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[redacted]

Chief Planning Officer,
Planning Department,
Arun District Council,
Arun Civic Centre,
Maltrevers Road,
Littlehampton, BN17 5 LF

19th April 2011

Our Ref: GCG/10/711

Dear Sir/Madam,

WORTHING GARDEN CENTRE. LITTLEHAMPTON ROAD. FERRING

Please find enclosed an Application for the Modification or Discharge of Planning Obligations, made on behalf of our client The Garden Centre Group Holdings Ltd. The application relates to a s106 agreement made in connection with Worthing Garden Centre.

The Deed of Agreement which it is sought to modify under this submission was signed on the 9th May 2001 between Arun District Council and Country Garden Centres Limited. The Garden Centre Group Holdings Ltd are the successors in title to Country Garden Centres Limited and wish to modify the Deed of Agreement, discharging the one signed in 2001.

S106 Background

Section 106A within the Town and Country Planning Act 1990 sets out the procedure for the modification and discharge of planning obligations.

It states under:

106A(1) A planning obligation may not be modified or discharged except-

(a) by agreement between the authority by whom the obligation is enforceable and the person or persons against whom the obligation is enforceable [the appropriate authority (see subsection (11))];or

(b) in accordance with this section and section 106B.

(2) An agreement falling within subsection (1)(a) shall not be entered into except by an instrument executed as a deed.

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(3) A person against whom a planning obligation is enforceable may, at any time after the expiry of the relevant period, apply to the local planning authority by whom the obligation is enforceable [the appropriate authority] for the obligation-

(a) to have effect subject to such modifications as may be specified in the application; or

(b) be discharged

The relevant period in this case is five years beginning with the date on which the obligation was entered into, which is the 9th May 2001.

The Act states that where an application to modify an obligation has been submitted to an authority, the authority may: determine that the planning obligation shall continue to have effect without modification; or if it does not serve a useful purpose should be discharged, or, *"...if the obligation continues to serve a useful purpose, but would serve that purpose equally well if it had effect subject to the modifications specified in the application, that it shall have effect subject to those modifications."*

Obligation History

The 2001 s106 agreement for Worthing Garden Centre sets out in the Second Schedule a list of goods that the owner of the Garden Centre is entitled to sell from the site. The original agreement for this garden centre was signed at the same time and on the same terms as a number of other garden centres, including Findon Garden Centre and Roundstone Garden Centre.

The s106 agreement for Roundstone Garden Centre has recently been modified in relation to a new planning permission. Given the joint history of these agreements in the District, it would be unreasonable for the Local Planning Authority to take a different approach to the attached application from that at Roundstone Garden Centre.

A new draft Deed of Agreement is therefore attached which seeks to update the list of items that can be sold from Worthing Garden Centre, to reflect the goods that customers expect to find sold from a modern garden centre. Enclosed with the Deed is an HM land Registry plan to identify the site.

As set out in the attached draft agreement, the s106 Obligation currently in force led to the discharge of three earlier agreements connected to the Garden Centre. These agreements formed part of a standardised approach undertaken by the Council to this type of use.

The Council has maintained this realistic commercial approach to the changing role and character of Garden Centres over time. This is an approach which has been reflected in the modification of a number of s106 agreements since 2001 including at Roundstone Garden Centre recently.

The Roundstone Garden Centre s106 has been modified to accord with a recent consent (A/109/10). The Officer's Report on that application states that, *"It is considered that the revised s106 Agreement negotiated with the applicants reflects the goods that are sold within a modern garden centre, and will not adversely affect the vitality or viability of any existing centres."*

The Report concludes, *"A number of changes are being proposed to the existing Section 106 Agreement which are to reflect what a modern garden centre sells, and it is considered that*

the changes are acceptable and will not have an adverse impact on the vitality or viability of local centres."

The accompanying s106 seeks to modify the goods that are sold from Worthing Garden Centre in a similar manner to Roundstone, to more accurately reflect what goods are expected and sold from a modern garden centre.

The basic structure of the s106 Agreement follows what has been previously permitted including the changes agreed at Roundstone Garden Centre. This conforms to the overall strategic approach adopted by the authority to these uses and also the judgement in *Wiggins v Arun DC* [1997], which set out that, *"...the activities of a garden centre should be judged by contemporary standards, rather than fixed for all time in the year when the relevant agreement was made."*

On that basis it is considered that the Worthing Garden Centre s106 Obligation can continue to serve a useful purpose and should be modified in accordance with the relevant Section in the Town and Country Planning Act 1990.

I trust this provides you with the information required to effect the modification and look forward to hearing from you in due course.

Yours faithfully,

[redacted]

David Butcher

Enc

cc Client

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