

DATED

4th June

1995

69

AGREEMENT

under

SECTION 106 TOWN & COUNTRY PLANNING ACT 1990

B E T W E E N

GILLINGHAM BOROUGH COUNCIL

and

THE URBAN REGENERATION AGENCY

and

COUNTRYSIDE MARITIME LTD

and

THE KENT COUNTY COUNCIL

ST MARY'S ISLAND, GILLINGHAM
(Educational Facilities)

(cjillf/agreements/jb/country-1)

THIS AGREEMENT is made the *Fourth* day of *June*
One thousand nine hundred and ninety-five ~~five~~ BETWEEN GILLINGHAM BOROUGH
COUNCIL of Municipal Buildings Gillingham in the Country of Kent of the
first part and THE URBAN REGENERATION AGENCY of St Georges House Kingsway
Team Valley Gateshead Tyne and Wear NE11 0NA of the second part and
COUNTRYSIDE MARITIME LIMITED whose registered office is situate at
Captain's House Pembroke Chatham Maritime Chatham Kent ME4 4UF of the third
part and THE KENT COUNTY COUNCIL of Springfield Sandling Road Maidstone
Kent of the fourth part

DEFINITIONS

(1) Wherever the context so permits the following words and phrases shall have the meanings herein attributed to them:-

- "the Council" The said Gillingham Borough Council and its successors in title
- "the Owner" The said Urban Regeneration Agency and their successors in title
- "the Developer" The said Countryside Maritime Limited
- "the Education Authority" The said Kent County Council
- "the Land" Land situated at St Mary's Island Gillingham in the County of Kent all of which land is shown edged Red on the Plan appended hereto
- "the Development" The erection of up to 1700 dwellings together with community, educational and commercial areas and associated open spaces highway and service infrastructure on the land
- "the Application" The planning application seeking outline planning permission for the Development bearing Local Authority Reference Number 93/0730GL

"the Planning
Permission"

The permission to be granted by way of approval of
the application

"the School"

This term shall mean a 1-Form Entry primary school
which shall be capable of being enlarged to a 2-Form
Entry primary school and associated educational and
recreational facilities

(2) Where the context so admits:-

(a) words of the masculine gender shall incorporate the
feminine gender and words of the singular shall include the
plural and vice versa

(b) the reference herein to any statute or section of a
statute includes any statutory re-enactment or modification
thereof

W H E R E A S :-

(1) The Council is the appropriate Local Planning Authority for the
purposes of Part III of The Town and Country Planning Act 1990 (as amended)
(hereafter 'The 1990 Act') in respect of the area which includes the Land

(2) The Owner is the Registered proprietor with Title Absolute of
the Land registered at H M Land Registry under Title Number K606638

(3) The Developer submitted the Application to the Council for
approval and subject to an agreement with the Owner will undertake the
development of the Land in accordance with the Planning Permission

(4) The Kent County Council is the appropriate local Education
Authority for the purposes of the Education Acts 1944-1994

(5) The Application was submitted to the Council on 10th November
1993

(6) The Council has indicated its willingness to grant the Owner
conditional outline Planning Permission in response to the Application
provided that the Owner the Developer and the Education Authority first

enter into a binding agreement with the Council pursuant to Section 106 of the 1990 Act for the purposes of permanently restricting or regulating the development of the Land as referred to above

(7) The Owner hereby warrants that it has obtained all necessary permission and consents required from any mortgagee covenantee or other person to them entering into this Agreement

NOW THIS DEED WITNESSETH as follows:-

1. THIS AGREEMENT is made pursuant to the provisions of Section 106 of the 1990 Act and the obligations created by this Agreement are planning obligations for the purposes of the said Section 106 and both the positive and restrictive covenants and undertakings herein on the part of the Owner are entered into with the intent that the same shall be binding on and enforceable jointly and severally without limit of time not only against the Owner but also against the successors in title of the Owner and any person claiming through or under the Owner to the Land or any part thereof as if that person had also been an original covenanting party in respect of the interest for the time being held by him

2. THE Owner covenants and undertakes for itself and its successors in title with the Council pursuant to Section 106 of the 1990 Act to perform the obligations specified in Part I of Schedule 1. The parties to this Agreement expressly agree that the provisions of the First Schedule hereto provide a means for the Developer to comply with the requirements of condition 33 of the Planning Permission and that subject to the School having been constructed in compliance with the requirements of the First Schedule hereto the Developer will have complied with its obligations under the said condition 33

3. THE Owner also covenants to pay the Council's costs in connection with the preparation and completion of this Agreement in the sum of £200

4. THE Education Authority covenants and undertakes for itself and its successors in title with the Owner the Developer and the Council to perform the obligations specified in Part II of Schedule 1

5. THE Council hereby covenants that upon the execution of this Agreement it will grant the Planning Permission in the form set out in Schedule 2 hereto

6. (i) The coming into force of this Agreement is conditional upon both:

(a) the grant of the Planning Permission, and

(b) the beginning of the Development by the carrying out of a material operation in accordance with the provisions of Section 56 of the 1990 Act

(ii) The Developer hereby undertakes to the Council to serve written notice upon the Council advising it of the date upon which the Development began within one month of the occurrence of the same

7. THIS Agreement is related to a further Agreement under Section 106 of the 1990 Act of even date herewith and made between the Council the Owner and the Developer and which relates to the provision of affordable housing and public access to open space amenity areas

8. NOTHING in this Agreement shall be construed as restricting the exercise by the Council of any powers exercisable by it under the 1990 Act or under any other Act PROVIDED ALWAYS that this Agreement shall remain in full force and effect notwithstanding the terms and conditions of any planning permission which may be or has been at any time issued by the Council or any other appropriate person or Authority pursuant to the provisions of the said Act or any statutory amendment or re-enactment thereof

9. THE terms and conditions of this Deed shall be capable of being varied by a supplemental Agreement executed by the parties hereto or by a

memorandum in writing executed by or on behalf of the parties hereto (and endorsed hereon)

10. THE Owner the Council and the Education Authority HEREBY MAKE APPLICATION to the appropriate Registrar of Local Land Charges for registration of this Agreement pursuant to the provisions of the Local Land Charges Act 1975

11. NO party shall be liable for the breach of any obligation contained in this Agreement after he has parted with his interest in the Land or that part of the Land in respect of which the breach occurs but this is without prejudice to liability for antecedent breaches

12. ANY Notice to the parties hereto under this Agreement shall be deemed to be sufficiently served if delivered personally or sent recorded delivery service to the following officials/persons at the respective addresses hereinafter specified:-

In respect of the Council

The Deputy Town Clerk and Solicitor
Gillingham Borough Council
Municipal Buildings
Gillingham
Kent
ME7 5LA

In respect of the Owner and the Developer

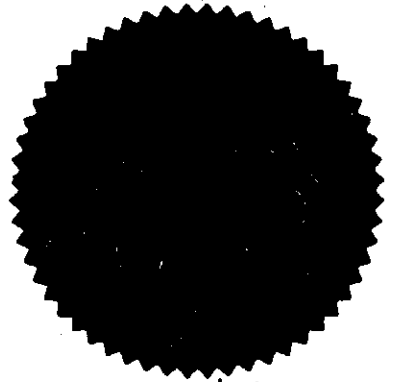
English Partnerships and
Countryside Maritime Ltd
Captain's House
Pembroke
Chatham
Kent
ME4 4UF

In respect of the Education Authority

The Director of Legal Services
Kent County Council
County Hall
Maidstone
Kent

IN WITNESS whereof the Council the Owner the Developer and the Education Authority have hereunto affixed their respective Common Seals the day and year first before written

THE COMMON SEAL of GILLINGHAM)
BOROUGH COUNCIL was hereunto)
affixed:-)

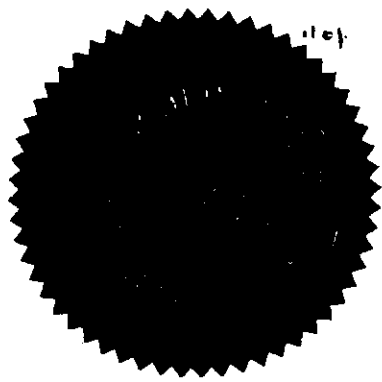


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Countersigned

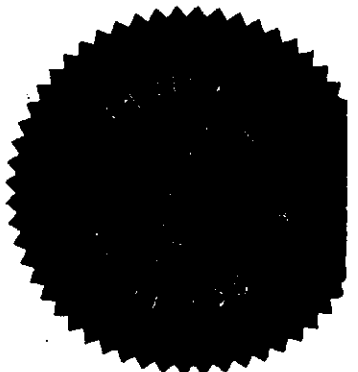
Deputy Town Clerk and Solicitor

EXECUTED AS A DEED for and on)
behalf of THE URBAN)
REGENERATION AGENCY (known as)
ENGLISH PARTNERSHIPS) by its)
duly authorised officer:)



Authorised Officer

THE COMMON SEAL of)
COUNTRYSIDE MARITIME LIMITED)
was hereunto affixed in the)
presence of:-)

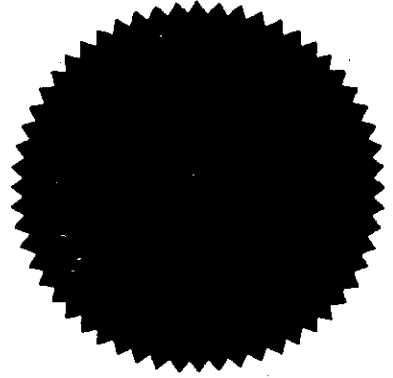


Director

Director
~~Secretary~~

D. B. Shullon

THE COMMON SEAL of THE KENT)
COUNTY COUNCIL was hereunto)
affixed in the presence of:-)



W. H. Amson

Authorized Signatory

FIRST SCHEDULE

EDUCATIONAL FACILITIES

PART I

1. The Owner shall within 12 months of the date of this Agreement identify a site suitable to meet the statutory minimum requirements of the Education (School Premises) Regulations 1981 or any amendment thereto for a 2FE Primary School and obtain the approval of the Education Authority to its suitability as to location, shape, stability and availability of access capable of adoption and of all necessary services to the site. The said approval of the Education Authority shall not be unreasonably withheld or delayed. The Owner shall be responsible for the maintenance of the access until such time, if at all, that the access is adopted.
 - 1.1. For the benefit of the parties involved the current statutory minimum requirement under these Regulations is for a site of 2.2 hectares to include provision for a nursery unit assuming a site of reasonable levels and of a shape satisfactory to fit in the various components of a Primary School.
 - 1.2. For the benefit of the parties involved it is understood that the School may be a voluntary aided School and that the construction of the School may be carried out by the Incorporated Rochester Diocesan Board of Education as the promotor of the School.
2. The Education Authority shall be entitled to request the Owner to transfer the approved site to it once it has secured the funding and the approvals referred to in paragraph 6 below. Within 3 months of the Education Authority requesting the transfer of the approved site, the Owner shall transfer the freehold interest in the site with vacant possession for a consideration of £1.

3. If the construction of the School has not commenced within 2 years of the transfer the site shall on demand by the Owner be re-transferred to the Owner for a consideration of £1.
4. Within 3 months from the date of this Agreement the Education Authority will agree an indicative programme for the building of the School with the Owner, such programme being subject to the funding and approvals required in paragraph 6 of this Schedule being obtained.
5. The Council will be consulted on the details of the proposed School building during the preparation of the detailed design.

PART II

6. The Education Authority will use its best endeavours to obtain funding and the necessary statutory approvals for the School by 31 ~~December~~ ^{September} 1995 and on receipt thereof will complete the construction of the School prior to the first occupation of the 300th dwelling or at such other time as the Education Authority shall notify to the Owner and the Council.
7. In the event that the Education Authority is unable to obtain the said funding and approvals for the School by 31 December 1995 it agrees that it will continue to use its best endeavours to obtain funding in the next and subsequent years.
8. In this Schedule the expression "best endeavours" shall mean obliging the relevant party to take all those reasonable steps which a prudent and determined person or company acting in his or its own best interests and anxious to achieve the stated objective would take but shall not oblige the relevant party to pay or incur an obligation to pay any money other than professional fees and disbursements (and VAT thereon).