

THIS AGREEMENT is made the NINTH day of JULY 1997
B E T W E E N WELWYN HATFIELD DISTRICT COUNCIL of Council Offices
The Campus Welwyn Garden City Hertfordshire ("the Council") of the
first part and MIDLAND BANK TRUST COMPANY LIMITED ^{A/C 34049400} whose registered
office is at 27/32 Poultry London EC2P 2BX ("the Owner") of the
second part and TESCO PENSION TRUSTEES LIMITED whose registered
office is at Tesco House Delamare Road Waltham Cross Hertfordshire
("the Applicant") of the third part

Definitions and Interpretations

1. In this Deed unless the context otherwise requires the following expressions shall have the following meanings attributed to them:-

- 1.1 the Council Welwyn Hatfield District Council of Council Offices The Campus Welwyn Garden City Hertfordshire AL8 6AE
- 1.2 the Owner Midland Bank Trust Company whose registered Office is at 27/32 Poultry London EC2P 2BX
- 1.2.1 the Applicant Tesco Pension Trustees Limited whose registered office is at Tesco House Delamare Road Waltham Cross Hertfordshire
- 1.3 the Land All that freehold piece or parcel of land situate at ground floor 53 Howardsgate Welwyn Garden City Hertfordshire as contained in a lease dated 19.3.1954 as the same is more particularly shown by way of identification only edged in blue and hatched in blue on the plan annexed hereto marked "A"
- 1.3.1 the Site All that freehold piece or parcel of land and buildings situate at 51 - 57 Howardsgate and 33 Stonehills Welwyn Garden City which is shown for identification purposes only edged in red and part of which is also cross hatched in blue and in green on the plan annexed marked "A"
- 1.4 the Development the development of the Land (being part of the Site) by the change of use of the ground floor including extended area to the rear from Use Class A1 to Use Class A3 and change of use of first floors 51 and 53 Howardsgate from Use Class B1 (offices) to Use Class A3 and change of use of first floor of 33 Stonehills from Use Class B1 to Use Class A1 pursuant to the Planning Permission
- 1.5 the Planning Application A planning application submitted by the Applicant under reference N6/0645/96/FP for planning permission to carry out the Development (as amended on 8th October 1996) together with plans specifications and particulars deposited with the Council including the drawing numbered 96-1008/L-G(20)/02revision a copy of

which is annexed hereto marked "A1"

- 1.6. the Planning Permission A planning permission for the Development the subject of the Planning Application in the form of the draft annexed marked "B"
- 1.7 the Condition the partial implementation of the Development by the commencement of trading within Use Class A3 at the ground floor of 53 Howardsgate Welwyn City (forming part of the Site) pursuant to section 56(1) of the Act
- 1.8 the Act The Town and Country Planning Act 1990
- 1.9 Use Class The use class designated by the Town and Country Planning (Use Classes) Order 1987
- 1.10 The Director The Director of Environmental Services for the time being of the Council or such other officer that the Council may from time to time appoint to undertake the duties of the Director of Environmental Services
- 1.11 The expressions "the Council" "the Owner" and "the Applicant" shall include where appropriate their respective successors in title and assigns
- 1.12 (a) Reference to clauses sub-clauses paragraphs schedules plans or recitals refer (unless the context otherwise requires) to clauses sub-clauses paragraphs schedules plans and recitals of this Deed (and in the case of plans the plan or plans attached to this Deed)
- (b) In this Deed the singular shall include the plural and the masculine shall include the feminine and vice versa where the context so admits
- (c) The Clause headings do not form part of this Deed and shall not be taken into account in its construction or interpretation
- 1.13 Unless otherwise provided all the parties to this Agreement hereby agree and confirm that the covenants and terms of this Agreement shall be deemed to remain in full force and effect on any extension or renewal variation modification or amendment of the Planning Permission which the Council may grant if the Owner has not for any reason commenced the Development within five years from the date hereof
- 1.14 References in this Agreement to any statutes or statutory instrument shall include any statute or statutory instrument amending consolidating or replacing them respectively from time to time being in force

Recitals

2. WHEREAS:-
- 2.1 The Council is the Local Planning Authority for the purposes of section 1 of the Act for the area in which the Land and the Site is situated and by whom the obligations restrictions stipulations conditions and covenants are enforceable
- 2.2 The Owner is proprietor of the Land with freehold title absolute registered at H.M. Land Registry under Title Number

- 2.3. The Owner holds the title of the Land (which forms part of the Site) on trust for the Applicant
- 2.4 The Applicant has by the Planning Application applied to the Council on 1.8.1996 for planning permission to carry out the Development on the Land which was received by the Council on 6.8.1996 and amended details to the Planning Application received on 8.10.1996
 - 2.4.1 The Planning Application is one of three planning applications made in respect of the Site by the Applicant as part of a proposed refurbishment scheme of the existing units
 - 2.4.2 The ground floor of 55 - 57 Howardsgate forming part of the Site and hatched in green on the plan annexed marked "A" has an existing lawful planning use within Use Class A3 but is currently vacant
- 2.5 The Council wishes to maintain the role of the Land and the Site as an important and prominent retail location in Welwyn Garden City town centre and to ensure that there is a balance between retail and non-retail frontages in this location and to that end the Owner and the Applicant agreed in principle with the Council that a change of Use Class from Use Class A1 to Use Class A3 at the Land would only be permitted provided the existing Use Class A3 for the ground floor of 55 - 57 Howardsgate forming part of the Site were to be changed to Use Class A1 and that the Owner and the Applicant agree with the Council to enter into this Agreement
 - 2.5.1 Upon the Owner and the Applicant agreeing in principle with the Council to enter into this agreement for the reasons explained in clause 2.4 above on 24.10.1996 the Council in accordance with powers delegated to its Planning Transportation and Economic Development Policy Committee resolved to grant the Planning Permission for the Planning Application subject to the parties entering into this Agreement including all the obligations restrictions stipulations conditions and covenants contained herein and without which the Planning Permission would not be granted

NOW THIS DEED WITNESSETH as follows:-

Nature of Agreement

3. The parties HEREBY AGREE:-
 - 3.1 That the obligations contained in this Agreement are planning obligations for the purposes of Section 106 of the Act insofar as they fall within the terms of sub-section (1) thereof to the intent that all obligations restrictions stipulations conditions and covenants herein shall be binding upon the Owner and the Applicant and their respective successors in title and shall relate to the Land and shall be registered as a local Land charge by the Council under the provisions of the Local Land Charges Act 1975
 - 3.2 That insofar as the obligations restrictions stipulations conditions and covenants contained herein are not planning obligations within Section 106 of the Act the covenants are entered into pursuant to Section 111 of the Local Government Act 1972 and all other enabling powers and this Agreement shall be registered as a local land charge by the Council

under the provisions of the Local Land Charges Act 1975

- 3.3. That any expense incurred or to be incurred by the Council to which the Owner is or may become liable under this Agreement may be recoverable by the Council as provided by Section 291 of the Public Health Act 1936 and in particular such expenses and interest accrued thereon shall until recovered be a charge on the Land and on all estates and interests therein and the Council reserves its right to pursue recovery of any monies due under this Agreement by civil action
- 3.4 That none of this Agreement other than this clause 3.4 and any other provision hereof required to give effect to this clause and Clause 4.1 below shall take effect unless or until both of the following shall have been satisfied:-
- (a) the Planning Permission shall have been granted
- (b) the Development shall have been commenced by or on behalf of the Owner and/or the Applicant by the carrying out on the Land of the Condition and/or any material operation in connection with the carrying out of the Condition by or on behalf of Owner and/or the Applicant and for the purposes of this Deed the term "material operation" shall have the meaning set out in sub-section 56(4) (a) (b) (c) and (d) inclusive of the Act PROVIDED that any works of demolition site inspection testing sampling site surveys site clearance or levelling fencing archaeological excavations or surveys shall not be deemed to constitute commencement of the Development
- 3.5 That this Agreement shall terminate and cease to have effect if the Planning Permission expires (but subject always to the provisions contained in clause 1.13 above) before the Development is implemented by the carrying out of the Condition or by implementation of any other part of the Planning Permission by the person or persons entitled to satisfy the Condition or implement the Planning Permission or at any time the Planning Permission is quashed or revoked or (without the consent of the person or persons entitled to satisfy the Condition and/or implement) modified
- 3.6 That any notices or other written communication to be served or given by one party upon or to any other under the terms of this Agreement shall be deemed to have been validly served or given if delivered by hand or sent by registered or recorded delivery post to the party upon whom it is to be served or to whom it is to be given as specified in clause 3.6.1 or as otherwise notified for the purpose in writing
- 3.6.1 That the address for any other written communication is in the case of the Council to its Chief Planning Officer at Council Offices The Campus Welwyn Garden City Hertfordshire AL8 6AE and in the case of the Owner to the address as specified in clause 1.2 above and in the case of the Applicant to the address as specified in clause 1.2.1 above
- 3.6.2 That any notice or other written communication to be given by any party to this Agreement shall be deemed valid and effectual if on its face it is signed on behalf of the relevant party by a Director Officer or other duly authorised signatory of that party
- 3.7 That the Owner and the Applicant shall (save in respect of liability for any prior breach of this Agreement) upon parting with the fee simple in any part of the Land be



WELWYN HATFIELD COUNCIL

Council Offices Welwyn Garden City Herts AL8 6AE
Telephone Welwyn Garden (01707) 357000

DECISION NOTICE

Ref No

N6/0645/96/FP

B

TOWN AND COUNTRY PLANNING ACT 1990

Change of use of ground floor of 53 Howardsgate, including extended area to the rear, from Use Class A1 to Use Class A3; change of use of first floors 51 and 53 Howardsgate from B1 (offices) to A3; change of use of first floor of 33 Stonehills from B1 to Use Class A1

at: 51-53 Howardsgate and 33 Stonehills, Welwyn Garden City

To:

Healey & Baker,
FAO Mr A Pyrke, 29 St George Street, Hanover Square,
London W1A 3BG

For:

Tesco Pension Trustees Ltd,

In pursuance of their powers under the above mentioned Act and the Orders and Regulations for the time being in force thereunder, the Council hereby PERMIT the development proposed by you in your application received with sufficient particulars on 6th August 1996 and shown on the plan(s) accompanying such application, subject to the following conditions:-

1. The development to which this permission relates shall be begun within a period of 5 years commencing on the date of this notice.

REASON

To comply with the requirements of Section 91 of the Town and Country Planning Act 1990.

2. The development hereby permitted shall retain a shop style frontage and window display at ground floor at all times in the future.

In order to maintain the visual amenity of the Welwyn Garden City Conservation Area in accordance with Policy BEV9 of the Adopted Welwyn Hatfield District Plan 1993.

Date :

DRAFT

Signed: [Redacted] Chief Planning Officer

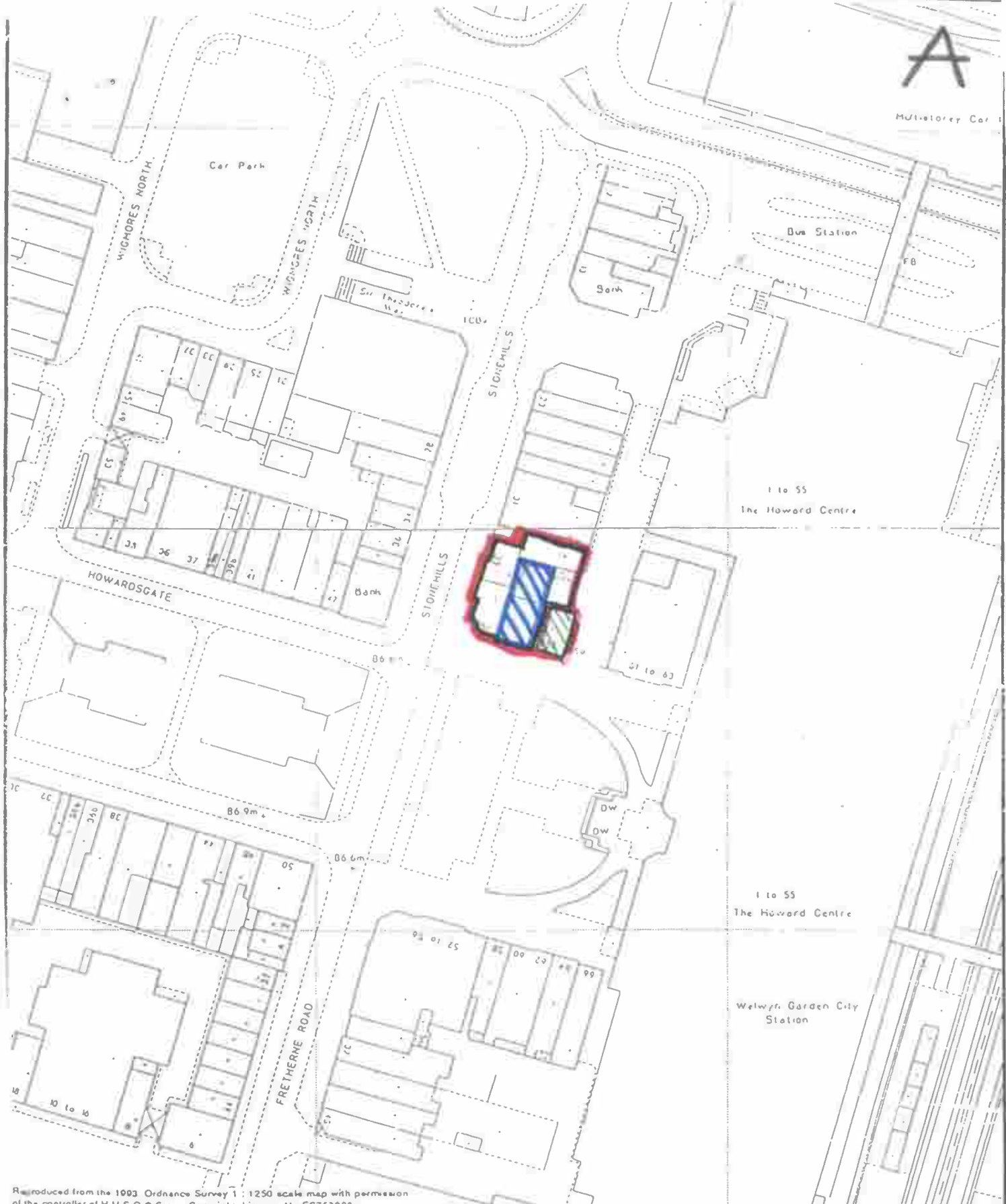
[Redacted Signature Area]

M. H. Trust Co. Ltd.
 Authorized Signatory
 Authorized Counter Signatory





Multistorey Car Park



Reproduced from the 1993 Ordnance Survey 1:1250 scale map with permission of the controller of H.M.S.O. Crown Copyright Licence No. ES753998

Welwyn Garden City
Drawing No: 3065/2

The plan is based upon the Ordnance Survey Map with the permission of the Controller of H.M. Stationery Office ©Crown Copyright Licence No. ES 753998

This plan is published for convenience of identification only. The site boundaries shown are indicative only and although believed to be correct its accuracy is not guaranteed and it does not form part of any contract.

HEALEY & BAKER

0171 629 9292

29 ST GEORGE STREET HANOVER SQUARE LONDON W1A 3BG

released from all obligations rights and duties under the terms of this Agreement insofar as they are referable to the Owner of or relate to any part of the Land

3.8 That the Owner and the Applicant shall upon parting with the entirety of their interest in the Land as a whole be released from all liability whatsoever under the terms of this Agreement save insofar as it relates to a relevant prior breach of this Agreement

Owners and Applicants covenants

4. The Owner for itself and its successors in title and the Applicant for itself and its successors in title both HEREBY COVENANT in favour of the Council in the event of the Planning Permission by way of the Condition being implemented but not otherwise (save that the covenants contained in Clause 4.1 of this Agreement shall have full force and effect from the date hereof) as follows:-

4.1 That on the date hereof the Owner will pay the whole of the reasonable costs incurred by the Council in the preparation of this Agreement

4.2 That the Owner and the Applicant shall not (unless permitted under an express planning permission granted after the date of this Agreement or otherwise approved by the Council) use the ground floor of 55 - 57 Howardsgate Welwyn Garden City (forming part of the Site) other than for a use falling within Use Class A1

4.2.1 For the avoidance of doubt the covenant contained in clause 4.2 above shall only apply in the event of the Planning Permission by way of the Condition being carried out in respect of the Land and not otherwise in respect of the implementation of any other part of the Planning Permission)


4.3 That the Applicant shall give to the Council no less than fourteen days prior written notice of its intention to satisfy the Condition

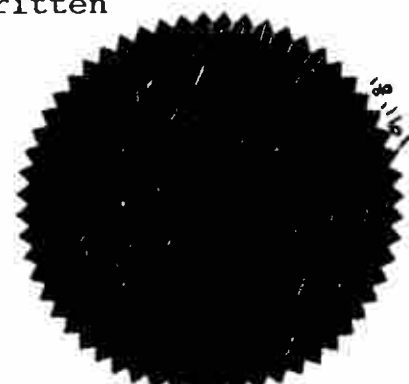
Schedules "A" "A1" & B" annexed

IN WITNESS whereof the Council and the Owner have executed this Agreement as a Deed the day and year first before written

THE COMMON SEAL of WELWYN
HATFIELD DISTRICT COUNCIL
is hereunto affixed in the
presence of:-


Chairman of the Council:-


Solicitor to the Council
(being its authorised
officer):-



Dated 9TH JULY 1997

WELWYN HATFIELD DISTRICT COUNCIL

and

MIDLAND BANK TRUST COMPANY

(owner)

and

TESCO PENSION TRUSTEES LIMITED

(Applicant)

Agreement under section 106 of the
Town and Country Planning Act 1990
in respect of land at
GROUND FLOOR 53 HOWARDSGATE
WELWYN GARDEN CITY
HERTFORDSHIRE

M.J. DAVIES
Solicitor to the Council
Welwyn Hatfield District Council
Council Offices
The Campus
Welwyn Garden City
Hertfordshire AL8 6AE

Reference:- RR/DEV2/8/26