

DATED

4 March

1987

MAXIM HOMES LIMITED

and

THE WILTSHIRE COUNTY COUNCIL

A G R E E M E N T

relating to the making up and
adoption of highways under
Section 38 of the Highways
Act 1980 and all other powers
(if any) in respect of
certain new carriageways
footways lighting and drainage
situate off Marlborough Road
Swindon (Coate Water)
in the County of Wilts.

WE HEREBY CERTIFY THAT THIS IS A TRUE
AND CORRECT COPY OF THE ORIGINAL.
DATED THIS 4th DAY OF MARCH 1987

Wragge & Co.
WRAGGE & CO.
SOLICITORS,
BIRMINGHAM. 2

County Secretary & Solicitor,
Wiltshire County Council,
County Hall,
Trowbridge,
Wiltshire.

BA14 8JN

AN AGREEMENT made the

Fourth

day of

March

One thousand nine hundred and eighty seven BETWEEN MAXIM HOMES LIMITED whose registered office is situate at Maxim House 692 Bristol Road South Northfield Birmingham (hereinafter called "the Developers") of the one part and THE WILTSHIRE COUNTY COUNCIL of County Hall Trowbridge Wiltshire (hereinafter called "the Council") of the other part

WHEREAS

(1) The Developers are registered at H.M. Land Registry as proprietors with Title Absolute under Title Number WT 55280 of certain land situate off Marlborough Road Swindon (Coate Water) Wiltshire shown coloured pink on the plan annexed hereto including land forming the site of certain new carriageways footways and verges together with surface road water drainage (gullies and gulley connections only) (hereinafter called "the said streets") and are desirous of erecting houses and other buildings having frontages thereto

(2) The Developers intend to make up and complete the said streets in the position shown on the said plan coloured pink to the intent that the said streets shall on completion become highways maintainable at the public expense

(3) The Developers have agreed with the Council that the said streets shall be made up and completed in accordance with "the Specification for Roadworks" which is annexed hereto when construed in conjunction with the drawings and details annexed hereto and numbered 86/1/6/A 86/1/7 86/1/8/A (hereinafter referred to as "the Specification")

(4) The Developers have agreed with the Council to carry out or cause to be carried out the works contained in the specification and subject thereto and to the maintenance thereof in a proper manner the Council

consented to do all acts and things necessary for the taking over and adoption of the said streets as highways maintainable at the public expense upon the terms and conditions hereinafter appearing

(5) The Council is the local highway authority for the said county NOW in pursuance of Section 38 of the Highways Act 1980 and of all other powers (if any) statutory or otherwise enabling the Council thereto IT IS HEREBY AGREED AND DECLARED as follows:-

1. The Developers will before commencing the erection of any houses which will front the said streets cause the carriageway foundations to be laid for the full width of the said streets with foul and surface water sewers at proper levels

2. (a) The Developers will at their own expense properly construct sewer level pave metal flag channel kerb drain and otherwise make good the said streets and shall provide a vehicular access serving any premises abutting or adjoining the said streets to be constructed in such a manner as to avoid damage to the said streets all in accordance with the specification (hereinafter referred to as "the said works") and to the reasonable satisfaction of the County Surveyor for the time being of the Council (hereinafter referred to as "the Surveyor")

(b) The Developers will at their own expense and at the same time as they are carrying out the said works provide the said streets with such proper means of street lighting as may reasonably be required by the Council as the local lighting authority

(c) The Developers will at their own expense and at the same time as they are carrying out the said works provide the said streets and the adjacent county highway where appropriate with such proper traffic signs road markings and such street furniture including street name plates as may be required by the Council and to the reasonable

satisfaction in all respects of the Surveyor

(d) The Developers will produce to the Council written confirmation as to the adoption of surface water sewers in appropriate cases subject to an in accordance with the provisions of Clause 15(g) hereof

3. The Developers will during the progress of the said works give at least forty-eight hours notice to the Surveyor of their intention to commence the various stages of work itemised in the specification and will give to the Surveyor and his representatives free access to every part of the said works for the purposes of inspecting the said works as they proceed and inspecting and testing all materials used or intended to be used therein and (in addition to the cost referred to in Clause 4 hereto) the cost of reasonable analysis and tests in connection therewith shall be at the expense of the Developers payable upon demand by the Developers to the Council on or before adoption of the said streets

4. The Developers will pay to the Council forthwith upon the completion of this Agreement the sum of One thousand and seventy five pounds towards the administrative and technical expenses incurred by the Surveyor including the cost of supervising and inspecting the said works as they proceed and the issue of provisional and final certificates of completion

5. The Developers will during the progress of the said works notify the appropriate statutory undertakers in sufficient time and at the proper stage in the progress of the said works to enable them to lay all gas and water mains and supplies and electric light cables under the said streets

6. The work of constructing the estate road junction (where

applicable) within the county highway and the work of installing any apparatus in or under the county highway to be executed by the Developers shall be in accordance with the said drawings details and specification annexed to this Agreement and completed to the reasonable satisfaction of the Council but prior to commencing any such works the Developers shall obtain the necessary licence from the Council as the local highway authority to lay apparatus in or under the county highway or any necessary authorisation by the Council as local highway authority to undertake works within the county highway

7. This Agreement does not authorise interference with statutory undertakers' apparatus or works without their consent nor the installation or use of telecommunication apparatus without the consent of the Ministry of Posts and Telecommunications or British Telecom licence

8. The Developers will ensure that any works done within or under the county highway in connection with the construction of the estate road junction or the installation of any apparatus will be done without undue disturbance to the highway and that the highway will remain open for use by the public at all times

9. Whilst executing any works within or under the county highway the Developers will ensure that the highway be kept free of mud or deposits and cause the said works to be properly fenced and guarded and to be properly lighted during the hours of darkness

10. As soon as reasonably practicable after executing any works within or under the county highway the Developers will make good any damage to the highway occasioned by the works to the reasonable satisfaction of the Council

11. The Developers will not permit any house or building erected

fronting onto any of the said streets to be occupied until such of the said streets as are necessary to serve each such house or building has been constructed to such an extent as will enable the occupier or occupiers of such house or building to pass and repass reasonably conveniently and safely in all weathers with a vehicle and on foot between a public carriageway which is a highway maintainable at the public expense and such house or building AND IN PARTICULAR the Developers will complete the said works on the said streets in accordance with the specification in accordance with Clause 2 hereto within two years of the date of the execution of this Agreement or such longer period as may be agreed between the Developers and the Council AND IN DEFAULT THEREOF in either case the Council shall (after one month's notice in writing to the Developers by the County Secretary and Solicitor of their intention so to do) have the right to enter the said streets and to complete the said works to the said streets in accordance with the specification and recover the reasonable cost thereof from the Developers

12. The Developers will not at any time give consent to British Telecom to the erection of telegraph poles without the previous consent in writing of the Council first had and obtained

13. If the Developers shall fail to perform or observe any of the covenants or agreements on their part contained herein or shall fail duly and diligently to proceed with the said works to the reasonable satisfaction of the Surveyor or if the Developers shall be adjudicated bankrupt or shall go into liquidation (voluntary or otherwise) other than for the purpose of reorganisation or shall execute a deed of assignment for the benefit of creditors or otherwise compound with the creditors generally the Council may by resolution passed at any meeting

without previous notice to the Developers and without prejudice to any of its rights claims or remedies against the Developers for any such non-performance or non-observance and without prejudice to the rights and remedies of the Council under the next following clauses determine this Agreement by notice in writing signed by the County Secretary and Solicitor for the time being and such notice shall be deemed to be sufficiently served if sent to the Developers by registered or recorded delivery post at the address as stated in this Agreement

14. When the said works have been carried out in accordance with Clause 2 hereof the Surveyor will issue his provisional certificate of completion and thereafter the Developers shall continue to maintain the said streets as private streets until the final certificate of completion is issued

15. The final certificate of completion shall be issued by the Surveyor when the following conditions have been satisfied:-

(a) Twelve months at least have elapsed since the date of the provisional certificate of completion (hereinafter referred to as "the maintenance period")

(b) All defects that may have become apparent during the maintenance period have been remedied and made good by the Developers at their own expense and to the reasonable satisfaction of the Surveyor such defects to include damage or excessive wear caused to the said streets during the maintenance period

(c) The cleansing of all sewers gullies catchpits and manholes the sweeping of the carriageway and footways and the cutting of grass on the verges to the reasonable satisfaction of the Surveyor

(d) The said streets have been directly connected to a public carriageway which is a highway maintainable at the public expense

(e) The said streets have been provided with proper traffic signs road markings street name plates and street furniture to the reasonable satisfaction of the Surveyor in accordance with Clause 2(c) hereto

(f) Where the street lighting is to be maintained by a Council other than the highway authority the Developers have produced a certificate from the said lighting authority as to the satisfactory completion of the works required under Clause 2(b) hereto which certificate shall indicate the acceptance by the said lighting authority of responsibility from the date of the certificate for the system of street lighting so provided

(g) Where the surface water sewers other than gullies and connections draining the said streets are to be vested in and under the control of the District Council or Water Authority in accordance with the provisions of the Public health Act 1936 as amended by the Water Act 1973 written confirmation has been received by the Council from the appropriate Authority that the sewers have been constructed to their satisfaction and have been adopted by that Authority or are expressly referred to in an Agreement entered into by the Developers with the Water Authority under Section 18 of the Public health Act 1936

(h) All costs as referred to in Clauses 3 and 4 hereof have been paid by the Developers

(i) All building works immediately adjacent to the said streets have been substantially completed in the reasonable opinion of the Surveyor

16. After the final certificate of completion has been issued the Council will give such notices and do such acts and things as may be required for securing that the said streets shall be adopted as highways maintainable at the public expense and the same shall

thereafter accordingly become and be such highways

17. The Developers on behalf of themselves their successors in title or assigns hereby undertake and agree with the Council that in the event of any claim for compensation or otherwise or charges arising in connection with or incidental to the carrying out of the said works as aforesaid and not otherwise hereby provided they will hold the Council fully indemnified from and against all claims charges costs and expenses in connection therewith or arising thereout

18. The Bond of even date in the sum of Nineteen thousand five hundred and fifty five pounds supplied by the Developers and executed by the Developers and by NORWICH UNION FIRE INSURANCE SOCIETY LIMITED the Guarantors for the due performance and observance of all the terms of this Agreement shall

(a) be varied only with the written consent of the Council expressed by the hand of the County Secretary and Solicitor and

(b) be cancelled as soon as the said streets have been adopted as highways maintainable at the public expense as aforesaid

19. IT IS HEREBY AGREED that nothing in this Agreement shall affect or prejudice the rights of this Council under the Highways Act 1980 and notwithstanding this Agreement the Council shall be at liberty to proceed in accordance with the provisions of that Act to secure the making up and completion of the said streets and it is hereby further agreed and declared that nothing in this Agreement shall affect or prejudice the rights of a District Council acting as Agents for a Water Authority to proceed in accordance with the appropriate provisions of the Public Health Acts to arrange for the vesting and control of a surface water sewer other than that to be vested in the Council under this Agreement as a highway drain

20. The Developers shall pay to the Council upon the completion of this Agreement the costs of the Council in connection with the preparation and completion of this Agreement

21. In this Agreement where the context so admits the singular shall be deemed to include the plural and vice versa and where there are two or more persons or Companies included in the expression "the Developers" the foregoing terms covenants and conditions shall be deemed to be entered into jointly and severally

IN WITNESS whereof the parties hereto have hereunto caused their respective Common Seals to be hereunto affixed the day and year first before written

THE COMMON SEAL of
MAXIM HOMES LIMITED
was hereunto affixed
in the presence of:-

THE COMMON SEAL of THE
WILTSHIRE COUNTY COUNCIL
was hereunto affixed
in the presence of:-

N.A. Smith.

County Secretary and Solicitor



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