

**Agreement under Section 106 of Town & Country
Planning Act 1990 and Section 278 of the Highways Act
1980 relating to land at Pound Lane, Norwich**

Dated

27th October 2003

J Sainsbury Plc
(Sainsbury's)

Stores Funding Limited
(SFL)

Sainsbury's Supermarkets Ltd
(the Developer)

Broadland District Council
(the Council)

Norfolk County Council
(the County Council)



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Agreement under Section 106 of the Town & Country Planning Act 1990 and Section 278 of the Highways Act 1980 relating to land at Pound Lane, Norwich

Dated 27th October 2003

Between

- (1) **J Sainsbury Plc ("Sainsbury's")** whose registered office is at 33 Holborn London EC1N 2HT
- (2) **Stores Funding Limited ("SFL")** registered in the Cayman Islands with its registered office at Walker House Mary Street PO Box 908 Great George Town Grand Cayman Islands
- (3) **Sainsbury's Supermarkets Ltd ("the Developer")** of 33 Holborn London EC1N 2HT
- (4) **Broadland District Council ("the Council")** of Thorpe Lodge 1 Yarmouth Road Thorpe St Andrew Norwich Norfolk
- (5) **Norfolk County Council ("the County Council")** of County Hall Martineau Lane Norwich Norfolk

Recitals

- A The Council is a local planning authority for the area of the Site for the purposes of the Act
- B The County Council is a local planning authority and highway authority for the area of the Site
- C The Developer submitted the Application to the Council and the Council has resolved to grant the Permission subject to the completion of this Deed
- D Sainsbury's is registered at HM Land Registry as the freehold owner of title NK17071 and the Developer is registered at HM Land Registry as proprietor with leasehold title NK286041 and SFL is registered at HM Land Registry as proprietor with leasehold title NK286039 in respect of the Land subject to the entries and restrictions contained therein but otherwise free from incumbrances.
- E SFL Sainsbury's and the Developer agree for their respective interests in the Land to be bound by the terms of this Agreement.
- F The Parties have agreed to enter into this Agreement for the purpose of securing the following in the terms set out in this Agreement:
 - restriction and regulation of the floor space of the Foodstore (as extended by the Planning Permission)
 - to regulate the management of the Car Park; and

- to assist in the achievement of the Travel Plan measures

G The Parties have further agreed to identify those provisions and obligations within the Previous Agreements that the Parties regard as still subsisting and of further effect

It is agreed:

1 DEFINITIONS

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

the Act means the Town and Country Planning Act 1990 as amended by the Planning & Compensation Act 1991

the Application means the application reference 2003/0829 for the erection of a foodstore extension, improved bus turnaround and general works including amendments to car park layout, internal access arrangements and recycling facility (as may be amended from time to time)

the Car Park Management Scheme means the scheme for the management of the Car Park in accordance with those principles set out in Schedule 4

the Car Park means the car park on the Site following completion of the Development

Comparison Goods means clothing, footwear, Do-It-Yourself and household goods (furniture, pictures etc carpets and other floor coverings major appliances, textiles and soft furnishings, hardware), recreational goods (radio, television, CD and DVD players), sports goods, toys, games and camping equipment, other recreational goods (medical equipment, perfumery, jewellery, silverware, watches and clocks and telephones)

the Development means the development described in the Application

the Foodstore means the existing Sainsbury's superstore located at the Site

Head of Planning Services means the Head of Planning Services or such delegated officer for the time being of the Council or such other officer or person duly authorised to act on his behalf or in his place

the Land means the land the subject of the Application excluding highway land

the Landowners shall mean the Developer Sainsbury's and SFL

Material Operation means a material operation in accordance with Section 56(4)(a) to (d) of the Act provided that for the purposes of this Deed the following shall be deemed not to be Material Operations: any archaeological works, demolition, site clearance, services diversions, site or soil investigations

Net Sales Floor Space means that area used for the display and sales of goods to customers including the space to which customers have access, counter spaces, display space, the space immediately behind the checkouts and any sublet space, but excluding offices, warehousing, preparation areas, storage and loading bays

Occupied or Occupation means the occupation of the Store Extension for trading purposes which for the avoidance of doubt shall exclude occupation for fit out or training purposes.

the Parties means the Developer, Sainsbury's, SFL, the Council and County Council

the Planning Permission means the planning permission to be granted by the Council pursuant to the Application substantially in the form of the draft attached in Schedule 1 (as may be amended from time to time)

the Plan means the Plan attached to this Agreement

the Previous Agreements means those documents listed in Schedule 5 to this Agreement

the Site means the area of land edged red for identification purposes only on the Plan situated at Pound Lane, Norwich to which the Application relates

the Store Extension means the extension to be provided to the Foodstore which forms part of the Development

the Travel Plan a plan in respect of the Foodstore which fulfils the criteria set out in Schedule 3 which may from time to time be varied with the written consent of the County Council to minimise single occupancy of private cars by staff employed at the Foodstore and its customers on the Site

the Works means those works specified in Schedule 2

2 STATUTORY AUTHORITIES

2.1 It is hereby agreed and declared by the Parties that the restrictions and requirements accepted by the Developer in this Deed are made pursuant to Section 106 of the Act, Section 38 and 278 of the 1980 Act and Section 111 of the Local Government Act 1972

- 2.2 The obligations in Clause 4 of this Deed are made pursuant to Section 106 of the Act with the intention that they bind the Land and shall be enforceable by the Council
- 2.3 The obligations in Clauses 4.1 and 4.4 are made pursuant to Section 106 of the Act with the intention that they bind the Land and shall be enforceable by the County Council

3 CONDITIONALITY

- 3.1 It is hereby declared that the obligations contained in this Deed save for those contained in Clauses 2, 3 and 4.1 shall not have effect unless:
- (a) the Planning Permission has been issued; and
 - (b) the Planning Permission has been implemented by a Material Operation
- 3.2 If the Planning Permission shall at any time be quashed or revoked then this Deed shall forthwith determine and cease to have effect
- 3.3 The Developer may determine this Deed at any time before the Planning Permission has been issued by serving notice on the Council

4 DEVELOPER'S COVENANTS

The Developer agrees to the following requirements and restrictions:

Implementation of the Permission

- 4.1 to give the County Council and the Council at least fourteen days' written notice of the Developer's intention to carry out a Material Operation

Restrictions on Floorspace of the Foodstore

- 4.2 Not to permit the Net Sales Floorspace of the Foodstore (as extended by the Store Extension) to exceed 5,726 square metres.
- 4.3 Not to permit more than 1,486 square metres of the gross floorspace of the Foodstore (as extended by the Store Extension) to be used for the sale and display of Comparison Goods

Travel Plan

- 4.4 Not to permit Occupation until the Travel Plan has been submitted to the County Council for its written approval and thereafter to:

- 4.4.1 implement the Travel Plan as approved within 2 months from the date of receipt of such approval from the County Council and comply with the same thereafter unless otherwise agreed in writing with the County Council; and
- 4.4.2 monitor and review the effectiveness of the Travel Plan over such time periods as shall be approved by the County Council and to provide the results and conclusions of the monitoring and review of the Travel Plan to the County Council

Car Park Management Scheme

- 4.5 Forthwith upon Occupation of the Store Extension to implement the Car Park Management Scheme

Works

- 4.6 Not to carry out or commence the Works until such time that it has entered into an agreement pursuant to Section 278 of the Highway Act 1980 with the County Council to secure the Works

5 THE COUNTY COUNCIL AND COUNCIL'S OBLIGATIONS

- 5.1 The County Council shall use reasonable endeavours to approve the Travel Plan within 2 months from the date that it is first submitted by the Developer

6 RELEASE AND DISCHARGE

- 6.1 The Landowners including for the avoidance of doubt their successors in title and assigns shall cease to have any obligation or liability under the terms of this Deed in relation to the Land or any part of it once it shall have parted with all its respective interest (save for the reservation of rights for services and of access signage or entry in favour of adjacent premises) in the Land or that part save in so far as it relates to any relevant prior breach of its obligations under this Deed.
- 6.2 If the Permission is quashed or revoked then this Deed shall absolutely determine and become null and void.
- 6.3 Prior to the carrying out of a Material Operation 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 Permission) granted after the date of this Deed.

7 REASONABLENESS

Where under this Deed any approval, consent, certificate, direction, authority, agreement, action or expression of satisfaction is required to be given or reached or taken by any party or any response is requested any such approval, consent, certificate, direction, authority, agreement, action, expression of satisfaction or response shall not be unreasonable or unreasonably withheld or delayed.

8 INDEMNITY

Sainsbury's hereby covenants to indemnify SFL on an after-tax basis against all losses and liabilities (including all proper costs, expenses, charges (including legal and other professional charges), damages, claims, levies, payments, assessments, demands, civil or criminal penalties, fines, sanctions, and other losses and liabilities of whatsoever nature, howsoever and whenever arising) suffered or incurred by SFL arising out of this Agreement or by reason of SFL being a party to this Agreement

9 NOTICES

- 9.1 Any notice or other written communication to be served or given to or upon any party to this Deed to the other shall be in writing and shall be sent to the address provided for above or such substitute address in England as may from time to time have been notified by that party.
- 9.2 A Notice may be served by
 - 9.2.1 delivery to the Head of Planning Services at the Council's address and the Director of Planning and Transportation at the County Council's address as specified above;
 - 9.2.2 delivery to the Director of Property at the Developer's address specified above;
 - 9.2.3 delivery to the Company Secretary at Sainsbury's address specified above
 - 9.2.4 delivery to the Director of Property for SFL at 33 Holborn London EC1N 2HT
 - 9.2.5 registered or recorded delivery post.
- 9.3 Any notice served shall be deemed to have been validly served or given at the time when in the ordinary course of business it would have been received.

10 MISCELLANEOUS

- 10.1 The headings appearing in this Deed are for ease of reference only and shall not affect the construction of this Deed
- 10.2 For the avoidance of doubt the provisions of this Deed (other than those contained in this Clause) shall not have any effect until this document has been dated
- 10.3 Where reference is made to a Clause, Part, Plan or Recital such reference (unless the context requires otherwise) is a reference to a clause, part, plan, or recital (or in the case of Plan) attached to this Deed
- 10.4 References to the Council and County Council include any successors to its functions as local planning authority and local Highway Authority and as one of a number of parties interested in the economic development of the area
- 10.5 References to statutes, bye laws, regulations, orders, delegated legislation shall include any such instrument re-enacting or made pursuant to the same power
- 10.6 Nothing in this Deed shall require the Developer to carry out any works whatsoever in upon or under land which is not either in its ownership or control or within the ownership or control of the Council unless such land is made available at nil cost at an appropriate time in order to allow the carrying out of such obligations
- 10.7 The restrictions and requirements contained in this Deed shall be treated as Local Land Charges and registered at the Local Land Charges Registry for the purposes of the Local Land Charges Act 1975.

11 EXERCISE OF THE COUNCIL'S AND COUNTY COUNCIL'S POWERS

Nothing contained in this Deed or implied in it shall prejudice or affect the rights discretions powers duties and obligations of the County Council and Council under all statutes bye-laws statutory instruments orders and regulations in the exercise of its functions as a local authority

12 COSTS

On the Completion of this Deed the Developer shall contribute towards the reasonable legal costs of the County Council in connection with the preparation negotiation and completion of this Deed

13 **CONTRACTS (RIGHTS OF THIRD PARTIES)**

The provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Deed

14 **ARBITRATION**

The following provisions shall apply in the event of a dispute:

- 14.1 Any dispute or difference of any kind whatsoever arising between the parties hereto out of or in connection with this Deed shall be referred to arbitration before a single arbitrator.
- 14.2 The parties shall jointly appoint the arbitrator not later than 28 days after service of a request in writing by either party to do so.
- 14.3 If the parties are unable to agree within 28 days as to the appointment of such arbitrator then such arbitrator (hereinafter referred to as “the tribunal”) shall be appointed on the application of either party to the President for the time being of the Law Society.
- 14.4 In the event of a reference to arbitration the parties agree to:
 - (a) prosecute any such reference expeditiously and
 - (b) do all things or take all steps reasonably necessary in order to enable the tribunal to deliver any award (interim, final or otherwise) as soon as reasonably practicable
- 14.5 The award shall be in writing signed by the arbitrator and shall be finalised within 21 days
- 14.6 The award shall be final and binding both on the parties and on any persons claiming through or under them

15 **PREVIOUS AGREEMENTS**

- 15.1 The Parties hereby agree and declare that the provisions of this clause so far as it relates to land outside the Site is not binding upon the owner or owners thereof
- 15.2 The Parties hereby further agree and declare that with the exception of the clause numbers from the Previous Agreements and the consolidated provisions stated in the Fifth Schedule the Previous Agreements shall be deemed to have been complied with.



Schedule 1 – Draft of the Planning Permission

Ask for : Mr N Harriss
Direct Dial : (01603) 430529
Fax : (01603) 700339
Date : 02 Sept 2003

Application Number:
20030829

White Young Green Planning
Strand Bridge House
138-142 Strand
London
WC2R 1HH

Date of Decision: 02 September 2003

Description: 1. Erection Of Class A1 Superstore Extension. 2. Revised Car Park Layout , Internal Access Arrangements, Bus Turnaround And Recycling Point.

Location: J Sainsbury Pound Lane, Thorpe St Andrew

Applicant: Sainsburys Supermarkets

Town & Country Planning Act 1990

The Council in pursuance of powers under this Act **GRANTS PLANNING PERMISSION** for the development referred to above, in accordance with the submitted plans and application forms, and subject to the following conditions.

1. The development hereby permitted shall be begun before the expiration of five years from the date of this decision.
2. The development hereby permitted shall not be carried out otherwise than in accordance with submitted plans as amended by drawing No. 1470-GA-103 Rev H received 25 June 2003.
3. Prior to development commencing the developer shall submit, for approval by the Local Planning Authority in consultation with the Highway Authority, a phasing programme of works relative to implementation and completion of the developments hereby approved. This shall provide for completion of the revised car park layout and internal access arrangements prior to the superstore extension being first brought into use. Development shall be carried out in accordance with the approved details.
4. No development shall be begun until further details of the following matters have been submitted to and approved in writing by the Local Planning Authority and the various developments shall not be brought in to use until the respective matters have been carried out in accordance with the approved details:-

- (a) the materials to be used in the construction of the external surfaces of the developments including buildings, car parking, bus turnaround, recycling point etc
 - (b) the ground and slab levels of the developments
 - (c) the external lighting
 - (d) cycle stands
 - (e) foul and surface water drainage
5. Submission of soft/hard landscape details for bus turnaround/recycling point and car park, to include:
- (a) written specification (including cultivation, maintenance and other operations associated with plant establishment)
 - (b) schedules of plants, noting species, planting sizes and proposed numbers/densities where appropriate including implementation timetables
 - (c) position/height/construction of means of enclosure/retaining structures and proposed finished levels

Any such trees/plants that are removed, die or become, in the opinion of the Local Planning Authority, seriously damaged or defective within five years of planting shall be replaced with specimens of a similar size and species as originally required.

6. Prior to the commencement of development details of any plant/machinery to be installed including details for the control of noise shall be submitted for approval to the Local Planning Authority and shall be carried out as approved.

The reasons for the conditions are:-

1. In accordance with Section 91 of the Town & Country Planning Act 1990.
2. For the avoidance of doubt and to ensure the permission relates to the application, as amended.
3. To ensure the satisfactory development of the site without prejudice to the amenity of the site or to road safety in accordance with Policies GS3, TRA4 and TRA6 of the Broadland District Local Plan.
4. To ensure the satisfactory development of the site in accordance with Policy GS3 of the Broadland District Local Plan.
5. To ensure the satisfactory development of the site in accordance with Policy GS3 of the Broadland District Local Plan.
6. To ensure the satisfactory development of the site, in accordance with Policies GS3 and CS17 of the Broadland District local Plan.

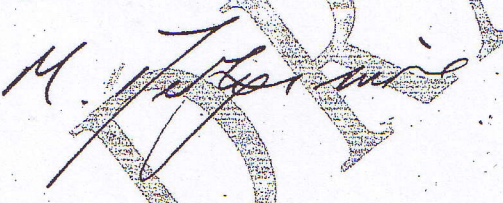
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INFORMATIVE

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1. Your attention is drawn to the comments of the Environment Agency in their letter of 12 June 2003.
2. The site is subject to related legal agreements.
3. This permission does not convey any form of consent to display any advertisements. A separate application(s) for consent to display signs on the buildings will be required.
4. This permission does not convey approval of the possible new 'beat office and community centre extension' as indicated on drawing no. 1470-GA-103 Rev H. These matters will require the approval of further planning permission.

Signed


Mr M Derbyshire
Head of Planning

Thorpe Lodge, 1 Yarmouth Road, Thorpe St Andrew, Norwich, NR7 0DU

Schedule 2 - Schedule of Works for the Improvement of Pound Lane Junction with Dussindale Drive, Norwich

1. The improvement of the signal controlled junction within the vicinity of the store, and associated equipment, to include enhanced pedestrian facilities.
2. The reinstatement resurfacing re-grading, re-seeding or, where necessary, the construction in full or in part of the existing highway disturbed by the carrying out of the Works as reasonably directed by the County Council.
3. The provision and laying of all road marking reasonably required by the County Council.
4. The provision, erection and connection of all street lighting columns where required including services for both temporary and permanent arrangements pursuant to the Works in accordance with all current codes of practice as varied from time to time to be approved by the County Council.
5. The provision and erection of all traffic signs reasonably required by the County Council including services for both temporary and permanent arrangements pursuant the Works in accordance with all current codes of practice as varied from time to time to be approved by the County Council.
6. All statutory undertakers' diversion works and the making good of any damage caused to any statutory undertakers' installation as a result of carrying out the Works.
7. All necessary ancillary highway works.

Schedule 3 – Travel Plan Provisions

1. The precise details of the Travel Plan will be the subject of further discussion between the Council, site owner and the tenants and follow the general advice on Travel Plans set out in the *Norfolk County Council Guidance Note For The Submission Of Travel Plans* and in particular include specific targets for the various modes of travel in line with the Norwich Area Transport Strategy targets. The primary measures which will be included within the plan are set out below.
2. **Travel Co-ordinator:** The Developer will appoint a Travel Co-ordinator responsible for the District Centre. He/she will be responsible for all aspects of the Travel Plan including basing with tenants, discussions with bus companies and the Council, implementation of proposals and monitoring and reporting.
3. **Car Sharing Scheme:** The Travel Co-ordinator will establish a car-sharing scheme for the site. This will involve creation of a database of staff home locations, shift patterns, car availability etc. so that suitable car shares can be arranged. There is now software available which allows this to be easily established and kept up to date as circumstances change.
4. **Provision for Cyclists:** The Developer will provide adequate shower and changing facilities for those who cycle to work. The Travel Co-ordinator will monitor the number of cyclists visiting the site and ensure that facilities are improved and increased if necessary. He/she will set up a Bicycle Users Group (BUG) to encourage cycling and display information in prominent positions on the site regarding appropriate routes to the site.
5. **Provision for Pedestrians;** The Developer will display information in prominent positions within the site regarding safe and appropriate routes to the site. The Travel Co-ordinator will advise people on the advantages of walking and liaise with the Council to remove any potential hazards identified by those who walk.
6. **Public Transport Information:** The Travel Co-ordinator will be responsible for disseminating information regarding public transport routes in the vicinity of the site. General information regarding bus routes and frequencies will be displayed in the Sainsbury's foyer and other appropriate locations within the site.
7. **Emergency Taxi Provisions:** The Travel Co-ordinator will, at the request of the employer, provide a taxi home for employees who have travelled to the site by car share, public transport etc. if the need arises e.g. due to family sickness etc.
8. **Monitoring and Review:** The Travel Co-ordinator will undertake regular monitoring of the performance of the Travel Plan e.g. by undertaking staff travel surveys and will report to the Council initially on an annual basis. The Travel Co-ordinator will discuss with the Council ways in which measures can be amended if the objectives of the Travel Plan are not being met.

Schedule 4 – Car Park Management Scheme

The precise details of the Car Park Management Scheme will be the subject of further discussion between the Council, site owner and the tenants. However, the primary measures that will be included are set out below.

1. The Developer will introduce a Car Park Management Scheme in the car park to discourage long stay parking, particularly by commuters and staff employed in the Foodstore and Store Extension
2. The Developer will be responsible for the day to day operation of the Car Park Management Scheme.
3. The operation of the Car Park Management Scheme will be monitored on an annual basis and discussed with the Council. The method of control used in the Car Park Management Scheme may be altered at the discretion of the Developer, but only after discussion with the Council.

Schedule 5 – The Previous Agreements

Agreement No.	Date		Parties
1	1 July 1983	This agreement was expressly cancelled by the terms of clause 9 of Agreement 3	The County Council (1) The Council (2) and Stair Limited (3)
2	26 Sept 1983	This agreement was expressly cancelled by the terms of clause 9 of Agreement 3	The County Council (1) The Council (2) J Sainsbury Plc (3)
3	29 March 1988	Obligations set out in clause 4: 4.1 – 4: complied with 4.5 : right to park remains 4.6.1 – 3: deleted by Agreement 9 4.6.4 : amended 4.6.5 : still applicable 4.6.6 : amended by Agreement 4 4.7 : expired 4.8 : deleted by Agreement 5 4.9 : still applicable 4.10 – incorporated in transfer 5-6 – complied with	The County Council (1) The Council (2) J Sainsbury Plc (3)
4	21 October 1988	Amendments to Agreement 3 contained in clause 1 of this supplemental agreement	The County Council (1) The Council (2) J Sainsbury Plc (3)
5	9 June 1989	Amends Agreement 3 by deletion of clause 4.8	The County Council (1) The Council (2) J Sainsbury Plc (3)
6	24 October 1991	Amends definition of 'the small shops' in Agreement 3 as previously amended by Agreement 4	The County Council (1) The Council (2) J Sainsbury Plc (3)
7	2 March 1995	Amends 4.6.4 and 4.6.6 of Agreement 3	The County Council (1) The Council (2) J Sainsbury Plc (3)

Agreement No.	Date		Parties
8	1 Dec 1998	Agreement complied with	The County Council (1) The Council (2) J Sainsbury Plc (3)
9	1 Dec 1998	Agreement replaces clauses 4.6.1 – 3 of Agreement 3	The County Council (1) The Council (2) J Sainsbury Plc (3)

Executed as a Deed by the parties

The Common Seal of J Sainsbury Plc was hereunto affixed in the presence of:

)
)
)
C. Keme
Authorised Signatory
K. Keme
Authorised Signatory



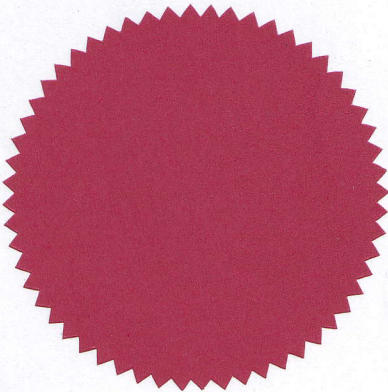
Signed as a deed on behalf

~~The Common Seal~~ of Stores Funding Limited was hereunto affixed in the presence of:

)
)
)
L. H. H. H.
)

X N. S. S. S. S.

X
Authorised Signatory
DIRECTOR
S. Fletcher
Authorised Signatory
SECRETARY



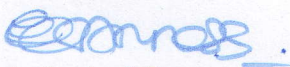
The Common Seal of Sainsbury's Supermarkets Ltd was hereunto affixed in the presence of:

)
)
)
S. H. H. H.
)

Authorised Signatory
K. Keme
Authorised Signatory

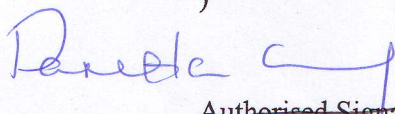


The Common Seal of Broadland District)
Council was hereunto affixed in the)
presence of:)


Authorised Signatory
HEAD OF CORPORATE SERVICES
& MONITORING OFFICER
Authorised Signatory.



The Common Seal of Norfolk County)
Council was hereunto affixed in the)
presence of:)


Authorised Signatory

authorised to sign on behalf of: Head of Law

Authorised Signatory

