

DATED 27th April 2017

ASHFIELD DISTRICT COUNCIL

(1)

and

MALCOLM HENRY HODGKINSON and SYLVIA ANN HODGKINSON

(2)

and

WILSON BOWDEN DEVELOPMENTS LIMITED

(3)

DEED OF VARIATION

**to the Section 106 Agreement dated 1
November 2005 relating to land at
Blenheim Industrial Estate Nottingham**

THIS DEED OF VARIATION is made the **27th** day of **April** 2017

BETWEEN:

- (1) ASHFIELD DISTRICT COUNCIL** of Council Offices Urban Road Kirkby-in-Ashfield Nottinghamshire NG17 8DA ("the Council")
- (2) MALCOLM HENRY HODGKINSON and SYLVIA ANN HODGKINSON** both of Greasley Castle Farm Church Road Greasley Nottinghamshire NG16 2AB (together "the Owner")
- (3) WILSON BOWDEN DEVELOPMENTS LIMITED** (Company Registration No: 00948402) whose registered office is situate at Barratt House Cartwright Way Forest Business Park Bardon Hill Coalville Leicestershire LE67 1UF ("the Developer")

RECITALS

- (A) This Deed is supplemental to the Original Agreement**
- (B) On 1 November 2005, the Council and the Owner entered into the Original Agreement in connection with the proposed development of the Application Site pursuant to the Original Permission**
- (C) The Council is the local planning authority for the purposes of the Act in respect of the area which includes the Application Site and by whom the obligations in the Original Agreement are enforceable**
- (D) The Owner is interested as freehold owner in that part of the Application Site comprising the Land which is registered at the Land Registry with title absolute under title number NT261878**
- (E) The Developer is a successor in title to the Owner's interest in the Land by virtue of a lease granted by the Owner and registered at the Land Registry under title number NT417545**
- (F) The Developer has now submitted the New Application to the Council for permission to carry out the New Development on the Land**
- (G) The Owner, the Developer and the Council agree that the Original Agreement shall be varied as set out in this Deed to enable the Council to grant the New Permission**

IT IS AGREED as follows:

1 In this Deed, the following words shall have the following meanings:

"Land"	the land shown edged red on the Plan
"New Application"	the application submitted to the Council by the Developer under reference number V/2017/0086 for permission to carry out the Development on the Application Site
"New Development"	the erection pursuant to the New Permission of a BB Distribution Centre with associated offices, access, parking and servicing, together with landscaping and all associated earthworks and retaining structures
"New Permission"	the planning permission to be granted by the Council pursuant to the New Application
"Original Agreement"	the agreement dated 1 November 2005 made between the Council and the Owner in accordance with Section 106 of the Act a copy of which is attached hereto
"Original Permission"	the planning permission granted by the Council on 1 November 2005 under reference number 2005/0589
"Plan"	the plan annexed to this Deed

2 Save where otherwise provided in this Deed, terms defined in the Original Agreement shall have the same meaning in this Deed

3 It is hereby acknowledged and agreed that:

3.1 this Deed is made pursuant to section 106A of the 1990 Act and varies the Original Agreement insofar as it binds the Land



CHAIRMAN



TRIPIN GEORGE PARTNERS LP

AUTHORISED OFFICER

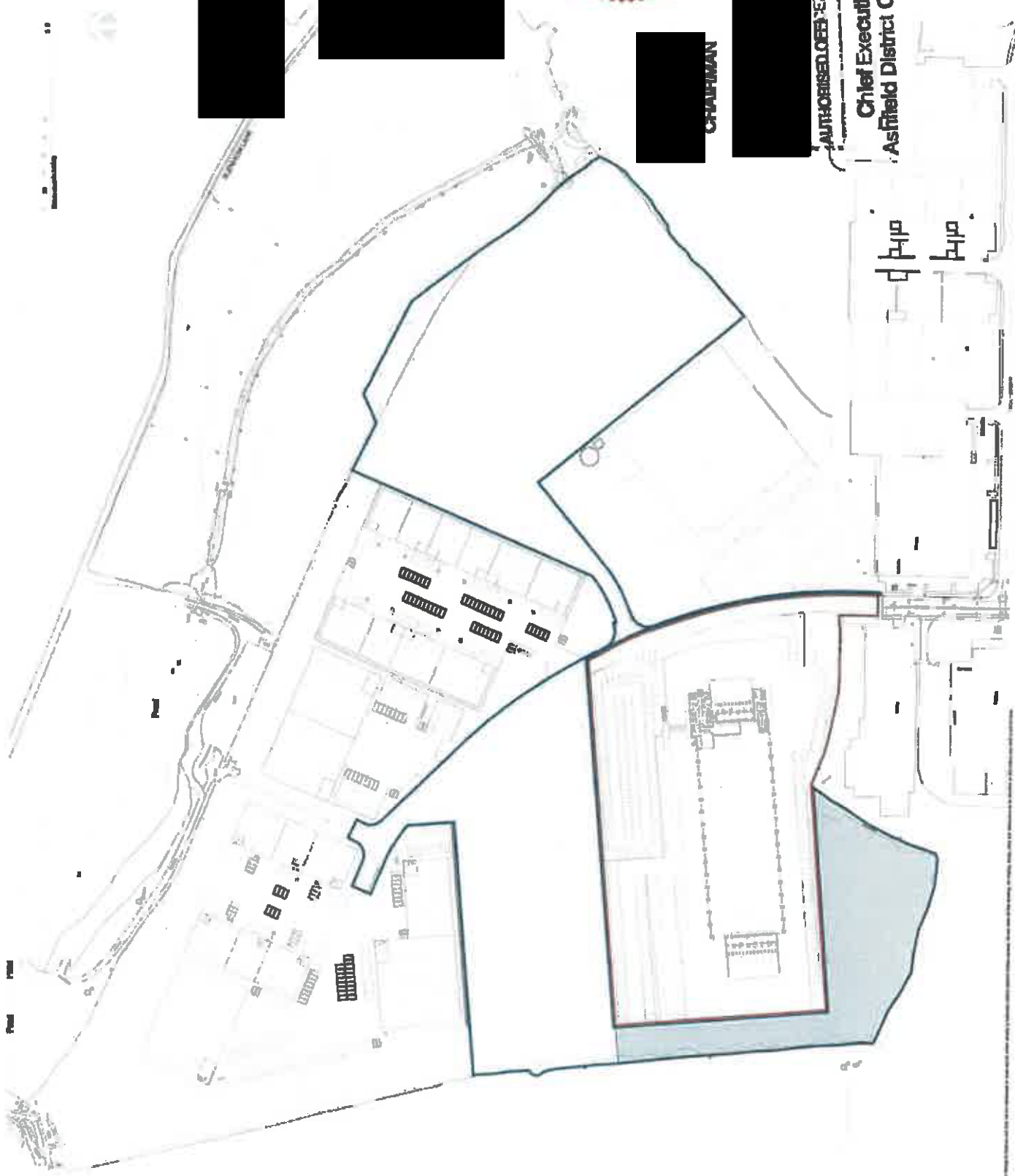
Chief Executive

Asfield District Council

Asfield District Council

Asfield District Council
Asfield, North Yorkshire
YO21 3JL
Tel: 01753 855222
Fax: 01753 855223
Email: info@asfield.gov.uk

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- 3.2 the obligations in this Deed entered into by the Owner and the Developer are planning obligations for the purposes of the 1990 Act and shall find the Owner's interest and the Developer's interest in the Land
- 3.3 any breach of a covenant or obligation given to the Council by the Owner (other than in respect of clause 7 of this Deed) and/or the Developer in this Deed shall be enforceable by the Council as local planning authority under the 1990 Act
- 4 It is hereby agreed that with effect from the date of this Deed the Original Agreement shall be varied as set out in the Schedule to this Deed
- 5 The Owner and the Developer covenant with the Council to observe and perform the covenants restrictions and obligations contained in the Original Agreement as varied by this Deed insofar as they bind the Land
- 6 It is further hereby acknowledged and agreed that the discount provided for in paragraph 2 of the First Schedule to the Original Agreement has been claimed by the Owner and the Developer and that no further discounts are available pursuant to that paragraph
- 7 The Developer shall on or before the date of this Deed pay to the Council the Council's reasonable costs associated with the preparation and completion of this Deed and its registration as a local land charge
- 8 The original of this Deed shall be retained by the Council and notice of it registered in the register of Local Land Charges maintained by the Council
- 9 Unless expressly stated nothing in this Deed will create any rights under the Contracts (Rights of Third Parties) Act 1999 in favour of anyone other than the parties to this Deed
- 10 Nothing in this Deed restricts or is intended to restrict the proper exercise at any time by the Council of any of its statutory powers functions or discretions in relation to the Land or otherwise
- 11 It is hereby agreed that any steps taken pursuant to the Original Agreement in satisfaction of the obligations therein shall be deemed to have been taken for the purposes of this Deed and mutatis mutandis

IN WITNESS of which the parties have executed this Deed as a deed on the date first written above

Schedule

The Original Agreement shall be varied as follows:

- 1 In clause 1 of the Original Agreement, the following new definitions shall be inserted:

"New Application" means the planning application dated 10 February 2017 in respect of the New Development which has been allocated the Council's reference number V/2017/0086

"New Development" means the erection pursuant to the New Permission of a B8 Distribution Centre with associated offices, access, parking and servicing, together with landscaping and all associated earthworks and retaining structures

"New Permission" means the grant of planning permission pursuant to the New Application

- 2 In paragraph 1 of the First Schedule to the Original Agreement, the words "or the New Permission" shall be inserted after each reference to the words "Subsequent Application"
- 3 In paragraph 1.1 of the First Schedule to the Original Agreement, the reference to "Use Class B1" shall be amended to "Use Class B1(a)"

EXECUTED as a DEED by ASHFIELD DISTRICT COUNCIL having affixed its COMMON SEAL to this Deed in the presence of:



[Redacted signature area]

Authorised Officer
Chief Executive
Ashfield District Council

SIGNED as a DEED by MALCOLM HENRY HODKINGSON in the presence of:

)
[Redacted signature area]

Witness Name *John Hodkinson*

Witness Address

Witness Signature

[Redacted witness address and signature area]

SIGNED as a DEED by SYLVIA ANN HODKINGSON in the presence of:

)
[Redacted signature area]

Witness Name *Sylvia Hodkinson*

Witness Address

Witness Signature

[Redacted witness address and signature area]

SIGNED as a DEED for and on behalf of WILSON BOWDEN DEVELOPMENTS LIMITED acting by

)
[Redacted signature area]

Director

[Redacted signature area]

Director/Secretary

ANNEX 1 - Original Agreement

THIS AGREEMENT is made the 1st day of November 2005

BETWEEN:

- (1) **MALCOLM HENRY HODGKINSON and SYLVIA ANN HODGKINSON** both of Bulwell Wood Hall Farm, 2 Blenheim Lane, Bulwell, Nottingham ('the Owner')
- (2) **ASHFIELD DISTRICT COUNCIL** of Council Offices, Urban Road, Kirkby-in-Ashfield, Nottinghamshire, NG17 8DA ('the Council')

1. Definitions

IN THIS AGREEMENT the following words and phrases shall have the following meaning:-

- 1.1 "the Act" means Town and Country Planning Act 1990 (as amended) and terms not otherwise defined in this Agreement have the meaning ascribed to them in the Act unless a contrary intention appears
- 1.2 "the Application" means the Planning Application dated 28th June 2005 in respect of the Proposed Development to which has been allocated the Council's Planning Application Reference No. 2005/0589
- 1.3 "the Application Site" means the land for which planning permission is sought to carry out the Proposed Development and which is shown for the purposes of identification only edged red on the Plan
- 1.4 "the Green Land" means that part of the Application Site which is shown for the purposes of identification only shaded green on the Plan

- 1.5 "the Obligations" means the planning obligations contained or referred to in the First Schedule to this Agreement
- 1.6 "the Plan" means the plan attached to this Agreement
- 1.7 "the Planning Permission" means the grant of Planning Permission pursuant to the Application
- 1.8 "the Proposed Development" means the erection of buildings for B1, B2 and B8 employment use with roads, parking and ancillary facilities as more particularly described in the Application
- 1.9 "a Subsequent Application" means any application for the approval of reserved matters following the issue of the Planning Permission
- 1.10 Any reference to a Use Class is to the classes of planning use defined by the Town & Country Planning (Use Classes) Order 1987 as for the time being amended

2. Recitals

WHEREAS:-

- 2.1 The Owner is registered at H.M. Land Registry as the proprietor of the Application Site other than the Green Land with title absolute under title number NT 216878⁶¹
- 2.2 Wilson Bowden Developments Ltd has submitted the Application
- 2.3 The Council is the Local Planning Authority for the purposes of the Act for the area in which the Application Site is situated
- 2.4 The Council's Local Plan Review adopted in November 2002 contains inter alia Policy TR6 (Transport Provision)

2.5 The Council resolved on 22nd September 2005 to grant planning permission for the Proposed Development in accordance with the Application subject to conditions and subject to the making of this Agreement without which planning permission for the Proposed Development would not have been granted

2.6 The Owner has agreed to enter into this Agreement for the purpose of procuring the issue of the Planning Permission

3. Enabling Powers

THE parties hereto enter into this Agreement under and pursuant to Section 106 of the Act.

4. Planning Obligations

4.1 The Obligations are planning obligations for the purposes of Section 106 of the Act to the intent that the Obligations shall be binding and enforceable without time limit against the ~~First and Second Owners~~ and any persons deriving title from them in the manner specified in Section 106 of the Act.

4.2 The Council is the Authority entitled to enforce the Obligations.

5. Conditionality

The Obligations are conditional upon the issue of the Planning Permission.

6. Covenant

THE Owner hereby covenants with the Council pursuant to Section 106 of the Act that the Application Site other than the Green Land shall be subject to the

Obligations and that the ~~First and Second Owners~~ will at their own expense duly carry out and perform the Obligations

7. Agreements and Declarations

It is agreed and declared as follows:

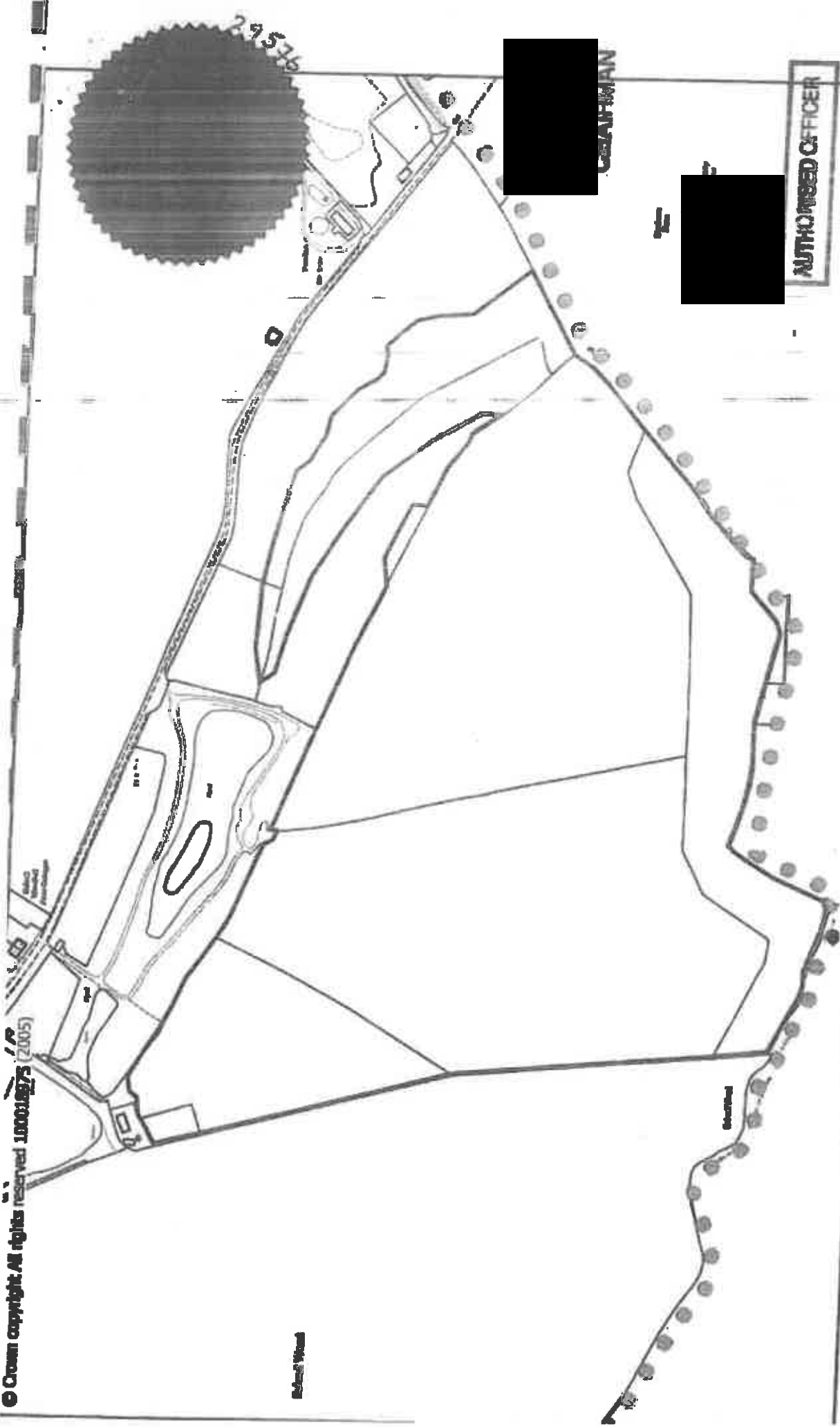
- 7.1** Any reference to a party to this Agreement shall where the context so admits shall include their successors in title and assigns
- 7.2** Words importing one gender shall be construed as importing any gender, and words importing the singular shall be construed as importing the plural and vice versa
- 7.3** No person shall be liable for breach of covenant contained in this Deed after he shall have parted with all interest in the Application Site or the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest
- 7.4** If the Planning Permission having been granted shall expire before the Proposed Development is begun, or shall at any time be revoked, this Agreement shall forthwith determine and cease to have effect
- 7.5** Nothing in this Agreement shall prohibit or limit the right to develop any part of the Application Site in accordance with a planning permission (other than the one relating to the Proposed Development as specified in the Application) granted after the date of this Agreement
- 7.6** Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually
- 7.7** The Agreement is a Local Land Charge and shall be registered as such

8. Costs

The Owner shall on the execution of this Deed pay the Council's costs incurred in the preparation and settlement of this Deed in the sum of £1,150.00

IN WITNESS whereof the parties have executed this Agreement as a Deed the day and year first before written

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Redeem Wood

Ashfield District Council
 Urban Road
 Kirby-in-Ashfield
 Nottingham NG17 8DA



Map sheet: SK5246
 Reference: Jm
 Prepared by: kg
 09 Aug 2005 10:51:12

Section 106 agreement
 Blenheim Park
 Blenheim Lane, Huddersfield

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Scale: 1 to 3500

AUTHORISED OFFICER

FIRST SCHEDULE

THE OBLIGATIONS

1. Prior to the commencement of Development pursuant to each and every Subsequent Application there shall be paid as a commuted sum to the Council for integrated transport improvements and initiatives within the administrative district of Ashfield a sum calculated as follows:

1.1 TWENTY THOUSAND POUNDS (£20,000) per One Thousand square metres (1000m²) of gross floor area in any building falling within Use Class B1 for which consent is given pursuant to a Subsequent Application

1.2 EIGHT THOUSAND POUNDS (£8,000) per One Thousand square metres (1000m²) of gross floor area in any building falling within Use Classes B2 to B8 for which consent is given pursuant to a Subsequent Application

PROVIDED that if consent is given to more than one Subsequent Application covering the same part of the Application Site the Owner shall elect in writing to the Council prior to making payment of such sum which consent is to be implemented and no other consent pursuant to a different Subsequent Application covering that part of the Application Site (whether granted before or after a Subsequent Application pursuant to which payment has already been made) shall thereafter be implemented unless the Owner shall first have paid to the Council any shortfall between the sum already paid to the Council and the sum due under the provisions of this First Schedule calculated with reference to the consent to the different Subsequent Application which the Owner then wishes to implement **BUT FURTHER PROVIDED** that nothing herein shall require the Council to make refund of any sum already paid

2. If prior to the making of any payment pursuant to Paragraph 1 the Owner shall produce evidence satisfactory to the Council of expenditure incurred or committed to be incurred on off-site highway work to comply with Condition 4(ii) of the Planning Permission then the Owner may set off as a discount against the sum(s) due under Paragraph 1 the amount expended or committed on such off-site highway work up to a maximum of £80,000 in aggregate. For the avoidance of doubt the discount may at the discretion of the Owner be set off against payments due in respect of more than one Subsequent Application but so that the total amount of discount allowed shall not exceed £80,000. The Owner when making any payment pursuant to Paragraph 1 shall certify how much of the discount allowable under this Paragraph 2 is being set off against the payment.
3. Where any amount is payable pursuant to Paragraph 1 of this First Schedule the amount to be paid shall be adjusted for inflation in accordance with the following formula :-

$$(P + A) \times B$$

Where:-

P = the amount payable pursuant to Paragraph 1 of this First Schedule

A = the 'all items' figure of the Retail Prices Index published by the Office for National Statistics or any successor body (the 'RPI figure') in respect of the month of September 2005

B = the RPI figure for the month in which the relevant payment is made or (if earlier) falls due to be made

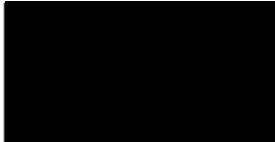
But so that if at any time B shall be less than A the amount payable pursuant to the relevant paragraphs as the case may be shall nevertheless be paid in full without reduction

PROVIDED ALWAYS that :

(a) if such sum(s) or any part thereof due on or before a date calculated in accordance with paragraph 1 shall not be paid by that due date it shall carry interest at 12% per annum from the date of actual Commencement of Development until actual payment and no premises to be built upon the Application Site shall be occupied whilst such sum(s) or any part thereof (including interest as aforesaid) remains unpaid.

(b) payment of the commuted sum(s) shall not in itself constitute commencement of the Proposed Development for the purposes of implementing the Planning Permission

**SIGNED AS A DEED by
MALCOLM HENRY HODGKINSON**



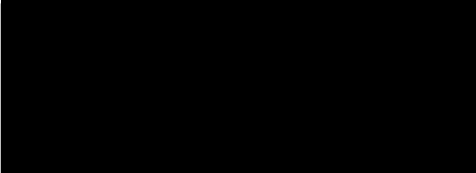
In the presence of:



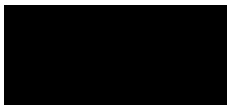
**SIGNED AS A DEED by
SYLVIA ANN HODGKINSON**



In the presence of:



**EXECUTED AS A DEED by
ASHFIELD DISTRICT COUNCIL
having affixed its COMMON SEAL
to this deed in the presence of**



Chairman



Authorise