

DATED

1st March.

2012

**SUPPLEMENTAL AGREEMENT UNDER SECTION 106A OF THE TOWN & COUNTRY
PLANNING ACT 1990 RELATING TO LAND AT RAINHAM QUARRY, WARWICK LANE,
RAINHAM, ESSEX**

between

THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF HAVERING

and

BRETT AGGREGATES LIMITED

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THIS DEED is dated 1st March 2012

- (1) THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF HAVERING of Town Hall, Main Road, Romford, Essex, RM1 3BD (**Council**).
- (2) BRETT AGGREGATES LIMITED (company registration number 316788) whose registered office is at 150 Aldersgate Street, London, EC1A 4AB (**Owner**).

BACKGROUND

- (A) This Deed is made under section 106A of the TCPA 1990 and is supplemental to the Original Agreement which was executed to facilitate the issue of the Original Planning Permission.
- (B) In the Original Agreement references to the planning permission was a reference to the Original Planning Permission.
- (C) The Owner has applied for the New Planning Permission and without prejudice to the terms of the other covenants contained in the Original Agreement the parties have agreed to vary the terms of the Original Agreement so as to extend the definitions of "Proposed Development" and "Planning Permission" contained in the Original Agreement to also include the New Planning Permission.
- (D) The Council has resolved to issue the New Planning Permission in the terms of the draft planning permission attached subject to the parties first executing this Deed.

AGREED TERMS

1. INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in this Deed.
- 1.2 All words and phrases defined in the Original Agreement shall have the same meaning in this Deed save where the context otherwise dictates.
- 1.3 In this Deed the following expression shall have the following meaning:

New Planning Permission: planning permission reference P0712.11 varying Condition 4 of the Original Planning Permission to allow aggregate processing to continue until 31st December 2015.

Original Agreement: the agreement made under section 106 of the TCPA 1990 dated 16th March 1995 between the Council and Aylett Gravel Limited as varied by a Deed of Variation dated 22nd July 1998 and made between the same parties and as further varied by a Deed of Variation dated 20th

December 2006 and made between the Council and Brett Aggregates Limited.

Original Planning Permission: planning permission reference P2239.87 as varied by planning permission P2099.04.

- 1.4 All references in this Deed to clauses in the Original Agreement are to clauses within the Original Agreement.
- 1.5 Clause headings shall not affect the interpretation of this Deed.
- 1.6 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.7 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.8 Unless the context otherwise requires, words in the singular include the plural and in the plural shall include the singular.
- 1.9 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.10 A reference to any party shall include that party's personal representatives, successors or permitted assigns and in the case of the Council the successors to its respective statutory functions.
- 1.11 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time provided that, as between the parties, no such amendment, extension or re-enactment shall apply to the deed to the extent that it would impose any new or extended obligation, liability or restriction, on, or otherwise adversely affect the rights of, any party.
- 1.12 A reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.13 A reference to **writing** or **written** does not include faxes or e-mail.
- 1.14 References to clauses, schedules and plans (unless the context otherwise requires) are to clauses, schedules and plans of this Deed.
- 1.15 An obligation in this Deed on a person not to do something includes an obligation not to agree or allow that thing to be done.

1.16 Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.17 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.

2. STATUTORY PROVISION

This Deed is made pursuant to the provisions of sections 106 and 106A of the TCPA 1990, section 111 of the Local Government Act 1972, section 2 of the Local Government Act 2000 and any other enabling powers.

3. VARIATIONS TO THE ORIGINAL AGREEMENT

3.1 In the Original Agreement references to the Original Planning Permission shall from the date of this Deed also include references to the New Planning Permission and references to the Proposed Development shall also include the development permitted by the New Planning Permission.

3.2 In all other respects the Original Agreement (as varied by this Deed) shall remain in full force and effect.

4. COVENANTS TO THE COUNCIL

The Owner covenants to observe and perform the covenants, restrictions and obligations contained in the Original Agreement as varied by this Deed.

5. LOCAL LAND CHARGE

This Deed shall be registered as a local land charge

6. COUNCIL'S COSTS

The Owner shall pay to the Council on or before the date of completion of this Deed, the Council's legal and monitoring fees of £883.

7. THIRD PARTY RIGHTS

A person who is not a party to this Deed shall not have any rights under, or in connection with, it by virtue of the Contracts (Rights of Third Parties) Act 1999.

8. GOVERNING LAW

This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

This document has been executed as a deed and is delivered and takes effect on the date started at the beginning of it.

LONDON BOROUGH OF HAVERING

TOWN AND COUNTRY PLANNING ACT 1990

To: Mr Mike Davies
Davies Planning
21 The Fairway
Herne Bay
Kent
CT6 7TW

Mr Mike Courts
Havering Aggregates Ltd
Robert Brett House
Milton Manor Farm
Ashford Road
CT4 7PP

APPLICATION NO: P0712.11

In pursuance of their powers as Local Planning Authority, the Council have considered your application and have decided to **GRANT PLANNING PERMISSION** for the following development :

Proposal: Variation of Condition 4 of P2239.87 to allow aggregate processing to continue until 31st December 2015

Location: Spring Farm/Rainham Quarry
Launders Lane
Rainham

The above decision is based on the details in drawing(s):
Supporting Statement

subject to compliance with the following condition(s):

- 1 The development hereby permitted shall be carried out in accordance with the details and drawings approved under planning permission P2239.87, including the details set out in the statement dated December 1992 as modified by letters dated 11 May 1993, except where amended by any of the following conditions or where agreed in writing with the Minerals Planning Authority.

Reason:

For the avoidance of doubt and to ensure the development is undertaken with plans approved by the Mineral Planning Authority.

- 2 2. Mineral processing and other operations, with the exception of mineral extraction and operations relating to the restoration and aftercare of the site, shall cease on or before the 31st December, 2015. Mineral extraction and restoration works shall be completed by the 30th June, 2016. The site shall be fully restored in accordance with the 'Revised Restoration and Aftercare Scheme' dated March 2000 and approved in accordance with condition 6 of planning permission P2239.87.

Reason:

In pursuance of the timely restoration of the site and in the interests of the visual amenity of the surrounding area and the Green Belt, in accordance with Policy DC61 of the with Development Control Policies Development Plan Document, and the guidance contained in PPG2. Condition 6 of planning permission P2239.87 has been discharged by the Minerals Planning Authority and the approved details continue to be applicable in this case.

- 3 (i) Subject to (ii) below, the after-care of the site shall be carried out in accordance with the 'Revised Restoration and After Scheme' dated March 2000 and approved in accordance with condition 7 of planning permission P2239.87.

(ii) Where the Minerals Planning Authority agree in writing with the person or persons responsible for undertaking the after-care steps that there shall be lesser steps or a different timing between steps, the after-care shall be carried out in accordance with that agreement.

Reason:

Condition 7 of planning permission P2239.87 has been discharged by the Minerals Planning Authority and the approved details continue to be applicable in this case.

- 4 Notwithstanding the provisions of the Town and Country Planning General Development Order 1988 Part 19, no operations for the erection, installation, extension, re-arrangement, replacement, repair or other alteration of any buildings, fixed plant or machinery, or structures or erections shall be undertaken other than the concrete batching plant, weighbridge and ancillary buildings approved by planning permission P2239.87, without the express permission of the Minerals Planning Authority.

Reason:

In the interests of the visual amenity of the surrounding area and the Green Belt, in accordance with Policy DC61 of the Development Control Policies Development Plan Document, and the guidance contained in PPG2.

- 5 The operations authorised, required or associated with this permission, with the exception of tree planting and after-care, and the temporary operations specified below, shall only be carried out between the following times:

7.00 am - 6.00 pm Monday to Friday
7.00 am - 1.00 pm Saturdays

No operations shall be carried out on Sundays, Bank or Public Holidays. All temporary operations, such as the replacement of soils, screening mound formation and the construction of ditches which take place within 45 metres of any residential property shall only be carried out between the following times:

8.00 am - 5.00 pm Monday to Friday
8.00 am - 1.00 pm Saturday.

Reason:

To minimise the impact of the development on the surrounding area in the interests of amenity, and in accordance with Policy DC61 of the Development Control Policies Development Plan Document, and the guidance contained in PPG2.

- 6 The site shall be operated in accordance with the landfill gas monitoring and venting arrangements approved in accordance with condition 9 of planning permission P2239.87.

Reason:

Condition 9 of planning permission P2239.87 has been discharged by the Minerals Planning Authority and the approved details continue to be applicable in this case.

- 7 Only excavated materials in their natural state, other soil forming materials or soils shall be deposited on the site.

Reason:

In the interests of amenity to ensure proper restoration of this site and to minimise the risk of pollution of ground and surface waters.

- 8 The final layer of cover shall comprise at least 0.6m of topsoil, subsoil or other such soil forming material, and under the areas to be planted with trees and shrubs this layer shall be at least 1.5 metres deep. This layer of material shall be kept free from all materials likely to interfere with the final restoration.

Reason:

To ensure a high standard of restoration.

- 9 The final soil layer shall be graded so as to form the approved final contours and to provide an even surface to enable the land to be planted and sown with grass seed. The finished surface shall be subsoiled in such a manner as to disturb the whole soil profile to a depth of 0.4m to alleviate any compacted layers.

Reason:

To ensure a high standard of restoration.

- 10 The spreading of soils shall only take place when they are in a suitably dry and friable condition and carried out in such a way and with such equipment to ensure minimum compaction.

Reason:

To ensure a high standard of restoration.

- 11 Any trees or shrubs which within a period of five years following planting, die or are removed or become seriously damaged or diseased, shall be replaced in the next available planting season with others of similar size and species, unless the Minerals Planning Authority gives written consent to any variation.

Reason:

In accordance with Section 197 of the Town and Country Planning Act 1990, to enhance the visual amenities of the development to ensure appropriate provision for nature conservation and to ensure that the development has due regard to the concept of the Thames Chase Community Forest.

- 12 The soils shall not be stored in mounds exceeding 3 metres in height. All other materials which may require storage shall be in mounds not exceeding 4 metres in height.

Reason:

In the interests of visual amenity and in accordance with Policy DC61 of the Development Control Policies Development Plan Document.

- 13 Adequate precautions shall be taken during dry periods to minimise dust nuisance caused by operations with the aim of ensuring that no dust or other debris is carried onto adjoining or nearby properties to the satisfaction of the Minerals Planning Authority. During periods when dust is likely to be generated from haul roads and other operational areas they shall be sprayed with water from a bowser or similar apparatus which shall be kept and maintained on site at all times for this purpose.

Reason:

In the interests of local amenity and in accordance with Policy DC61 of the Development Control Policies Development Plan Document.

- 14 The concrete batching plant shall not be erected until details of its proposed design, layout and location, including materials and the colour scheme for any external cladding, has first been submitted to and agreed in writing by the Minerals Planning Authority.

Reason:

In the interests of visual amenity and in accordance with Policy DC61 of the Development Control Policies Development Plan Document.

- 15 No topsoil or subsoil or overburden shall be sold or otherwise taken off the site.

Reason:

To ensure a high standard of restoration.

- 16 The processed and unprocessed sand and gravel at the plant site shall not be stored in mounds exceeding six metres above ground level.

Reason:

In the interests of visual amenity and in accordance with Policy DC61 of the Development Control Policies Development Plan Document.

- 17 All existing trees and hedges except those within the area of sand and gravel extraction shall be retained unless otherwise agreed by the Mineral Planning Authority in writing. Any such tree or hedge damaged by the operations shall be replaced.

Reason:

In the interests of visual amenity and in accordance with Policy DC61 of the Development Control Policies Development Plan Document.

- 18 The design and layout of the site access onto Launderers Lane shall be retained in accordance with the scheme approved by the MPA (Minerals Planning Authority) in accordance with condition 26 of planning permission P2239.87. Access and egress to and from the site shall only be from the existing Launderers Lane access point.

Reason:

Condition 26 of planning permission P2239.87 has been discharged by the Minerals Planning Authority and the approved details continue to be applicable in this case.

- 19 All existing screening and noise attenuation mounds shall be retained for the duration of the site's operations, until such a time as the site's restoration requires their removal.

Reason:

In the interests of amenity and in accordance with Policy DC61 of the Development Control Policies Development Plan Document.

20 In the event that any areas of uneven settlement occur during the restoration and after-care period, these areas shall be made good with suitable imported soils to the satisfaction of the Minerals Planning Authority prior to the end of the after-care period.

Reason:

In pursuance of achieving a high standard of restoration and in the interests of the visual amenity of the surrounding area and the Green Belt, in accordance with Policy DC61 of the with Development Control Policies Development Plan Document, and the guidance contained in PPG2.

Reason for Approval:

The proposal is considered acceptable having regard to the relevant criteria of Policies DC22, DC32, DC42, DC45, DC58, and SSA6 of the LDF Core Strategy and Development Control Policies DPD, and all other material considerations.

Dated:



Patrick Keyes
Head of Development and Building Control
London Borough of Havering
Mercury House, Mercury Gardens
Romford RM1 3SL

IMPORTANT - attention is drawn to the notes overleaf

**NOTES IN CONNECTION WITH APPROVAL OF APPLICATIONS SUBJECT TO CONDITIONS
OR REFUSAL OF APPLICATIONS FOR PLANNING PERMISSION**

- (1) If the applicant is aggrieved by the decision of the local planning authority to refuse permission or to grant permission or approval subject to conditions, an appeal may be made to the First Secretary of State at the Department for Communities and Local Government in accordance with Section 78 of the Town and Country Planning Act 1990 within six months of the date of this notice. However, if an enforcement notice is subsequently served relating to the same or substantially similar land and development and you want to appeal you must do so within 28 days of the service of the enforcement notice, or within 6 months of the date of this notice, whichever period expires earlier.

Appeals must be made on a form which is obtainable from the Planning Inspectorate, Customer Support Unit, Temple Quay House, 2 The Square, Temple Quay, Bristol BS1 6PN or from the Planning Inspectorate's web site, www.planning.inspectorate.gov.uk

- (2) When submitting the completed appeal form to the Planning Inspectorate, a copy should be sent to Planning, London Borough of Havering, 7th Floor Mercury House, Mercury Gardens, Romford, RM1 3SL. The First Secretary of State has power to allow a longer period for the giving of a notice of appeal but will not normally be prepared to exercise these powers unless there are special circumstances which excuse the delay in giving notice of appeal. The First Secretary of State is not required to entertain an appeal if it appears that permission for the proposed development could not have been granted by the local planning authority, or could not have been so granted otherwise than subject to the conditions imposed by them, having regard to the statutory requirements to the provisions of the development order, and to any directions given under the order. Where the decision of the local planning authority is based upon a direction from the First Secretary; it is not the practise to refuse to accept appeals solely because of this direction.
- (3) If permission to develop land is refused or granted subject to conditions, whether by the local planning authority or by the First Secretary of State and the owner of the land claims that the land has become incapable of reasonable beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, a purchase notice may be served on the London Borough of Havering requiring the council to purchase the land in accordance with the provision of Part VI of the Town and Country Planning Act 1990.
- (4) In certain circumstances, a claim may be made against the local planning authority for compensation where there has been an appeal or where an application has been referred to the First Secretary, and where planning permission is refused or granted subject to conditions. The circumstances in which such compensation is payable are set out in section 114 of the Town and Country Planning Act 1990.
- (5) The statutory requirements are those set out in section 79(6) of the Town and Country Planning Act 1990, namely Sections 70, 71 and 72(1) of the Act.

You are reminded that Building Regulations approval may also be required for these works. You must contact the Building Control Manager or Building Inspector to confirm if permission is required.

Note: Following a change in government legislation a fee is now required for the request for Submission of details pursuant to discharge of conditions in order to comply with the Town and Country Planning (Fees for Applications and Deemed Applications) (Amendment) (England) Regulations, which came into force from 06/04/2008. A fee of £85 per request (or £25 where the related permission was for extending or altering a dwellinghouse) will be required.

The common seal of the **Mayor and Burgesses of the London Borough of Havering** is affixed in the presence of:

[Handwritten signature]

Mayor

[Handwritten signature]


Authorised signatory



Executed as a deed by **Brett
Aggregates Limited** acting by two
directors or by one director and its
secretary



.....
Director



.....
Director / Secretary