

*Lyndal planning  
planning 2000*

DATED 20 December 2000

**TESCO STORES LIMITED**  
**and**  
**ESTATES & AGENCY HOLDINGS PLC**  
**to**  
**LONDON BOROUGH OF CAMDEN**

**PLANNING OBLIGATION BY WAY OF  
UNDERTAKING PURSUANT TO SECTION 106  
OF THE TOWN & COUNTRY PLANNING ACT 1990  
RELATING TO DEVELOPMENT AT  
38-42 WHITFIELD STREET CAMDEN LONDON**

DEED OF UNDERTAKING is given this 20th day of December 2000

TESCO STORES LIMITED whose registered office is at Tesco House Delamare Road  
Waltham Cross Hertfordshire ("the Tenant") and ESTATES & AGENCY  
HOLDINGS PLC whose registered office is at 33 Ely Place London EC1N 6TD ("the  
Developer")

LONDON BOROUGH OF CAMDEN of Town Hall Judd Street London WC1H 9JE ("the  
Council")

### DEFINITIONS

Words and Phrases used in this Deed are defined in Clause 2.1

The Developer is the freehold owner of the Site subject to:

- B.1 a lease in favour of the Developer and
- B.2 a registered charge in favour of LDC Trustees Limited (who have consented to the entering into of this Deed and to it becoming binding upon the Site)
- C The Council is the Local Planning Authority for the purposes of Section 106 of the Act for the area within which the Site is situated
- D The Council is also the highway authority (within the meaning of the Highways Act 1980) for the area within which the Site is situated
- E The Developer submitted the Application to the Council in respect of the Application Site
- F The Council resolved to refuse planning permission for the Application and a decision notice was formally issued on 13 January 2000
- G The Developer has appealed to the Secretary of State under Section 78 of the Act against the Council's refusal to grant planning permission for the Application and a public inquiry is due to commence on 19 December 2000
- H As regards the obligations in this Deed:
  - H.1 it is important to the Developer and to the Tenant that the retail store on the Site (and which is proposed to be extended onto part of the Application Site) be as attractive as

possible so as to assist in resisting the competition from nearby facilities and consequently the Developer and the Tenant are prepared to pay a financial contribution to the Council towards the cost of the Council undertaking works which will improve the general appearance of the area; and

- H.2 if the Permission is granted then the Site and the Application Site will be accessed by service vehicles from Whitfield Street (in which case it will be desirable for the Council as highway authority to promote Traffic Regulation Orders under the Road Traffic Regulation Act 1984 and to undertake works to apply a protective treatment to the pavement adjacent to the service area) and the Developer and the Tenant are jointly prepared to pay a contribution towards the cost of each of these

## 1 OPERATIVE PART

- 1.1 This Deed is made pursuant to Section 106 of the Act and is a planning obligation for the purposes of that Section of the Act

- 1.2 Subject to the Conditions Precedent the Obligation shall be enforceable by the Council jointly and severally against:

- 1.2.1 the Developer and its successors in title in respect of the freehold interests (only) in the Site; and

- 1.2.2 the Tenant and its successors in title in respect of the leasehold interest (only) in the Site

## 2 INTERPRETATION

- 2.1 In this Deed the following expressions shall unless the context otherwise requires have the following meanings:

**"Accrued Interest"**

interest accruing on a daily basis at the rate prevailing for the relevant account in which the money is held

**"the Act"**

the Town & Country Planning Act 1990 (as amended)

**"the Application"**

the application submitted by the Developer for planning permission for the Development received by the Council on 7 December 1998 and given reference number PS9805221R2

**"the Application Site"**

the land known as 38-42 Whitfield Street in respect of which the Application has been submitted and which is adjacent to the Site

**"the Conditions Precedent"**

the conditions precedent set out in Clause 3.1

**"the Contributions"**

the financial contributions payable under the terms of this Deed (which for the avoidance of doubt are the Pavement Protection Works Contribution the Street Scene Contribution and the Traffic Regulation Contribution)

**"Deed"**

this Deed of Undertaking

**"the Development"**

demolition of the buildings on the Application Site and redevelopment to provide ancillary storage and bakery use (A1) to basement; retail use (as an extension to the existing Tesco supermarket to the south of the Site) and business entrance to ground floor; and business use (Class B1) to first and fourth floors

**"Implementation"**

commencement of development by the carrying out of a "material operation" as defined in Section 56 of the Act save that the definition shall not include works of demolition site clearance ground investigations site surveys laying of services and service media construction of boundary fencing or hoardings archaeological investigation or landscaping works (and "Implement" and "implemented" shall be construed accordingly)

**"the Index"**

the All Items Index of Retail Prices published by HM Government (or such other body on which responsibility for compiling the said index may devolve) and in this Deed the

phrase "increased by application of the Index" shall be construed in accordance with Clause 7.5

**"the Obligation"**

the covenant on the part of the Developer and the Tenant set out in Clause 4.1

**"the Pavement Protection Works Contribution"**

the sum of four thousand eight hundred pounds (£4,800.00) (as increased by application of the Index) to be used towards the Pavement Protection Works

**"the Pavement Protection Works"**

the pavement protection works set out in Part 3 of Schedule 1

**"the Permission"**

planning permission for the Development granted by the Secretary of State (or an Inspector duly appointed to act on his behalf) pursuant to the Application

**"the Secretary of State"**

the Secretary of State for the Environment, Transport and the Regions

**"the Site"**

the land known as 10-16 Goodge Street shown for the purposes of identification only edged in red on the Site Plan

**"the Site Plan"**

the plan annexed hereto marked "Site Plan"

**"the Street Scene Contribution"**

the sum of one hundred thousand pounds (£100,000.00) (as increased by application of the Index) to be used towards the Street Scene Works

**"the Street Scene Works"**

any one or more of the works set out in Part 1 of Schedule 1 for the general improvement of the appearance of the area around the Site

**“the Traffic Regulation Contribution”**

the sum of three thousand pounds (£3,000.00) (as increased by application of the Index) to be used towards the Council’s costs incurred in obtaining the Traffic Regulation Orders

**“the Traffic Regulation Orders”**

the orders set out in Part 2 of Schedule 1

**“Working Days”**

any day(s) upon which banks in the City of London are open to the general public

2.2 Where in this Deed reference is made to a Clause it is a reference to a Clause in this Deed and where in this Deed reference is made to a Schedule it is a reference to a Schedule in this Deed

2.3 Where reference is made in this Deed to:

2.3.1 the Developer or the Tenant it shall (unless the context otherwise requires) include their respective successors in title to the Site; and

2.3.2 the Council it shall include any successor as Local Planning Authority and/or highway authority (as appropriate)

2.4 References in this Deed to a Statute or Statutory Instrument shall mean and include any statutory modification or re-enactment thereof

2.5 Words in this Deed denoting an obligation on a party to do any act or matter or thing include an obligation to procure that it be done and words in this Deed placing a party under a restriction include an obligation not to permit infringement of the restriction

2.6 Clause headings do not form part of this Deed and shall not be taken into account in its construction or interpretation

**3 CONDITIONALITY**

The Obligation is subject to and is conditional upon satisfaction of the following conditions precedent:

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- 3.1 the grant of the Permission;
- 3.2 service of notice on the Council (in the manner specified in Clause 7.3 hereof) by the Developer that it intends to Implement the Permission or (if earlier) Implementation of the Permission by or on behalf of the Developer; and
- 3.3 receipt by both the Developer and the Tenant of a written undertaking from the Council agreeing to be bound by the terms on which the Contributions are to be paid by the Developer and the Tenant pursuant to this Deed including (without prejudice as to generality) the conditions in Clause 4

**THE OBLIGATION**

Subject to satisfaction of the Conditions Precedent the Developer and the Tenant **HEREBY JOINTLY AND SEVERALLY COVENANT** with the Council that they will within twenty Working Days after satisfaction of the last of the Conditions Precedent pay the Contributions between them in equal shares to the Council on the terms set out below and the Council will not use any part of the Contributions otherwise than for the purposes and in accordance with the terms set out below (**PROVIDED THAT** if at the date 36 months after receipt of the Contributions any part of them have been paid to the Council but not expended such unexpended balance shall forthwith be repaid to the Developer and the Tenant (in equal proportions) in full together with Accrued Interest):

***The Street Scene Contribution***

- 4.1 subject to the conditions set out in this Clause 4 the Developer and the Tenant will pay to the Council the Street Scene Contribution on the following terms:
  - 4.1.1 the Council shall not use the Street Scene Contribution otherwise than for the purposes of carrying out the Street Scene Works and administering the carrying out of those works (and for the avoidance of doubt the Council shall be entitled to use part of the Street Scene Contribution towards preliminary investigation design and supervision fees connected with the Street Scene Works)
  - 4.1.2 the Council acknowledges that it is obliged to obtain the best value for money that is reasonably obtainable for the Street Scene Works and shall consider in good faith any

reasonable proposals for the expenditure of the Street Scene Contribution put to it by the Developer

4.1.3 the Council will hold the Street Scene Contribution in an interest-bearing account on trust for the carrying out of the Street Scene Works

4.1.4 (without prejudice to the remainder of this Clause 4) within 28 days of completion of the Street Scene Works the Council will provide a full breakdown in writing of expenditure incurred in the construction of the Street Scene Works and if upon completion of them any part of the Street Scene Contribution (including any Accrued Interest on it) remains unexpended it shall be repaid to the Developer and the Tenant (in equal proportions) as soon as possible

***The Pavement Protection Contribution***

4.2 subject to the conditions set out in this Clause 4 the Developer and the Tenant will pay to the Council the Pavement Protection Works Contribution on the following terms (save that the Council may in its absolute discretion request that the Developer carry out the Pavement Protection Works at its own cost in lieu of making a financial contribution):

4.2.1 the Council shall not use the Pavement Protection Contribution otherwise than for the purposes of carrying out the Pavement Protection Works and administering the carrying out of those works (and for the avoidance of doubt the Council shall be entitled to use part of the Pavement Protection Contribution towards preliminary investigation design and supervision fees connected with the Pavement Protection Works)

4.2.2 it is acknowledged that the Council is obliged to obtain the best value for money that is reasonably obtainable for the Pavement Protection Works and shall consider in good faith any reasonable proposals for the expenditure of the Pavement Protection Works Contribution put to it by the Developer

4.2.3 the Council will hold the Pavement Protection Works Contribution in an interest-bearing account on trust for the carrying out of the Pavement Protection Works

4.2.4 within 28 days of completion of the Pavement Protection Works the Council will provide a full breakdown in writing of expenditure incurred in the construction of the



Pavement Protection Works and if upon completion of them any part of the Pavement Protection Contribution (including any Accrued Interest on it) remains unexpended it shall be repaid to the Developer and the Tenant (in equal proportions) as soon as possible

***The Traffic Regulation Contribution***

- 4.3 subject to the conditions set out in this Clause 4 the Developer and the Tenant will pay to the Council the Traffic Regulation Contribution on the following terms:
- 4.3.1 the Council shall not use the Traffic Regulation Contribution otherwise than towards the cost (which for the avoidance of doubt shall include the administrative costs of the Council's officers) of obtaining the Traffic Regulation Orders
- 4.3.2 the Council will hold the Traffic Regulation Contribution in an interest-bearing account on trust for obtaining the Traffic Regulation Orders and will commence the statutory process for obtaining the Traffic Regulation Orders within 28 days of receipt of the Traffic Regulation Contribution (or as soon as is reasonably practicable thereafter) with the intent that they be obtained as soon as it is reasonably practicable (save that nothing in this Deed shall be taken to fetter the Council's statutory discretions as highway authority in relation to the promotion and confirmation of the Traffic Regulation Orders)
- 4.3.3 within 28 days of the Council obtaining the Traffic Regulation Orders the Council will provide a full breakdown in writing of expenditure incurred in obtaining the Traffic Regulation Orders and if upon obtaining them any part of the Traffic Regulation Contribution (including any Accrued Interest on it) remains unexpended it shall be repaid to the Developer and the Tenant (in equal proportions) as soon as possible

**5 COVENANT BETWEEN THE DEVELOPER AND THE TENANT**

The Developer and the Tenant covenant with each other that for the avoidance of doubt:

- 5.1 the Contributions and each part of them are payable by the Developer and the Tenant jointly in equal shares;
- 5.2 any part of the Contributions (including any Accrued Interest on them) repaid by the Council are to be held by the Developer and the Tenant jointly in equal shares; and

5.3 they will comply with their respective obligations under this Deed

## 6 RELEASE AND WAIVER

6.1 The Developer shall on parting with the whole of its freehold interest in the Site be released from all liability under the terms of this Deed (save in respect of any antecedent breaches).

6.2 The Tenant shall on parting with the whole of its leasehold interest in the Site be released from all liability under the terms of this Deed (save in respect of any antecedent breaches).

6.3 This Deed shall be deemed to have been revoked and be of no effect (without any further act or deed on the part of the Council the Developer or the Tenant) if:

6.3.1 the last of the Conditions Precedent shall not have been satisfied within 5 years after the date hereof; or

6.3.2 the Permission having been granted shall lapse without first having been implemented or shall be varied or revoked other than at the request of the Developer or the Tenant; or

6.3.3 the Permission having been granted is quashed following a successful legal challenge and in any such case if the Contributions or any part of them shall have been paid by the Developer or the Tenant pursuant to the Obligation they shall be repaid in full by the Council forthwith on written demand from the Developer or the Tenant together with all Accrued Interest

## 7 GENERAL ADMINISTRATIVE PROVISIONS

7.1 This Deed is a local land charge and shall be registered as such

7.2 If any payment required to be paid by the Developer or the Tenant by virtue of any of the provisions of this Deed is not paid on the due date it shall be paid together with interest at the rate of 4% above the base rate for the time being of the Co-Operative Bank (accruing on a daily basis from the date on which the payment was due until the date on which it is paid)

7.3. Any notice required to be served or given by the Developer or the Tenant to the Council under the terms of this Deed shall be deemed to be validly served or given if transmitted by facsimile (and confirmed by transmission confirmation slip) delivered by hand or sent by registered or recorded delivery post to the Council marked "For the Attention of the Planning Obligations Officer" in the Forward Planning Team, Environment Department, Town Hall Annex, Argyle Street, London WC1H 8EQ quoting the reference "Goodge Street/Whitfield Street - Unilateral Undertaking"

7.4 Any notice required to be served or given to the Developer or the Tenant shall be deemed to be validly served or given if:

- delivered to the registered office of the Developer or the Tenant respectively;  
and

- in each case marked for the attention of the Company Secretary and bearing the reference "Goodge Street/Whitfield Street - Unilateral Undertaking"

7.5 Where in this Deed any payment is stated to be subject to increase "by application of the Index" the amount of the payment shall be increased by reference to the Index with the relevant indices being (a) the index at the date of this Deed and (b) the last published index prior to the date on which the relevant payment falls due

**EXECUTED AS A DEED AND DELIVERED** by the Developer and the Tenant on the date of this Deed

## **SCHEDULE 1**

### **Part 1 : The Street Scene Works**

Any one or more of the following works within the vicinity of the Site:

- provision of landscaping
- installation of street furniture
- provision of public art
- works to repair any part of the public highway (including any existing landscaping or street furniture) in the vicinity of the Site
- provision of cycle parking
- any other works agreed in writing by both the Developer and the Tenant jointly with the Council (having regard to the guidance in Circular 1/97)

### **Part 2 : The Traffic Regulation Orders**

A traffic regulation order or orders (pursuant to the Road Traffic Regulation Act 1984 or other appropriate legislation) such as may be necessary to allow:

- appropriate loading areas on each side of Whitfield Street and
- appropriate "no waiting" restrictions on Whitfield Street between its junctions with Scala Street and Goodge Street outside of those loading areas

### **Part 3 : The Pavement Protection Works**

Works for the application of an appropriate surface treatment to the pavement of Whitfield Street adjacent to the Site with the intention of improving its resistance to damage from the movement of roll cages across it