

SELBY

IN THE VALE OF YORK

Selby District Council

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15th December, 2005

Dear Mr. Evans,

Tadcaster Town Centre

I refer to all previous correspondence and discussions on this matter and in particular to our telephone on the 14th December, 2005. As you are well aware, the Council's Full Council meeting considered this matter at their meeting on the 13th December, 2005 and resolved that an Agreement under Section 106 of the Town and Country Planning Act 1990 should be signed with Samuel Smiths Old Brewery (Tadcaster) to include the following main points:-

- (I) The District Council's planning permission for the Central Area Car Park be quashed by agreement between the parties with both parties paying their own costs;
- (II) The Brewery will provide fifty new residential units in Tadcaster before the end of December 2008 such units being either new build structures or the renovation of existing buildings but in either instance a residential unit will be provided where no residential unit is in existence at the present time, such dwellings to be offered for occupation by 31st December 2008;
- (III) The freehold interest of the Central Area Car Park and 43 Kirkgate, Tadcaster, be transferred to the ownership of Samuel Smiths Old Brewery (Tadcaster) on a valuation to be determined by an independent valuer but only when the refurbishment works on the car park, the provision of the new toilet block and fifty residential properties has occurred. This work to be completed by the 31st December 2008;
- (IV) If, without reasonable cause, the works are incomplete by 31st December 2008 the Agreement shall cease;
- (V) A Licence is entered into for a period of eighty years to enable the District Council to continue to run the market in Tadcaster on land which will be within the ownership of Samuel Smiths Old Brewery (Tadcaster);
- (VI) A Lease for a period of eighty years be entered into between the District Council and the Brewery in respect of the location of the toilet block on land within the ownership of the Brewery;



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- (VII) The council will pay £60,000 towards the cost of the new toilet block to include the construction of the shell, the cost of the unit and the cost of installation of the services required;
- (VIII) On the signing of the Section 106 Agreement a letter be sent to North Yorkshire County Council, confirming this event has occurred and explaining as part of the proposals the Brewery would wish to purchase land known as the 'corner plot' at the junction of High Street and Chapel Street, Tadcaster and the District Council would support the sale of that land to the brewery if North Yorkshire County Council would so wish;
- (IX) On the signing of the Section 106 Agreement, a letter also be sent to North Yorkshire County Council confirming this event and indicating that Selby District Council would agree not to raise any objection to a road traffic scheme agreed between North Yorkshire County Council and the Brewery for this particular scheme;
- (X) To be agreed that properties 20, 22, 24A and 24B St. Joseph Street, Tadcaster be allocated for residential development, for affordable housing. The design of these properties to be in keeping with properties already, or to be built, in that area;
- (XI) That when the Agreement is in its final form that Counsel's Opinion be taken with regard to the content of the documentation as a final check to safeguard the Authority's position;

We have, of course, as the legal representatives of our respective clients been seeking to agree the Section 106 Agreement, and documents referred therein for some considerable time. Throughout that period both of us have made it clear that any final Agreement will be subject to confirmation by our respective clients being Samuel Smiths Old Brewery (Tadcaster) and Selby District Council acting through its Full Council meeting. It was always, and still remains the prerogative of each client to seek to put forward amendments to the Agreement until such time as the documents are actually signed. Looking at the main points which have now been resolved by the District Council, I make the following further comments on those resolutions:-

- (I) This appears to be in accordance with our discussions;
- (II) The Members have added on some additional words to the effect that the fifty dwellings should be offered for occupation by the 31st December, 2008. Although this is an additional requirement, I hope that this will not prove onerous and can be accepted but look forward to receiving your comments Please see definition of "Phase 3 on page 3";

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- (III) This is a new resolution put forward by Members and in looking at the Section 106 Agreement, it appears to be at variance with it. Under Clause 7 on page 7 there is a requirement on the Developer (subject to Clause 13) to use its reasonable endeavours to complete phase 1 by the later of the end date and the extended end date. The Members have decided that the work should be carried out by the "end date" and not "the extended end date". Clause 13 contains the force majeure and also goes on to put forward reasons why the end date and extended end date can be extended under paragraph 13.2. On looking at the Agreement, you have obviously taken the view that the 31st December, 2008 deadline can be extended for a period of three years from the date on which the last of the Closure and Traffic Orders necessary for the implementation of the Developer's traffic regulation scheme is made by North Yorkshire County Council. Given that that scheme has not yet been determined and presumably will not be determined until some time in 2006 inevitably in accordance with the existing Section 106 Agreement the implementation period will extend beyond December 2008 which is not the wishes or indeed in accordance with the resolution of Members of the Authority. Please see my amendments to Clause 7 on page 8 and Clause 13.2 on page 9;
- (IV) As (III) above;
- (V) This is in accordance with our discussions;
- (VI) This is in accordance with our discussions;
- (VII) Despite our discussions with regard to increasing the District Council's commitment to pay money for the purposes of the construction of the toilet block, the Members have decided that the District Council's total expenditure should be in the sum of £60,000. This is at variance with our recent discussions when, at Officer level, I was advised that a sum of £70,000 might be acceptable but this was, of course, always subject to Member approval and unfortunately they are only prepared to pay £60,000. Please see Clauses 10.1 and 10.2 on page 8;
- (VIII) This would appear to be in accordance with our discussions;
- (IX) This would appear to be in accordance with our discussions;
- (X) This is at variance with our discussions and I will refer you to paragraph 11.2 of the Section 106 Agreement. Members of the Authority are happy for this site to be subject to a residential housing scheme for affordable housing but were not prepared to agree to the Developer being paid to design the scheme on behalf of the District Council. Please see Clause 11.2 on page 8;


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- (XI) If we are able to agree the Section 106 Agreement to take into account Members' resolutions as indicated above, it was the wish of Members that the final documentation should be put before a Barrister appointed by the District Council, as a final safeguard of the District Council's position to ensure that the Agreement is a sound one in the interests of the Authority.

I return herewith the Section 106 Agreement with some amendments, to take into account the points as made by the Members of the Authority and look forward to hearing from you as soon as possible with a view to progressing matters.

Yours sincerely,


Head of Legal Services

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