

Dated 9th April

2010

**THE MAYOR & BURGESSES OF THE LONDON BOROUGH
OF BARNET (1)**

AND

BARNET PRIMARY CARE TRUST (2)

AGREEMENT

relating to:

Finchley Memorial Hospital, Granville Road, London N12 0JE

Ref NVB/334661
Doc 8013163.2

SpeechlyBircham

AN AGREEMENT dated 9th April 2010 made BETWEEN

(1) THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF BARNET ("the Council") of the North London Business Park Oakleigh Road South London N11 1NP (2) BARNET PRIMARY CARE TRUST ("the Owners") of 10 Hartley Avenue, London NW7 2HX

WHEREAS:

- A. The Owners have the freehold interest in the Land registered at H.M. Land Registry under Title No. AGL143868 MX444588 and MX421119 respectively
- B. The Council is the Local Planning Authority for the purposes of the Town and Country Planning Act 1990 (as amended) and the Highway Authority for the purposes of the Highways Act 1980 for the area within which the Land is situated
- C. On 1 October 2009 the Owners through their agents applied to the Council for planning permission under reference No. F/03573/09 to develop the Land by a Development comprising construction of a new part two part three storey hospital (plus part lower ground floor) with ancillary facilities including a cafe and retail. Construction of an energy centre. Associated parking and servicing areas new vehicular access off Granville Road to service construction traffic and demolition of existing hospital buildings (with the exception of Bullimore House)
- D. At a meeting of the Council's Planning and Environment Committee held on 20 January 2010 it was resolved that subject to the completion of this Agreement the Permission should be granted subject to conditions
- E. The Council is a Local Authority for the purposes of Section 111 of the Local Government Act 1972 and is satisfied that the arrangements made in this

Agreement will facilitate be conducive to and be incidental to the Council's functions

- F. The Council considers it expedient and in the interests of the proper planning of its area that provision should be made for regulating development in the manner hereinafter appearing and the parties hereto have accordingly agreed to enter into this Agreement

NOW IT IS AGREED as follows:

1. Interpretation

- 1.1 In this Agreement unless the context otherwise requires:

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

'Application' means the application for planning permission registered by the Council on 1 October 2009 and bearing reference number F/03573/09

'Bus Stop Improvement Contribution' means the sum of £64,000 (sixty four thousand pounds) Index Linked comprising (a) £44,000 (forty four thousand pounds) for works involving the implementation of ibus (countdown) displays within the existing bus shelters (associated with access to the Finchley Memorial Hospital) on Ballards Lane and A1000 High Road and the provision of two further bus shelters on Ballards Lane which will be required in order to be able to provide ibus information at these stops and (b) £20,000 (twenty thousand pounds) required by Transport for London towards upgrading five bus stops within the vicinity of the Land to be Disability Discrimination Act compliant.

'Contributions' mean the Bus Stop Improvement Contribution and Controlled Parking Zone Contribution and Feasibility Study Contribution and Highways Contribution and Monitoring Contribution and Travel Plan Contribution payable under this Agreement

'Commencement of Development' means the date upon which any material operation (as defined in s56(4) of the 1990 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, demolition work, archaeological investigations, investigation for the purposes of assessing ground conditions, remedial work in respect of contamination or other adverse ground conditions, diversion of services, erection of any temporary means of enclosure, erection of fences, hoardings and construction of access or service roads, the temporary display of site notices or advertisements and "Commence Development" shall be construed accordingly.

'Controlled Parking Zone Contribution' means the sum of £20,000 (twenty thousand pounds) Index Linked for the funding of a new scheme for controlling parking within the vicinity of the Development as shall have been identified as necessary as part of the Feasibility Study. The Owner hereby agrees that part of the Controlled Parking Zone Contribution may be applied towards the cost of parking controls within 20 metres of the main entrance to the Finchley Memorial Hospital.

'Development' means the development of the Land permitted by the Permission

'Feasibility Study' means the Council's consultation with the community and other stakeholders to explore the need for parking controls within the vicinity of the Development to inform corporate policies and priorities in accordance with prevailing Council practice and in addition to any statutory requirements

'Feasibility Study Contribution' means the sum of £10,000 (Ten Thousand Pounds) Index Linked towards a Feasibility Study to explore the need for

parking controls within the vicinity of the Development which shall include consultation with the public

'Highway Contribution' means the sum of £20,000 (twenty thousand pounds) Index Linked towards securing improvements to the pedestrian environment within the vicinity of the Land including upgrading the tactile paving at the junction of Granville Road and Bow Lane Finchley N12

'Index' means the "all items" Retail Prices Index published by the Office for National Statistics or any successor ministry department or organisation or (if such Index is at the relevant time no longer published) such other comparable Index or basis for indexation as the parties may agree

'Index Linked' means the product (if any) of the amount of contributions payable under this Agreement multiplied by A and divided by B where "A" is the most recently published figure for the Index prior to the date of the payment and "B" is the most recently published figure for the Index at the date of the Agreement

'Implementation' means implementation of the Permission as defined in section 56 of the 1990 Act

'Land' means the land edged red on the Site Plan and more particularly described in the First Schedule

'Monitoring Contribution' means the sum of £2,400 (two thousand four hundred pounds) Index Linked towards the Council's costs in monitoring the obligations under this Agreement

'Occupation' means the first date upon which any part of the Development is physically occupied for the first time other than for the purposes of construction and fitting-out works and 'Occupied' and cognate expressions will be interpreted in accordance with this definition.

'Permission' means the planning permission granted pursuant to the Application together with any modification made thereto with the consent of the parties to this Agreement

'Site Plan' means the plan annexed to this Agreement

'Travel Plan' means a scheme that is compliant with the framework of the Travel Plan set out in the Second Schedule to be approved by the Council and which may from time to time be varied with the written consent of the Council

'Travel Plan Contribution' means the sum of £5,000 (five thousand pounds) Index Linked towards the Council's costs in monitoring the objectives of the Travel Plan

1.2 Where the context so requires:

- (a) the singular includes the plural;
- (b) references to any party shall include the successors in title of that party;
- (c) where a party includes more than one person any obligations of that party shall be joint and several;
- (d) references to clauses and schedules are references to clauses in and schedules to this Agreement; and
- (e) save as otherwise provided in this Agreement any approval in writing or consent to be given by the Council under this Agreement shall not be unreasonably withheld or delayed

2. Legal Effect

2.1 This Agreement is made pursuant to Section 106 of the 1990 Act and Section 111 of the Local Government Act 1972 to the intent that it shall bind the Owner and his successors in title to each and every part of the Land and his assigns as provided in those sections

- 2.2 This Agreement is also made pursuant to Section 38 and 278 of the Highways Act 1980
- 2.3 The covenants hereinafter contained are planning obligations for the purposes of Section 106 of the 1990 Act
- 2.4 This Agreement is also entered into by the Council pursuant to Section 2 of the Local Government Act 2000 as being expedient for the purposes of improving the economic social or environmental wellbeing of the area
- 2.5 The Council is the local planning authority by whom the obligations are enforceable
- 2.6 No person or company shall be liable for any breach of this Agreement unless he or it holds an interest in the part of the Land in respect of which such breach occurs or held such an interest at the date of the breach
- 2.7 Except for the covenants in clauses 2.11 and 3.1 (which take effect from the date of this Agreement) the other covenants in this Agreement shall take effect when the Permission has been granted and implemented by Commencement of Development
- 2.9 If the Permission expires within the meaning of Section 91 of the 1990 Act or is revoked or otherwise withdrawn or modified by any statutory procedure without the consent of the Owner or its successors in title this Agreement shall cease to have effect
- 2.10 Nothing in this Agreement shall be construed as prohibiting or limiting any right to develop any part of the Land in accordance with a planning permission granted by the Council or by the First Secretary of State on appeal or reference to him after the date of this Agreement
- 2.11 The Owners shall pay the Council's reasonable and proper legal costs and professional fees for the preparation and completion of this Agreement

3. Covenants

- 3.1 The Owner covenants with the Council to give not less than 14 days prior written notification to the Council's Director of Planning Housing and Regeneration (or such other officer as may be advised to the Owner) of the intended date of implementation of the Permission
- 3.2 The Owner covenants with the Council to pay the Contributions in their entirety to the Council (Index Linked as above) as follows:
- 3.2.1 As to the Bus Stop Improvement Contribution within 28 days of Implementation of the Permission;
- 3.2.2 As to the Controlled Parking Zone Contribution within 28 days of receipt of a written notice from the Council that the Controlled Parking Zone is to be implemented by the Council;
- 3.2.3 As to the Highway Contribution within 28 days of Implementation of the Permission;
- 3.2.4 As to the Monitoring Contribution within 28 days of Implementation of the Permission;
- 3.2.5 As to the Feasibility Study Contribution within 28 days of Implementation of the Permission;
- 3.2.6 As to the Travel Plan Contribution one month prior to Occupation.
- 3.3 The Council hereby covenants with the Owner that it will repay to the Owner such amount of any Contribution made by the Owner to the Council under this Agreement which has not been expended in accordance with the provisions of this Agreement after five years from the date of receipt by the Council, together with interest at the Co-Operative Bank plc base rate from time to time for the period from the date of payment of the relevant Contribution to the date of refund by the Council.

- 3.4 If the Owner shall fail to pay the Contributions due under this Agreement or any part of them is not paid on the due date the Owner shall pay the Council interest at the rate 4% above the base lending rate of the Co-operative Bank plc or such other bank as the Council may designate on any unpaid amounts of the Contributions from the date when they were due to the date on which they are paid to the Council
- 3.5 Nothing in the preceding clause shall entitle the Owner to withhold or delay any payment of the Contributions due under this Agreement after the date upon which they fall due or in any way prejudice affect or derogate from the rights of the Council in relation to non-payment
- 3.6 The Council covenants with the Owner to use the Contributions and any interest accrued thereon for the purposes set out in the interpretation clause of this agreement
- 3.7 The Council covenants, following performance and satisfaction of all of the obligations contained in this Deed, to cancel all entries made in the Register of Local Land Charges in respect of this Deed
- 3.8 The Owner further covenants with the Council to :
- 3.8.1 Submit a draft Travel Plan to the Council and obtain approval to the same from the Council prior to the date of Occupation of the Development
- 3.8.2 Following discussions with the Council revise the draft Travel Plan to incorporate any reasonable comments made by the Council and agreed by the Owner within 6 weeks of submission to the Council of the draft Travel Plan
- 3.8.3 Promote and publicise the agreed Travel Plan within 2 months of approval and within 2 months of Occupation

- 3.8.4 Appoint a Travel Plan Co-ordinator to implement the Travel Plan such appointment to be made for five years
- 3.8.5 Implement the Travel Plan by the dates or within the time limits set out in the Action Plan section of the Travel Plan
- 3.8.6 Undertake a consultation process within 6 months from the date of implementation of the Travel Plan
- 3.8.7 Review the Travel Plan annually on or around the first, second, third and fourth anniversaries of the date that the Travel Plan is implemented pursuant to the provisions of this Agreement in accordance with the targets set out in the Travel Plan and submit a copy of the findings of the review to the Council for approval

3.9 The Council hereby covenants with the Owner that it will:

- 3.9.1 notify the Owner submitting the draft Travel Plan of any proposed amendments which the Council reasonably requires to the draft Travel Plan within one month of receiving the draft Travel Plan; and
- 3.9.2 approve the draft Travel Plan in writing as soon as possible and in any case within one month of receiving the draft Travel Plan in the event of the Council not wishing to put forward any amendments as set out in clause 3.9.1 above or within one month of the Council receiving the amended draft Travel Plan incorporating the amendments requested pursuant to clause 3.9.1

4 Change in Ownership

The Owner covenants with the Council to give the Council immediate written notice of any change in ownership of any of its interests in the Land occurring before all the obligations under this Agreement 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 Land or unit of occupation purchased by reference to a plan

5 Arbitration

Any dispute or difference arising between the parties with regard to their respective rights and obligations as to any matter or thing in any way arising out of or connected with this Agreement shall be referred to the decision of a single arbitrator to be agreed by the parties or failing agreement between them to be nominated by the President for the time being of the Royal Institution of Chartered Surveyors as the case may be and any such reference shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 1996 or any statutory modification or re-enactment for the time being in force

6. Third Parties

Without prejudice to the definitions of "Council" and "Owner" given in this Deed, it is not intended that this agreement should give rights hereunder to a third parties arising solely by virtue of the Contract (Rights of Third Parties) Act 1999.

7. Notices

7.1 All notices, requests, demands or other written communications to or upon the respective parties hereto pursuant to this Deed shall be deemed to have been properly given or made if dispatched by recorded delivery to the party to which such notice, request, demand or other written communication is to be given or made under this Deed and addressed as follows:

(a) to the Council at:

North London Business Park, Building 4, Oakleigh Road South, London
N11 1NP

For the attention of Director of Planning Housing and Regeneration

(b) to the Owner at:

Westgate House
Edgware Community Hospital, Burnt Oak Broadway, Edgware,
Middlesex HA8 0AD

For the attention of Neil McElduff

7.2 Either party to this agreement may change its nominated address by prior notice to the other party.

IN WITNESS of which the parties have signed and sealed this Agreement as a Deed
on the date first written above

FIRST SCHEDULE

(The Land)

Finchley Memorial Hospital, Granville Road, London N12 0JE as is registered at the Land Registry with title absolute under Title Numbers AGL143868, MX444588 and MX421119 shown for identification purposes edged red on the Site Plan.

SECOND SCHEDULE

THE FRAMEWORK OF THE TRAVEL PLAN

1. The main purpose of the Travel Plan is to reduce single occupancy car travel to and from the Land by imposing controls and incentives in respect of the transport of all persons including staff guests visitors and deliveries to and away from the Land
2. The Travel Plan will outline measures designed to encourage all staff and visitors to use means of transport other than the car for journeys to and away from the Land and to promote high occupancy of vehicles used in accordance with the objectives in paragraph 4
3. The Travel Plan will incorporate the appointment of a Travel Plan Co-ordinator
4. Objectives

The Travel Plan will be designed to meet the following overall objectives

- Prevent parking on the road network adjoining the Land and the areas surrounding it
- Reduce car dependency
- Optimise car occupancy

- Encourage a co-ordinated approach to ensure that the maximum opportunities exist for collective staff travel habits (for example car sharing)
- Manage travel demand as efficiently as possible
- Promote opportunities for access by non-car modes for staff guests and visitors
- Develop car sharing priority policy to allocate spaces for car sharers in support of the objectives of the Travel Plan and organise staff to car share by setting up a car sharing process for staff
- Provide car sharing initiatives to be used as an effective way of minimising parking and improving environmental conditions with the Travel Plan Co-ordinator setting up a car sharing process for staff and visitors
- Maximise the opportunities for alternative non-car travel modes in particular bus usage
- Ensure that the allocation of all parking spaces is efficiently managed and in support of the objectives
- Investigation of the provision of a guaranteed lift home fund
- Provision of a survey of persons trips to and from the Land including the mode of travel
- Provision of a survey of parking availability within the Land and at the following local roads; Granville Road, Bow Lane, Graywood Court, Holdenhurst Avenue and Queens Avenue
- Provision of an information pack to new staff showing all public transport pedestrian and cycle links to and from the Land with such information packs including timetables route maps and other information relating to local bus services and links to local underground and rail services

- Provision of appropriate on-site facilities such as cycle storage changing rooms and staff showers to encourage use of walk and cycle modes by staff and visitors
 - Provide initiatives for promoting walking and cycling which identify suitable routes to and from the Land within the vicinity and surrounding area and thereby encourage local journeys to be made on foot or cycle
 - Promotion and provision of information on the web on how to get to the Land by all modes of transport.
 - Organisation of a co-ordinated approach of deliveries, to ensure that peak times are avoided
5. The Travel Plan shall also include measures to ensure the effective monitoring of :
- The number and availability of car parking spaces used by persons employed at or visiting the Finchley Memorial Hospital
 - a) on-site in allocated spaces;
 - b) on-site in areas outside the allocated spaces; and
 - c) at the following neighbouring roads; Granville Road, Bow Road, Graywood Court, Holdenhurst Avenue and Queens Avenue
 - The number of person trips to and from the Land:
 - d) in single occupancy vehicle
 - e) by travel mode
 - f) by time of day
 - g) by duration of stay
6. The Travel Plan will outline the program for the implementation of the

Measures and shall contain measures and targets for the monitoring of the way in which the objectives outlined in the preceding clauses are being met

THE COMMON SEAL OF THE MAYOR)
AND BURGESSES OF THE LONDON)
BOROUGH OF BARNET was hereunto)
affixed in the presence of:-)



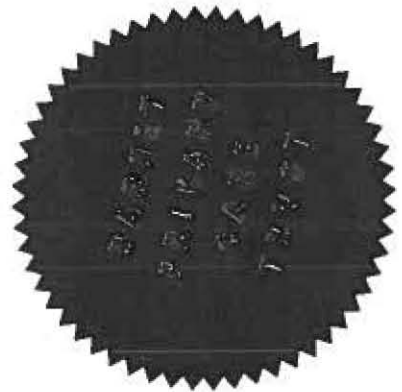

Head of Legal

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Acting Democratic Services Manager

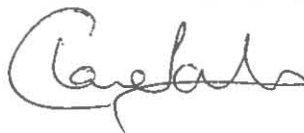
The Common Seal of)
BARNET PRIMARY CARE)
TRUST was hereunto affixed in)
the presence of:)



Authorised signatory



Authorised signatory



DATED 9th April 2010

BETWEEN:

THE MAYOR AND BURGESSES OF
THE LONDON BOROUGH OF BARNET

- and -

BARNET PRIMARY CARE TRUST

AGREEMENT

made pursuant to Section 106 of the Town
and Country Planning Act 1990 and
associated powers relating to the
development of land at Finchley Memorial
Hospital Granville Road London N12 0JE

M A Martinus LL.B (Hons.)
Head of Legal
North London Business Park
Oakleigh Road South
London N11 1NP