

S461

DATED 6th November 1998

WARWICK DISTRICT COUNCIL

- and -

BEAZER HOMES

- and -

NATIONAL HOUSE BUILDING COUNCIL

- and -

GALLAGHER ESTATES LIMITED

ADJP/D110.99

A G R E E M E N T

under Section 38 of the Highways Act 1980
relating to roads at Heathcote Home Farm, Warwick.

Head of Legal Services
Warwick District Council
Town Hall
LEAMINGTON SPA
Warwickshire

A N A G R E E M E N T made the 6th day of November One thousand nine hundred and ninety-eight B E T W E E N WARWICK DISTRICT COUNCIL of the Town Hall Leamington Spa in the County of Warwick (hereinafter called "the Council") of the first part Beazer Homes whose registered office is situate at St. James House, The Square, Lower Bristol Road, Bath, BA2 3SB (hereinafter called "the Developers" which expression where the context so admits shall include their successors and permitted assigns) of the second part and National House Building Council whose registered office is situate at Buildmark House, Chiltern Avenue, Amersham, Buckinghamshire, HP6 5AP (hereinafter called "the Surety") of the third part and Gallagher Estates Limited whose registered office is at Gallagher House, 51 Bordesley Green, Birmingham, B9 4QS (hereinafter called "Gallagher") of the forth part

WHEREAS:-

- (1) Gallagher seised (inter alia) in fee simple in possession of the land situate at Heathcote Home Farm in the County of Warwick shown coloured brown green and yellow being the site of certain private carriageways verges and footways (hereinafter collectively referred to as "the roads") and which are shown on the plan annexed hereto (hereinafter called "the plan")
- (2) The Developers intend to make the roads for public use across the said piece of land in the positions indicated on the plan and desire that the said roads shall on completion become highways maintainable at public expense
- (3) This Agreement relates to the making of a highway and is made and entered into pursuant to the provisions of the Highways Act 1980
- (4) Insofar as this Agreement is entered into pursuant to Section 38 of the Highways Act 1980 the Council acts as agent for Warwickshire County Council

being the Highway Authority

N O W in pursuance of Section 38 of the Highways Act 1980 and of all other powers (if any) enabling the Council IT IS HEREBY AGREED AND DECLARED between the parties hereto as follows:-

Time for
commencement
and completion of
development

1. THE Developers will diligently at their own expense commence the construction of the roads and complete the same within the period of THREE YEARS from the date of this Agreement or such extended period as may be agreed

Mode of
construction

2. The roads shall be properly sewered levelled paved flagged metalled channelled kerbed and otherwise made good and provided with means of lighting (including the landscaping and/or turfing of verges where indicated on the plan) All such works of construction maintenance and repair of the Roads to be carried out in all respects to the reasonable satisfaction of the Engineer and Surveyor for the time being of the Council (hereinafter called "the Engineer") or other officer designated by him for that purpose and in accordance with

(a) the plans annexed to this agreement and numbered

Drawing No. 11520/100 Rev D

Drawing No. 11520/101 Rev E

Drawing No. 11520/103 Rev E

Drawing No. 11520/105 Rev A

(b) the Council's current specification

(c) any condition imposed in the Planning Permission relating to the construction of the roads

(d) any further reasonable directions given by the Engineer to the Developers

Provisional
certificate of
completion

3. (1) Upon completion of the roads in accordance with the provisions herein contained the Developers shall notify the Engineer who shall as soon as reasonably possible cause the works to be inspected and shall if the Developers have completed the same to his reasonable satisfaction issue a provisional certificate of completion

Dedication for
public use

- (2) Upon the issue of the provisional certificate of completion the roads shall be opened by the Developers for uninterrupted use by the public

Period of
maintenance

4. THE Developers will at their own expense diligently make good any defect or damage which shall arise or become manifest in the roads during the period of one year from the date of the provisional certificate of completion given by the Engineer

Statutory
undertaker's
apparatus

5. (1) The Developers will in the course of the work and subject as hereinafter provided cause all gas and water mains and electricity and British Telecom cables to be laid under the roads and will ensure that the gas and water service pipes and electricity service cables are laid to the boundaries on either side thereof at such points as shall first be agreed by the Engineer before the final surfacing (if any) is carried out

Plan showing
position of
apparatus

- (2) Before carrying out any of the work referred to in the preceding sub-clause the Developers will furnish to the Engineer a plan or plans showing the positions of the said apparatus together with such additional information in relation thereto as the Engineer may reasonably require

Consent to
statutory
undertaker's
and others'
apparatus
on or under
the roads

6. THE Developers shall not without first obtaining the written consent of the Engineer at any time give consent to
- (a) British Telecom to erect on or lay under the roads and the land sites thereof any telegraph posts or telegraph cables or any apparatus of like or

ancillary thereto

(b) any person or concern including a statutory undertaker as defined by the Highways Act 1980 to lay or install in or under the roads any pipes cables tanks cisterns manholes or other thing whatsoever

The
commencement
and occupation
of dwellings

7. (1) Before commencement of the construction of any dwelling fronting on to any road the Developers shall complete the base course of the carriageway of the road fronting the dwelling together with the base course of such other lengths of carriageway as are necessary to provide access to and from the said dwelling and the public highway shown on the plan
- (2) In addition to the foregoing before any dwelling fronting on to any road is occupied the Developers shall construct the base course of the footpath in front of the said dwelling together with the base course of such other lengths of footpaths as are necessary to provide pedestrian access to and from such dwelling and the public highway shown on the plan
- (3) Following the occupation of any such dwelling as aforesaid the remainder of the works above referred to in sub-clauses (1) and (2) of this Clause that is to say the completion of the carriageways and the footpaths shall be carried out to the satisfaction of the Engineer within such reasonable period as the Engineer shall stipulate or (if no such period is stipulated) within the period provided in Clause 1 hereof
- (4) No dwelling shall be occupied before lamp columns are provided along the roads leading to such dwelling connected to the mains and ready for lighting in accordance with the approved plan

Access for
purposes of
inspection
of works

8. THE Developers shall permit the Engineer or any person or persons authorised by him free access at all times with or without vehicles to every part of the site of the works and of any adjoining or adjacent land in the ownership or under the control of the Developers for the purposes of inspecting the works and in particular without prejudice to the generality of the foregoing provisions of this Clause the Developers shall permit the Engineer or such person or persons authorised by him as aforesaid to bore test holes and take away samples for analysis

Repair of
defects arising
during
progress of
work

9. THE Developers will until the roads become as hereinafter provided maintainable at the public expense keep the whole of the works in a good state of repair and condition and will reinstate and make good any defects which shall or may appear arise or become manifest to the Engineer and the Engineer may until the roads shall become maintainable at public expense require the Developers to make good any portion of the works which he reasonably considers to be defective and require reconstruction or rectification of the same by the Developers

Failure to
complete works

10. (1) In the event of the failure for any reason whatsoever of the Developers to commence or if commenced to complete the construction of the roads in the manner aforesaid within the time or extended time hereinbefore mentioned or of their failure to maintain the roads to the satisfaction of the Engineer for the period hereinbefore provided after completion the Council shall (after a notice in writing of their intention so to do) have the right to complete such work or any part thereof and charge the expenses thereof against the Developers such expenses being a debt due to the Council and recoverable by the Council by action or otherwise
- (2) In the event of such failure on the part of the Developers as aforesaid the Council shall prepare a specification of the works required to complete

the roads (or parts of the roads referred to in the Notice) in accordance with the terms of this Agreement together with an estimate of the cost thereof (including the Council's fees and expenses in connection therewith) and upon notice being given to the Developers of such specification and estimate of cost the sum specified in the estimates shall forthwith become due and payable by the Developers to the Council

(3) Upon completion by the Council of the works referred to in sub-clause (2) hereof the Engineer shall issue a certificate to the Developers of the cost thereof. If such cost shall be less than the sum paid under sub-clause (2) then the difference shall be repaid by the Council to the Developers and if such cost shall exceed the sum so paid then the difference shall be due and payable by the Developers to the Council

Issue of final
certificate and
adoption
procedure

11. (1) If after the expiry of one year from the date of provisional certificate of completion herein before referred to or after expiry of six months from the execution of any final reinstatements subsequent to statutory undertakers works in the roads whichever is later the Engineer is satisfied in all respects that the works or the parts thereof that form the subject matter of such certificates have been properly completed and maintained by the Developers and that all defects arising and all reinstatements after statutory undertakers works have been properly remedied and made good the Engineer shall issue to the Developers a final certificate of the completion of the works or the relevant parts thereof as the case may be and thereupon the road or the relevant part thereof in respect of which a final certificate has been issued shall become a highway maintainable at the public expense

(2) The conditions referred to in the preceding sub-clause are:-

- (a) the road of relevant part thereof abuts upon and communicates directly with a part of the highway maintainable at the public expense and
- (b) unless the Council shall agree otherwise (such agreement not to be unreasonably withheld or delayed) any sewer which is under the road shall have been adopted as a sewer maintainable by Severn Trent Water Limited
- (c) A certificate of completion has been issued by the Engineer pursuant to the provisions of the 278 Agreement (if applicable)
- (d) The County Fire Officer is satisfied that the Fire Hydrant provision has been laid out in accordance with his requirements and the associated costs have been paid by the Developer direct to Severn Trent Water Limited

Saver for
private street
works under the
Highways Act
1980

12. NOTHING in this Agreement shall restrict or fetter the rights of the Council upon either the termination of this Agreement or following a service of a notice under Clause 10 hereof to put into operation or have the works herein mentioned or any part of them carried out under the Private Street Works Code contained in the Highways Act 1980 or any Act or Acts replacing re-enacting or modifying the same

Power to Council
to determine
Agreement
in certain
events

13. IF the Developers shall fail to perform or observe any of their covenants or obligations under this Agreement or shall go into liquidation voluntarily or otherwise (except liquidation for the purpose of reconstruction) or shall execute a Deed of Assignment for the benefit of creditors or otherwise compound with creditors the Council may without prejudice to any of their rights or powers under this Agreement determine this Agreement forthwith by notice served on the Developers

Obligations of
Surety

14. IF the Developers shall fail to perform or observe any of the covenants or obligations under this Agreement or shall fail duly and regularly to proceed with the works to the satisfaction of the Engineer or if the Developers shall go into liquidation voluntarily or otherwise (except liquidation for the purpose of reconstruction) or shall execute a Deed of Assignment for the benefit of creditors or otherwise compound with creditors then without prejudice to any other rights or powers of the Council under this Agreement or under the Highways Act 1980 the Surety shall pay to the Council all costs charges expenses losses or damage payable by the Developers to the Council by virtue of this Agreement (including all costs and expenses incurred by the Council or their Contractors in carrying out or completing the works) and all such costs and expenses as the Council may sustain or incur or otherwise be entitled to under this Agreement by reason of or in consequence of any such default or liability on the part of the Developers provided that the total amount payable to the Council by the Surety shall not exceed £247,545.88 (Note: Amount inserted is the equivalent to the estimated cost of the works at the time of the entering into of the Agreement)

Indulgence
by Council
not to absolve
Surety

15. NO Alterations in the terms of this Agreement between the Council and the Developers or in the extent or nature of the works to be constructed completed and maintained hereunder and no allowance of time by the Council under this Agreement nor any indulgence forbearance or forgiveness in or in respect of any matter or thing concerning this Agreement on the part of the Council or the Engineer shall in any way release the Surety from its obligations hereunder

Insurance

16. THE Developers shall at their own expense effect insurance with an insurance company and in terms approved by the Council as follows:-

- (a) against any liability claims or proceedings whatsoever arising under statute or common law in respect of personal injury or death of any person arising out of or in the course of or caused by the execution of the works and
- (b) against any liability claims or proceedings whatsoever for injury or damage to any property real or personal either of the Council or of any other person insofar as such injury or damage arises out of or in the course of or by reason of the execution of the works

Indemnity by
Developers

17. THE Developers on behalf of themselves and their successors in title or assigns undertake and agree with the Council that in the event of any claim for compensation or otherwise or charges arising in connection with or incidental to the carrying out of any works under terms of this Agreement and not hereby otherwise provided for and until such time as the roads shall become repairable at the public expense they will hold the Council harmless and indemnified therefrom and against all claims charges costs and expenses in connection therewith or arising thereout and nothing in this Agreement shall imply any obligation on the part of the Council to the Developers or any other person to ensure the works are properly executed

Assignment

18. SUBJECT to Clauses 13 and 14 hereof the Developers shall not assign this Agreement or any part thereof or any benefit obligation or interest therein or thereunder without the written consent of the Council

Notices

19. ANY notice demand consent direction or provision for final certificate of completion required or authorised under this Agreement shall be deemed to be duly served given or issued on or to the Developers if it is

- (a) in writing
- (b) signed by the Engineer or other duly authorised officer of the Council for the purposes of service of notices

(c) addressed to the Developers at their registered office or last known address

(d) sent by post to or left at the Developers' registered office or last known address or is handed to the Developers' representative apparently in charge of the works

20. THE Developers will on the execution of this Agreement pay to the Council the Council's expenses and fees in connection with the inspections of the works and their other obligations under the terms of this Agreement amounting to £16,590.48 being a sum equivalent to £500.00 **plus** 6.5% of the estimated total cost thereof

21. Gallagher is party to this Agreement as landowner only and it is hereby agreed and declared that Gallagher shall have no obligation to the Council, the Developers or the Surety pursuant to this Agreement and the Developers hereby indemnify Gallagher in regard of all costs claims demands and other liabilities arising hereafter

IN WITNESS whereof the parties hereto have executed this instrument as their deed
the day and year first before written

THE COMMON SEAL of)
WARWICK DISTRICT COUNCIL)
was hereunto affixed)
to this deed in the)
presence of:-)


Authorised Officer



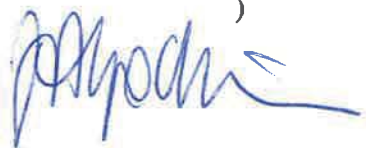
SIGNED as a DEED for and behalf
THE COMMON SEAL of)
BEAZER HOMES LIMITED)
was hereunto affixed to by COLIN)
this deed in the presence of:-)

MICHAEL HONAN and GRAHAM
ANTHONY GPF in exercise of
their power under a Power

Director
of Attorney dated 16th May
1998


Secretary

THE COMMON SEAL of)
NATIONAL HOUSE BUILDING COUNCIL)
was hereunto affixed to this)
deed in the presence of:-)


Authorised Sealing Officer

THE COMMON SEAL of)
GALLAGHER ESTATES LIMITED)
was hereunto affixed to this)
deed in the presence of:-)

Director

Secretary

