the area within which the Land is situated and by whom the planning obligations contained in this Deed are enforceable
- (B) The Developer is the freehold owner of the Land and which is contained in title number WM652910 and is registered at HM Land Registry
- (C) The Planning Application was heard by the Council's Planning Committee on the 11 October 2011 who resolved to approve the same subject to a number of matters including the completion of this Deed to secure the matters contained herein.
- (D) The Developer and the Council agree that the planning obligations created by this Deed are necessary and appropriate to accompany the grant of Planning Permission

**OPERATIVE PROVISIONS**

**1. DEFINITIONS AND INTERPRETATIONS**

1.1 Unless the contrary intention appears the following definitions apply:

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

"**Commencement of the Development**" means the commencement of the Development by the Developer by the carrying out of a material operation within the meaning of Section 56(4) of the 1990 Act however Irrespective of the Section 56(4) of the 1990 Act none of the following operations shall constitute a material operation for the purposes of this definition works of demolition; excavation and/or works of site clearance; ground investigations site survey work; archaeological investigations; provision of temporary services and access; service alterations; erection of boundary hoardings and boundary treatments and Commence or Commenced and cognate expressions shall be construed accordingly.

"**Deed**" means this deed of agreement

"**Development**" means part demolition, part retention and extension of existing buildings to provide a mixed use development comprising a retail store (A1), retail shops, services and food and drink uses (A1/A2/A3/A4/A5) offices (B1) and petrol filling station, together with associated car parking, highways improvements and access works, landscaping and public realm and other related work

"**Interim Director for Education and Enterprise**" means the officer holding this position within the City Council or his equivalent from time to time

"**Land**" means the land edged red on the plan attached to this Deed

"**Occupation**" means occupation of the proposed Superstore 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 or display or occupation in relation to security operations and "Occupy" and cognate expressions shall be construed accordingly

**"Planning Application"** means the application for planning permission for the Development under the Council reference 11/00365/FUL

**"Planning Permission"** means the planning permission granted pursuant to the Planning Application

**"Railing Restoration Scheme"** means the scheme once approved by the Council following submission in accordance with paragraph 4.2 of schedule 1

**"Signage Contribution"** means the sum of £3,500 as a contribution towards the costs of amending existing fingerpost signage within the Ring Road to provide directions to the Superstore

**"Superstore"** means the retail store comprised in the Development

- 1.2 Words in this Deed importing the singular meaning shall where the context so admits include the plural meaning and vice versa
- 1.3 Words in this Deed of the masculine gender shall include the feminine and neuter genders and vice versa and words denoting natural persons shall include corporations and vice versa
- 1.4 References in this Deed to any statutes or statutory instruments shall include and refer to any statute or statutory instruments amending, consolidating or replacing them respectively from time to time and for the time being in force
- 1.5 References in this Deed to clauses, schedules and paragraphs are to clauses, schedules and paragraphs of this Deed
- 1.6 Covenants made hereunder:
  - (a) are to the intent that the same shall bind whomsoever shall become a successor or successors in title to the relevant part of the Land
  - (b) are to the intent that the same shall operate as a charge on the relevant part of the Land and be registered in the Register of local land charges
  - (c) are made to the intent that each of the same shall be a planning obligation for the purposes of Section 106 of the 1990 Act

## 2. **STATUTORY POWERS**

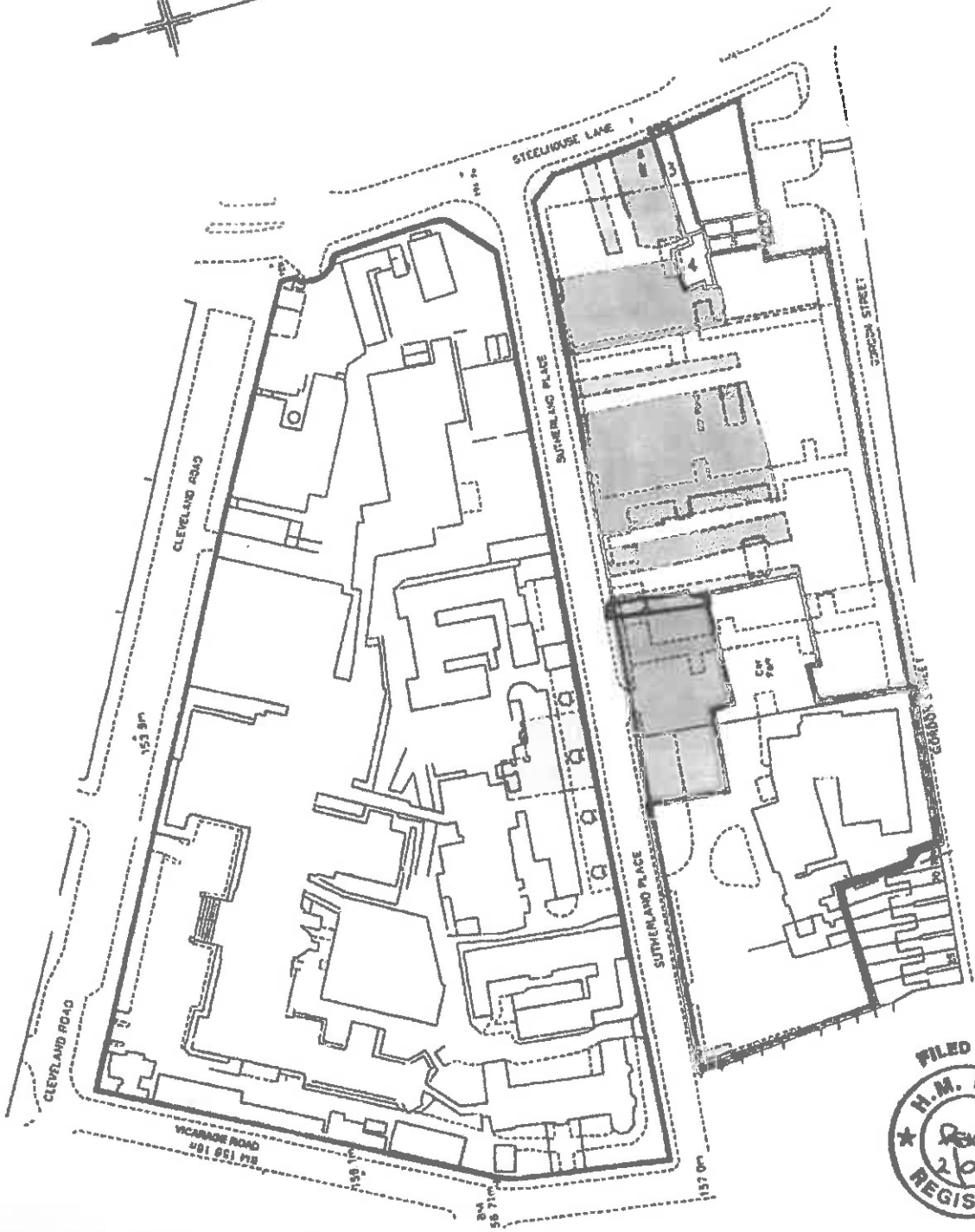
This Deed is entered into and completed pursuant to section 106 of the 1990 Act and shall be binding on the Developer's interest in each part of the Land and enforceable by the Council against the Developer and any person deriving title therefrom as provided in that provision

## 3. **CONDITIONALITY**

The provisions in this Deed are conditional upon and shall not take effect until the Planning Permission has been issued by the Council and Commencement of the Development has occurred save for paragraph 3 of schedule 1 which takes effect on the date of this Deed

H.M. LAND REGISTRY		TITLE NUMBER	
		WM 652910	
ORDNANCE SURVEY PLAN REFERENCE	SO9198	SECTION X	Scale 1/1250
ADMINISTRATIVE AREA WEST MIDLANDS : WOLVERHAMPTON			© Crown Copyright

*[Handwritten signature]*



**4. DEVELOPER'S OBLIGATIONS TO THE COUNCIL**

4.1 Subject as herein provided the Developer covenants with the Council in respect of and so as to be binding upon its interest in the Land to comply with the covenants set out in Schedule 1 to this Deed

4.2 The Developer hereby covenants with the Council not to carry out the Development nor to continue to comply with the Development other than in compliance with the provisions of this Agreement

**5. COUNCIL'S OBLIGATIONS TO THE DEVELOPER**

Subject as herein provided the Council covenants with the Developer to comply with the covenants set out in Schedule 2 to this Deed

**6. RELEASE**

On parting with its interest in any part of the Land the Developer shall be released from all liability under the terms of this Deed in respect of such part of the Land (save in respect of antecedent breaches)

**7. GENERAL ADMINISTRATIVE PROVISIONS**

7.1 This Deed is a local land charge and is capable of registration as such by the Council

7.2 If any provision of this Deed shall become or shall be declared by any Court of competent jurisdiction to be invalid or unenforceable in any way then the Clause or Clauses which become or are declared to be invalid or unenforceable shall be severed from the remainder of this Deed (which shall continue in full force and effect)

**8. DISPUTE PROVISIONS**

8.1 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

8.2 In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to Clause 8.1 or as to the appropriateness of the professional body then such question may be referred by either part 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

8.3 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-eight working days after the conclusion of any hearing that takes place or twenty-eight working days after he has received any file or written representation

8.4 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

8.5 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

**9. COUNTERPARTS**

9.1 This Deed may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

9.2 Transmission of an executed counterpart of this agreement (but for the avoidance of doubt not just a signature page) (a) by fax or (b) by e-mail (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this agreement. If either method of delivery is adopted, without prejudice to the validity of the agreement thus made, each party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.



## SCHEDULE 1

### Developer's Covenants

#### 1. EMPLOYMENT

- 1.1 During the early stages of construction of the Superstore to convene regular meetings of a working party comprising representatives from the Council, the Developer, All Saints Action Network (ASAN) and other relevant local community groups, and local employment agencies (the "**Employment Committee**") in respect of local initiatives seeking to:
- (a) achieve access by local people to information about vacancies at the superstore comprised in the Development both during its construction and operation
  - (b) target recruitment measures relating to vacancies for construction and vacancies at the Superstore comprised in the Development to local people residing in the All Saints ward and other local wards and
  - (c) achieve the provision of flexible employment opportunities in line with the Developer's corporate best practice to include at least flexible working hours whenever possible, family-friendly shifts, maternity leave, paid paternity leave, equal training and development opportunities for part-time workers, vouchers a career break scheme, job sharing, flexi-time or compressed hours, shift swaps and part-time work when practical
- 1.2 To consider and have regard to the representations of the Employment Committee and to adopt an initiative which seeks to achieve each of the objectives set out at 1.1(a) to 1.1(c)
- 1.3 Where appropriate to use the offices of ASAN as a venue for interviews of prospective staff
- 1.4 On or about the first anniversary of first trading from the Superstore comprised in the Development to convene a further meeting of the Employment Committee established under paragraph 1.1 to review the success of each of the initiatives adopted under paragraphs 1.1(a) to 1.1(c) and to consider its representations
- 1.5 To take reasonable account of the recommendations of the Employment Committee in the operation of the Superstore comprised in the Development

#### 2. TRAINING

- 2.1 Within three months of Commencement of the Development to convene a working party comprising representatives from the Council, the Developer and local colleges and training providers (the "**Training Committee**") with the aim of working with the Employment Committee to bring forward training programmes prior to the employee selection process for vacancies at the Superstore having particular regard to the provision of guaranteed employment for successfully re-trained individuals living in the All Saints ward and other local wards and previously in long term unemployment subject to applicants meeting agreed specified criteria
- 2.2 Where appropriate to use the offices of ASAN as a venue for staff training and meetings
- 2.3 Within three months of first trading from the Superstore to consider such further representations as may be made by the Training Committee established under

paragraph 2.1 in respect of the assistance available from local colleges that could be incorporated into Tesco's ongoing training scheme for employees at the Superstore

- 2.4 To take reasonable account of the recommendations of each Training Committee in the recruitment for and operation of the Superstore

**3. FINANCIAL CONTRIBUTIONS**

**Fingerpost Signage**

- 3.1 The Developer shall pay to the Council the Signage Contribution prior to Occupation of the Superstore

- 3.2 Not to Occupy the Superstore until the Signage Contribution has been paid to the Council

**Traffic Regulation Orders**

- 3.3 The Developer shall within 10 working days of demand, such demand not to be made earlier than Commencement of the Development, pay the Council's reasonable and proper legal and administrative costs incurred in the preparation and/or making of traffic regulation orders (whether implemented or not) insofar as are made necessary as a consequence of the Occupation of the Superstore

- 3.4 Not to carry out construction works pursuant to the Planning Permission or Occupy the Superstore at any time whilst in breach of paragraph 3.3

**4. RESTORATION OF RAILINGS**

- 4.1 The Developer shall consult with the Council in good faith as to the detailed content of a scheme for the restoration of historic railings around the site

- 4.2 Following consultation under paragraph 4.1 not to Occupy the Superstore until the Developer has submitted a draft Railing Restoration Scheme to the Council and the Council has agreed the Railing Restoration Scheme in writing, such scheme to include a programme of works

- 4.3 The Developer will implement the Railing Restoration Scheme following its approval by the Council in accordance with the programme of works there set out therein to be completed no later than six months from the first day of trading of the Superstore

- 4.4 The works undertaken pursuant to the Railing Restoration Scheme shall not be repositioned or removed from their approved siting except with the prior written permission of Interim Director for Education and Enterprise except for routine repair maintenance or cleansing and then shall be returned to their approved site within 14 days or such longer period as shall be agreed in writing with the Interim Director for Education and Enterprise

**SCHEDULE 2**

**The Council's Covenants**

1. **USE AND RETURN OF FINANCIAL CONTRIBUTIONS**
  - 1.1 All money paid to the Council under this Deed shall be used exclusively for the purposes for which it was paid
  - 1.2 Any money paid to the Council under this Deed which has not been spent within 5 years of receipt shall be returned to the party who made the payment
2. **DUTY TO ACT PROMPTLY AND REASONABLY**
  - 2.1 Where under this Deed any consent or approval is required of the Council the Council shall act reasonably and without delay in giving or refusing such consent or approval and in the case of any refusal shall give detailed written reasons for its decision

**EXECUTED AS A DEED AND DELIVERED** by the parties hereto on the date written



( Signed as a deed by **MARCUS VINIKOUIE**  
( as attorney for **TESCO STORES**  
( **LIMITED**  
( in the presence of:

Signature of Witness

Name (in BLOCK CAPITALS)

Address

*J. Holt*  
JULIA HOLT  
Shire Park, Welwyn Garden City  
Herts AL7 1AB  
Secretary