

# **BROMSGROVE DISTRICT COUNCIL**

## **CABINET**

**5TH DECEMBER 2007**

### **DEED OF GRANT - ASTON ROAD, BROMSGROVE**

Responsible Portfolio Holder	Councillor Roger Smith
Responsible Head of Service	Claire Felton

#### **1. SUMMARY**

- 1.1 Members are asked to support the issuing of a Deed of Grant with regard to Aston Road to secure formal right of access to Bromsgrove Technology Park.

#### **2. RECOMMENDATION**

- 2.1 That Members approve the signing of a Deed of Grant with Advantage West Midlands with respect to Aston Road.
- 2.2 That Members accept the Council's responsibility to maintain the road in reasonable condition.
- 2.3 That Members instruct officers to work with the County Council to secure the adoption of the road at the earliest possible date.

#### **3. BACKGROUND**

- 3.1 Aston Road links Sherwood Road with the developing technology park. The road is in part owned by the Council, but when the Council sold some of the frontages adjoining Aston Road, it also sold some parts of the road in front of these properties. This has complicated the process of adoption of the road.
- 3.2 The road is of considerable importance as it allows access to the newly developing Bromsgrove Technology Park. The Technology Park forms a part of the A38 Technology Corridor and is some 22 acres of land. Currently some 8 acres are either under development or are under offer.
- 3.3 Currently there is no formal right of access to the Technology Park, but access is permitted by the Council and until recently this has been acceptable to the companies establishing their activities on the technology park. However, more recently the Council has been contacted by Advantage West Midlands (AWM) to say that they are being asked by companies expressing interest regarding locating to the technology park about access.
- 3.4 AWM take the view that the absence of a right of access is affecting the recruitment of businesses to the technology park.

- 3.5 AWM and Bromsgrove District Council have been pursuing Worcestershire Highways Unit for several years to adopt the road. A process known as Section 38 has to be completed before the road can be adopted. However, progress seems slow and despite regular contact between the District Council and the County Council's legal departments the process of adoption has been long and drawn out.
- 3.6 In order to facilitate a right of access Bromsgrove District Council can sign a Deed of Grant. This will secure formal right of access. The request for the Deed of Grant has come from AWM who have agreed to pay a one off sum of £15,000 as a contribution to the maintenance of the road should a Deed of Grant be agreed.
- 3.7 In signing a Deed of Grant Bromsgrove District Council will commit to maintaining the road to a reasonable standard prior to the road being adopted.
- 3.8 The road is currently in a reasonable condition. However, the principal risk is that if the process of adopting the road cannot be achieved in a relatively short period of time the Council may be liable for road works and £15,000 is unlikely to cover the entire cost. Alternatively, if the adoption is completed in the near future it is unlikely that any works will be necessary.
- 3.9 The additional risk, albeit limited, is that the absence of right of access may restrict the further development of the technology park and adversely affect employment opportunities in the district.
- 3.10 The options for the District council are to do nothing and assume that the development of the Technology Park will be sustained at its current level. This assumption is based on the expectation that the process of adoption of the road will be completed in the near future. District Council officials will maintain their efforts to ensure the County Council will adopt the road. The risk is that companies may be deterred from moving on to the Technology Park and the adoption continues to be drawn out.
- 3.11 The second option is to agree to a Deed of Grant and assume that the process of adoption will be completed in the near future. This will offer a guarantee of access, but not guarantee any expansion in the number of companies establishing activities on the Technology Park. It also runs the risk of the adoption being long and drawn out with the District Council having to expend resources to maintain the road in a reasonable condition.
- 3.12 Despite the risk of the second option it is suggested that this is the option Members support as this provides the most proactive approach to promoting further employment on the Technology Park and will demonstrate commitment to the Park by the District Council.

#### **4. FINANCIAL IMPLICATIONS**

- 4.1 The key financial implications are that on agreeing a Deed of Grant a sum of £15,000 will be paid by AWM to Bromsgrove District Council as a contribution to the maintenance of the road.

4.2 However, the financial risk is that should the process of the road continue for a substantial period of time the costs of maintaining the road in a reasonable condition will fall upon the Council.

4.3 It is difficult to make any estimate on the costs as these will be associated with the level of work required.

## **5. LEGAL IMPLICATIONS**

5.1 The report is asking Cabinet to agree to the disposal of the road at a figure below its market value and is not in accordance with Section 123 of the Local Government Act 1972.

5.2 AWM have indicated that they want the road maintained to a reasonable standard which is open to dispute and so risk is attached. Reasonableness is a difficult legal term.

5.3 Although there is some confidence that the County will adopt the road the time it will take is uncertain and it is this point that creates the greatest financial risk.

## **6. COUNCIL OBJECTIVES**

6.1 There is not a direct link with any of the present Council objectives. Employment levels are high within the District and economic development is not a specified objective although the Council's vision does speak of a district where people are 'proud to live and work'.

## **7. RISK MANAGEMENT**

7.1 The main risks associated with the details included in this report are:

- *Cost of maintaining the road at a reasonable condition.*
- *Loss of businesses considering the Technology Park as a location.*
- *Impact on development of the Technology Park.*

## **8. CUSTOMER IMPLICATIONS**

8.1 There is not an immediate impact on customers except those currently located on the Technology Park and those companies planning to locate on the Park.

## **9. EQUALITIES AND DIVERSITY IMPLICATIONS**

9.1 There are not any immediate implications for equalities and diversity.

## **10. OTHER IMPLICATIONS**

Procurement Issues	None
Personnel Implications	None
Governance/Performance Management	

Community Safety including Section 17 of Crime and Disorder Act 1998 None
Policy None
Environmental None

**11. OTHERS CONSULTED ON THE REPORT**

Portfolio Holder	Yes
Chief Executive	Yes
Corporate Director (Services)	Yes
Assistant Chief Executive	No
Head of Service	Yes
Head of Financial Services	Yes
Head of Legal, Equalities & Democratic Services	Head of Service Involved
Head of Organisational Development & HR	No
Corporate Procurement Team	Yes

**12. APPENDICES**

Copy of the Proposed Deed of Grant

**13. BACKGROUND PAPERS**

Not applicable

**CONTACT OFFICER**

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Dated

2007

- (1) Bromsgrove District Council
  - (2) Advantage (GP) Limited for and on behalf of and in its capacity as general partner of the PxP West Midlands LP and Advantage (Nominee) Limited for and on behalf of the PxP West Midlands LP
  - (3) Advantage West Midlands
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Deed of Grant

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relating to Bromsgrove Technology Park

## PARTICULARS

**Date**

**Grantor**

Bromsgrove District Council of Council House, Burcot Lane, Bromsgrove, Worcestershire, B60 1AA

**Fee**

£15,000 (Fifteen Thousand Pounds)

**First Grantee**

Advantage (GP) Limited for and on behalf of and in its capacity as general partner of the PxP West Midlands LP and Advantage (Nominee) Limited for and on behalf of the PxP West Midlands LP of Centrix House, Crow Lane East, Newton-le-Willows, Merseyside WA12 9UT

**Second Grantee**

Advantage West Midlands of 3 Priestly Wharf, Holt Street, Aston Science Park, Birmingham, B7 4BN

**the Grantees**

The First Grantee and Second Grantee

**Plan**

The plan attached to this Deed

**the Road**

The freehold property shown coloured brown on the Plan forming part of the property comprised in title number HW107691 and for the avoidance of doubt abutting and contiguous and along the entire width of both the adopted highway at points A and B on the Plan and the Existing Roadway at points C and D on the Plan

**the Existing Roadway**

The freehold property shown coloured blue on the Plan over which the Second Grantee has been granted a right of way pursuant to a Deed of Grant dated 14 June 2006 made between (1) Persimmon Homes Limited and (2) the Second Grantee

**PxP Site**

The freehold property comprised in title number(s) WR80623 and WR106076 as shown edged red on the Plan and any additional land to be acquired after the date of this Deed to form part of the PxP Site and for the avoidance of doubt includes the AWM Site if it is transferred to the First Grantee

**AWM Site**

The freehold property shown edged green on the Plan if acquired by the Second Grantee after the date of this Deed

**THIS DEED OF GRANT** is made on the date set out in the Particulars

**BETWEEN**

- (1) The Grantor;
- (2) The First Grantee; and
- (3) The Second Grantee

**BACKGROUND**

- (A) The Grantor is the owner of the Road and the First Grantee is the owner of the PXP Site.
- (B) The Second Grantee is intending to acquire the AWM Site
- (C) The Grantor and the Grantees have agreed to grant the rights in this Deed for the benefit of the PXP Site and the AWM Site.

**OPERATIVE PROVISIONS**

**1. INTERPRETATION**

1.1 In this Deed, the following words and expressions have the following meanings:

- “Conduits”** sewers, drains, watercourses, pipes, cables, wires and other channels or conduits and all other transmission media or similar equipment now present or installed during the Perpetuity Period for the passage of Services
- “Perpetuity Period”** the period of 80 years from and including the date of this Deed
- “Services”** water, gas, electricity, telecommunications, surface water drainage, foul drainage, fuel oil and other similar services

1.2 In this Deed:

- 1.2.1 the clause headings do not affect its interpretation;
- 1.2.2 unless otherwise indicated, references to clauses and Schedules are to clauses of and Schedules to this Deed and references in a Schedule to a Part or paragraph are to a Part or paragraph of that Schedule;



- 1.2.3 references to the Road, the Existing Roadway, the AWM Site and the PXP Site include any part of them;
  - 1.2.4 "including" means "including, without limitation";
  - 1.2.5 "indemnify" means to indemnify against all actions, claims, demands and proceedings taken or made against the party receiving the benefit of the indemnity and all costs, damages, expenses, liabilities and losses incurred by that party;
  - 1.2.6 where two or more people form a party to this Deed, the obligations they undertake may be enforced against them all jointly or against each individually; and
  - 1.2.7 if any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of this Deed is to be unaffected.
- 1.3 The Particulars form part of this Deed and words and expressions set out in the Particulars are to be treated as defined terms in this Deed.

**2. RIGHTS GRANTED FOR THE BENEFIT OF THE PXP SITE**

In consideration of the Fee, which the Grantor has received, the Grantor as the unencumbered owner of the freehold title to the Road grants in fee simple with full title guarantee to the Grantees the rights in, over, under and along the Road set out in **Schedule 1** for the benefit of the PXP Site and the AWM Site and each and every part of them and the owners and occupiers from time to time and those authorised by them and the public at large without cost to any person or party benefiting from these rights.

**3. RIGHTS GRANTED FOR THE BENEFIT OF THE ROAD**

- 3.1 The right for the owners of the Road and those authorised by them to connect into and to use any Conduits installed pursuant to the right granted in paragraph 2.1. of Schedule 1 hereof subject to the owners of the Road:
- 3.1.1 obtaining the prior written consent of the owners of the PXP Site and the AWM Site to the position and specification of any such connections before exercising the right to connect to the new Conduits, such consent not to be unreasonably withheld or delayed save that the owners of the PXP Site and AWM Site may withhold such consent where in their reasonable opinion the Conduits would be overloaded by the additional passage of Services in or through them following connection to them by the owners of the Road
  - 3.1.2 paying to the owners of the PXP Site and the AWM Site a fair and proper proportion according to use of the costs of repairing maintaining replacing

renewing and cleaning any of the Conduits installed pursuant to the rights granted in paragraph 2.1 of Schedule 1 hereof and used in common between the PxP Site, the AWM Site and the Road

3.1.3 The Grantor will at the Second Grantee's request and costs (such costs to be reasonable) execute any deed or document and take any action required by the Second Grantee to perfect this deed and for the avoidance of doubt will include the ability for the Second Grantee and its successors in title to exercise its rights under **Schedule 1** for the benefit of the AWM Site.

#### 4 **LAND REGISTRY RESTRICTIONS AND APPLICATIONS**

4.1 The Grantees are to apply to the Land Registrar for the easements and other rights granted for the benefit of the PxP Site and the AWM Site which are set out in **Schedule 1** to be noted on the title number of the PxP Site and the AWM Site and which burden the Road to be noted against the title number of the Road.

4.2 The Grantor consents to notice of the burden of the rights in **Schedule 1** being noted against the title number of the Road.

4.3 The Grantor consents to notice of the burden of the covenants in **Schedule 2** being noted against the Title Number of the road.

#### 5 **Grantor's Covenants**

5.1 The Grantor covenants with the Grantees in the terms set out in **Schedule 2**.

5.2 The Grantor hereby covenants that the Grantor shall not seek to recover any costs for the maintenance and for any future adoption costs of the Road from the First Grantee or the Second Grantee.

#### 6 **EXECUTION**

The Grantor and the Grantees have executed this Deed of Grant as a deed and it is delivered on the date set out in the Particulars.

# **SCHEDULE 1**

## **Rights granted for the benefit of the PXP Site and the AWM Site**

### **1. Existing Services**

The right in common with the owners of the Road and those authorised by them to connect to and use any Conduits in, on, under or over the Road for the passage of Services to and from the PXP Site and the AWM Site subject to the owners of the Pxp Site and the AWM Site (where applicable) obtaining the prior written consent of the owners of the Road to the position and specification of any such connections before exercising the right to connect to the Conduits, such consent not to be unreasonably withheld or delayed save that the owners of the Road may withhold such consent where in their reasonable opinion the Conduits would be overloaded by the additional passage of Services in or through them following connection to them by the owners of the Pxp Site and/or the AWM Site

### **2. New services**

2.1 The right in common with the owners of the Road and those authorised by them during the Perpetuity Period to install and use new Conduits under the Road for the passage of Services to and from the Pxp Site and the AWM Site subject to:

2.1.1 the owners of the Pxp Site and the AWM Site (where applicable) obtaining the prior written consent of the owners of the Road to the position of any such new conduits before exercising the right to install new Conduits, such consent not to be unreasonably withheld or delayed

2.1.2 the owners of the Pxp Site and the AWM Site (where applicable) repairing, maintaining, replacing, renewing and cleaning any Conduits installed pursuant to this right, in so far as the Conduits are not used in common between the Pxp Site, the AWM Site and the Road

### **3. Rights of way**

The right to pass and re-pass at all times and for all purposes without interruption with and without vehicles and with workmen, appliances, equipment, plant and materials over and along the Road for the Grantees, its successors in title, tenants, licensees and occupiers and the public at large and in common with the owners of the Road and those authorised by the owners of the Road.

4. **Entry**

4.1 The right for the owners of the PxP Site and the AWM Site and those authorised by them to enter and remain upon and break open the surface of so much as is necessary of the Road by prior written notice (except in case of emergency) with or without workmen, plant and equipment to:

4.1.1 repair and maintain the Road;

4.1.2 repair, maintain, replace, renew, clean, connect to and sever connections with any Conduits over which rights are granted by this Deed; and

4.1.3 lay further Conduits and apparatus during the Perpetuity Period in accordance with the rights granted in **paragraph 2.**

4.2 The rights of entry granted by this Deed are subject to the owners of the PxP Site and the AWM Site:

4.2.1 first obtaining any consents required from statutory undertakers for the installation of or connection to any Conduits;

4.2.2 causing as little inconvenience as reasonably practicable to the owners of the Road in the exercise of these rights;

4.2.3 except in case of emergency, carrying out any works required in accordance with a programme of works, plans and specifications previously approved by the owners of the Road, such approval not to be unreasonably withheld or delayed;

4.2.4 making good as soon as reasonably practicable all damage caused to the Road and any buildings from time to time on it to the reasonable satisfaction of the owners of the Road;

## **SCHEDULE 2**

The Grantor covenants with the Grantees so as to bind the land comprised in the Road and for the benefit of the PxP Site and the AWM site that the Grantor and its successors in title will continue to maintain the Road to a reasonable condition

**THE COMMON SEAL of  
BROMSGROVE DISTRICT COUNCIL**  
was hereunto affixed in the presence of:

Authorised Signatory

Authorised Signatory

**SIGNED as a deed**  
by **ADVANTAGE (GP) LIMITED**  
acting by a director and its company  
secretary or two directors

Director

Director/Secretary

**SIGNED as a deed**  
by **ADVANTAGE (NOMINEE)  
LIMITED**  
acting by a director and its company  
secretary or two directors

Director

Director/Secretary

**EXECUTED** (but not delivered  
until the date hereof) **AS A DEED**  
by affixing **THE COMMON SEAL** of  
**ADVANTAGE WEST MIDLANDS**  
in the presence of:

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