

Dated 13 September 2017

**ASHFORD BOROUGH COUNCIL**

**AND**

**THE KENT COUNTY COUNCIL**

**AND**

**FRIENDS LIFE LIMITED**

**AGREEMENT**

Under Section 106 Town And Country Planning Act 1990

relating to Land on the north side of

Highfield Lane, Sevington

T W Mortimer, LL.B., Solicitor  
Head of Legal and Democratic Services  
Ashford Council  
Civic Centre, Tannery Lane  
Ashford, Kent  
TN23 1PL

ABC Planning Ref: 14/00906/AS  
ABC Legal Ref: JG/DS54-0755

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This Deed made on *thirteenth day of September*

2017

Between:

- (1) **ASHFORD BOROUGH COUNCIL** of Civic Centre, Tannery Lane, Ashford, Kent TN23 1PL (the "**Borough Council**"); and
- (2) **THE KENT COUNTY COUNCIL** of Sessions House County Hall Maidstone Kent ME14 1XQ ("the County Council");
- (3) **FRIENDS LIFE LIMITED** a company incorporated in England and Wales (Co Reg No 04096141) whose registered office is at Pixham End, Dorking, Surrey RH4 1QA (the "**Owner**")

#### Recitals

- 1.1 The Owner is the freehold owner and registered proprietor of that part of the Application Site registered at the Land Registry under title numbers K917394, K421661 and K582402
- 1.2 The Borough Council is the local planning authority for the purpose of the Planning Act for the area where the Application Site is located.
- 1.3 The County Council is the highway authority and the local planning authority for the area in which the Application Site is located
- 1.4 The Owner wishes to carry out the Development of the Application Site and submitted the Planning Application to the Borough Council.
- 1.5 The Borough Council resolved at a meeting of its Planning Committee held on 18 May 2016 to grant the Planning Permission subject to the completion of an agreement under section 106 of the Planning Act.
- 1.6 The Borough Council the County Council and the Owner have accordingly agreed to enter into this agreement pursuant to the provisions of section 106 of the Planning Act upon the terms and conditions hereinafter appearing.

#### Witness as follows

### **1 DEFINITIONS AND INTERPRETATION**

#### **1.1 In this Agreement:**

**"Actual Turning Facility Works Costs Notice"** means the notice to be served on the Owner by the County Council following the completion of the Turning Facility Works confirming the actual cost of the Turning Facility Works;

**"Agreement"** means this agreement;

**"Application Site"** means the land on the north side of Highfield Lane, Sevington as shown edged red on Plan 1 and further described in Schedule 5;

**"Building"** means a building constructed pursuant to the Planning Permission;

**"Bus Service"** means a bus service provided by the Owner or on behalf of the Owner by a commercial operator or provided by a combination of the two in accordance with the approved

Bus Strategy, and which shall call at the Development, the Ashford town centre and Ashford International Railway Station;

**"Bus Strategy"** means a document proposing detailed arrangements for the Bus Service including the operator, the route, stopping points, frequency, days and hours of operation and any fares to be charged, together with the length of time for which the Bus Service will be provided, a mechanism for regular monitoring of the Bus Service and the supply of regular monitoring information to the Borough Council therefrom, and a mechanism for adjustment and review of all or any of the above;

**"Car Park Works"** mean the construction of a suitably surfaced, all-weather, 30 space off-street car park together with the associated works to serve St. Mary's Church, together with access alterations and footpath connections;

**"Car Park Works Specification"** means the specification for the Car Park Works;

**"Carbon Off-Setting Sum"** in relation to each Building means the sum calculated in accordance with Schedule 6 to be applied by the Borough Council towards funding carbon saving projects (including designing, procuring, delivering, administering and project managing works or services; repaying loans and reimbursing expenditure (irrespective of when incurred); and forward funding such projects);

**"Church Works"** means the various upgrade works to St. Mary's Church, Sevington to enable the church to meet the needs of the community, to be agreed in the Church Works Specification;

**"Church Works Contribution"** means the sum of one hundred and eighty six thousand eight hundred and seventy five pounds (£186,875) Index Linked for the funding of the Church Works;

**"Church Works Specification"** means the specification for and the timing of the Church Works;

**"Commencement of Development"** means the carrying out of a Material Operation pursuant to the Planning Permission (and related expressions such as "Commence Development" "Commencement" and "Commence" shall be construed accordingly);

**"Commencement Notice"** means a notice by the Owner to the Borough Council announcing its intention to Commence Development on a specified date no earlier than 4 weeks and no later than 6 weeks after the date of service of the notice;

**"Contamination"** means contamination with noxious substances or any other waste as defined by the Environmental Protection Act 1990;

**"Deed of Dedication"** means a deed of dedication for the dedication of the Turning Facility Land as highway maintainable at the public expense under s.37 Highways Act 1980

**"Development"** means development to provide an employment led mixed use scheme, to include site clearance, the alteration of highways, engineering works and construction of new buildings and structures of up to 157,616 sqm comprising: up to 140,000 sqm Class B8 (storage and distribution) use; up to 23,500 sqm of B1a/B1c Business (of which a maximum of 20,000 sqm of B1a); up to 15,000 sqm of B2 (general industry); up to 250 sqm of A1 (retail shops) and 5,500 sqm of sui generis to accommodate Kent Wool Growers together with ancillary and associated development including utilities and transport infrastructure, car parking and landscaping;

**"Development Consent Order"** means the development consent order for the M20 Junction 10A for a new junction and associated improvement



"DU" means a development unit as defined in the Borough Council's supplementary planning guidance document *"SPG6 Providing for transport needs arising from the South of Ashford Transport Study"* (June 2004), namely the following quanta of floorspace:

- use class B1 – 5,500sqm;
- use class B2 – 8,600sqm;
- use class B8 – 16,700sqm;
- use class A1 (food) – 1,000sqm; and
- use class A1 (non food) – 6,500sqm;

**"Estate Road Works"** means works required for the delivery of the Estate Road;

**"Estate Road"** means that part of the Link Road on the Estate Road Land;

**"Estate Road Land"** means the land shown for identification purposes coloured green on Plan 1;

**"Expert"** means a person appointed under clause 7;

**"Framework Travel Plan"** means the framework travel plan to be agreed under condition 28 of the Planning Permission and referred to in condition 29 of the Planning Permission;

**"Future Highway Land"** means the land shown for identification purposes indicated with a brown dotted line on Plan 1;

**"Future Highway Works"** mean the construction of a 2-lane vehicular connection together with the abutments for a crossing over the railway to the south which links to the Estate Road (and **"Future Highway"** shall be construed accordingly);

**"Future Highway Works Trigger"** means the notice served by the Borough Council on the Owner specifying that the Future Highway Works must be carried out by the Owner which notice shall not be served until the Junction 10A Works are completed and that junction is open to traffic;

**"Head of Strategic Sites and Design"** means the person from time to time holding or acting in the post of Head of Development Strategic Sites and Design with the Borough Council or any replacement for that post;

**"Highways Act"** means the Highways Act 1980;

**"Index Linked"** means adjusted in accordance with the provisions of clause 8;

**"Interest"** means interest calculated in the manner set out in clause 13;

**"Junction 10A Land"** means the land for the Junction 10A Works as shown edged red on Plan 3;

**"Junction 10A Works"** means construction of a new Junction 10A to the M20 (which includes any partial junction) with associated works and future maintenance thereof or in the event planning permission or development consent order is refused for the new junction, works to provide additional capacity at junction 10A to the M20;

**"Junction 10A Works Contributions"** means the sums payable to Highways England pursuant to an agreement under section 278 of the Highways Act entered into in accordance with paragraph 1 of Schedule 2;

**"Land"** forms part of the Application Site and is the land shown outlined in red on Plan 4

**"Link Road"** means the Estate Road and the Future Highway which together form the new link road through the Application Site, from the access onto the Junction 10a Land to the point at the boundary of the Application Site where it would cross the railway lines to the south (including the abutments to the railway lines);

**"Material Operation"** means material operation within the meaning of section 56(4)(a) of the Planning Act other than the following:

- (a) archaeological investigation, excavation, site surveys and preparation;
- (b) the assessment of Contamination;
- (c) remedial action in respect of any Contamination or other adverse ground conditions;
- (d) site clearance, demolition work, investigations for the purpose of assessing ground conditions;
- (e) the erection of fencing or other means of enclosure for site security;
- (f) the display of advertisements;
- (g) the erection of a site compound or site office or similar temporary buildings or structures;
- (h) diversion and laying of services; and
- (i) laying of any roads;

**"Monitoring Fee"** means the sum of five thousand pounds (£5,000) Index Linked towards monitoring compliance with this Deed (excluding the Travel Plan);

**"Occupy"** means first occupy or cause or permit first occupation of any of the Buildings for the purposes permitted by the Planning Permission other than occupation for the purpose of construction, decoration, fitting-out, security, marketing or repair (and related expressions such as "Occupation" shall be construed accordingly);

**"Pedestrian and Cycle Connection Improvement Contribution"** means the sum of thirty thousand pounds (£30,000) Index Linked for the funding of improvements to facilitate improved pedestrian and cycle connections between the Application Site and Kingfisher Close, Willesborough as shown for indicative purposes only in blue on Plan 1;

**"Plan 1"** means the plan attached to this Agreement labelled "Plan 1" and showing the Application Site and various features within and around it;

**"Plan 2"** means the plan attached to this Agreement labelled "Plan 2" (being Steer Davies Gleave drawing number 22233107-00102- Rev-P2) showing the Turning Facility Land;

**"Plan 3"** means the plan attached to this Agreement labelled "Plan 3" and showing the extent of the Junction 10A Works edged red

**"Plan 4"** means the plan attached to this Agreement labelled "Plan 4"

**"Planning Act"** means the Town and Country Planning Act 1990 as amended;

**"Planning Application"** means the application for planning permission for the Development registered by the Council under reference number 14/00906/AS;

**"Planning Permission"** means the planning permission to be granted by the Borough Council pursuant to the Planning Application in the form of the draft annexed to this Agreement at Appendix 1;

**"Public Footpath Improvement"** means the upgrading to public bridleways of public footpath AE639 and public footpath AE363 between Highfield Lane and Blind Lane and the diversion of Public Footpaths AE338 and AE639;

**"Public Footpath Improvement Specification"** means the specification for the Public Footpath Improvement to a standard to enable all-weather usage by pedestrians and cyclists in the case of Public Footpath AE639 and AE363 and pedestrians only in the case of Public Footpaths AE337A and AE338

**"Public Footpath Improvement Works"** means the physical works in accordance with the Public Footpath Improvement Specification and any orders made authorising those works;

**"Substantial Completion"** means completed in accordance with the Planning Permission and any reserved matters approvals and/or (where relevant) any specification or design approved by the Borough Council, or other requirement under this Agreement, save in minor respects and so certified in writing by the Owner's architect, surveyor or engineer;

**"Traffic Regulation Order (Highfield Lane and Kingsford Street)"** means the traffic regulation order necessary to prevent through vehicular traffic moving between Highfield Lane and Kingsford Street and retain a local public highway for cyclists and pedestrians and equine users only (using lockable bollards or similar measures to maintain an access for emergency vehicles only);

**"Traffic Regulation Order (Church Road)"** means the traffic regulation order necessary to prevent through vehicular traffic at the southern end of Church Road (using lockable bollards or similar measures to maintain an access for emergency vehicles only);

**"Travel Plan Monitoring Fee"** means the sum of one thousand pounds (£1000) Index Linked towards monitoring and reviewing the Framework Travel Plan and the Workplace Travel Plans (which may include the recovery of costs previously incurred);

**"Turning Facility Land"** means that part of the land required for the Turning Facility Works which forms part of the land registered at HM Land Registry with Title Number K421661 and as edged in red on Plan 2 ;

**"Turning Facility Land Notice"** means the notice to be served by the County Council to the Owner confirming that it requires the Turning Facility Land to carry out the Turning Facility Works;

**"Turning Facility Works"** means works to construct a refuse lorry sized turning facility to enable a turn and return in an easterly direction along Kingsford Street together with associated works (including landscaping) to an adoptable standard on land which includes the Turning Facility Land;

**"Turning Facility Works Costs Estimate"** means the sum of £93,450.00 (ninety three thousand and four hundred and fifty pounds) to be paid by the Owner to the County Council;

**"Turning Facility Works Costs Estimate Notice"** means the notice to be served by the County Council requiring payment of Turning Facility Works Costs Estimate in accordance with Clause 9 (c) Schedule 2 of this Deed;

**"Working Day"** means any day which is not a Saturday or Sunday or a public holiday in England; and

**"Workplace Travel Plan"** means the workplace travel plan/s to be agreed under condition 29 of the Planning Permission for each Building which has a Gross External Area of two thousand five hundred square metres (2,500sqm) or more.

- 1.2 References in this Agreement to clauses, Schedules or paragraphs are references to clauses, Schedules or paragraphs of this Agreement.
- 1.3 References in this Agreement to any statute, subordinate legislation or planning policy or guidance are unless otherwise stated references to that statute, subordinated legislation, planning policy or guidance as amended or adopted from time to time, and to any replacement or succeeding statute or delegated legislation from time to time.
- 1.4 Save as herein provided the Interpretation Act 1978 shall apply to this Agreement.
- 1.5 Expressions importing the singular include the plural and vice versa.
- 1.6 Expressions importing one gender include other genders.

## **2 LEGAL EFFECT**

- 2.1 This Agreement is made pursuant to section 106 of the Planning Act and the covenants, restrictions and obligations by the Owner hereinafter contained shall be planning obligations for the purposes of section 106 of the Planning Act and are enforceable by the Borough Council and the County Council as local planning authorities against the Owner.
- 2.2 This Agreement is also made pursuant to section 111 of the Local Government Act 1972, section 2 of the Local Government 2000, section 1 of the Localism Act 2011 and all other powers so enabling.
- 2.3 The obligations on the part of the Owner in this Agreement shall be enforceable not only against the Owner but also against any successors in title to its interest in the Land and any person claiming an interest in the Land through or under the Owner PROVIDED THAT:
  - (a) no person shall be liable for any breach of the covenants contained in this Agreement in relation to any land occurring after it has parted with its entire interest in such land (save for antecedent breaches);
  - (b) the obligations contained in this Agreement shall not be binding upon any statutory undertakers who have as part of their statutory undertaking any interest in the Land; and
  - (c) except for paragraph 4 of Schedule 2 and any obligation preventing or restricting Occupation of the Development the obligations contained in this Agreement shall not be binding upon any leaseholder or occupier of an individual Building nor the mortgagee or chargee of any such persons nor any receiver appointed by a mortgagee or chargee of any such persons.
- 2.4 This Agreement constitutes the whole agreement between the parties relating to the subject matter and subject to sections 106A and 106B of the Planning Act and clause 2.3(a) any release or variation of the Owner's liability under this Agreement shall not take effect unless evidenced in writing in a document under the seal of the Borough Council and executed by the Owner.

2.5 Covenants made in this Agreement:

- (a) if made by more than one person or company are made jointly and severally; and
- (b) shall be local land charges on the Land and shall be registered in the Register of Local Land Charges.

**3 THE OWNER'S COVENANTS**

- 3.1 The Owner shall on completion of this Agreement pay the Borough Council's and County Council's reasonable and proper legal costs incurred in connection with the negotiation, preparation and completion of this Agreement (less any amount thereof already paid before completion of this Agreement).
- 3.2 The Owner shall prior to Commencement of Development serve the Commencement Notice on the Borough Council and shall not unless otherwise agreed in writing with the Borough Council Commence Development before the date specified in the Commencement Notice.
- 3.3 The Owner shall notify the Borough Council in writing of the date on which Commencement of Development occurred within seven (7) days of its occurrence.
- 3.4 The Owner shall not Commence Development until it has paid the Borough Council the Monitoring Fee.
- 3.5 The Owner shall:
  - (a) on the date of submission of the Framework Travel Plan, pay to the Borough Council the Travel Plan Monitoring Fee; and
  - (b) on or before each anniversary of the date of such submission, pay to the Borough Council a further Travel Plan Monitoring Fee until a total of five such payments have been made to the Borough Council.
- 3.6 The Owner covenants with the Borough Council and County Council as set out in Schedule 2.
- 3.7 The Owner's covenants in clause 3.2 to 3.5 are conditional upon the grant of the Planning Permission, and its covenant in clause 3.6 (except for paragraph 9.1(b)(ii) of schedule 2) is additionally conditional on Commencement of Development having occurred.

**4 THE BOROUGH COUNCIL AND COUNTY COUNCIL'S COVENANTS**

- 4.1 The Borough Council covenants with the Owner as set out in Schedule 3.
- 4.2 The County Council covenants with the Owner as set out in Schedule 4

**5 GOVERNING LAW AND JURISDICTION**

The construction, validity, performance and enforcement of this Agreement shall be governed by English law and shall be subject to the jurisdiction of the English courts.



## 6 NOTICES

- 6.1 Any notice to the Owner from the Borough Council or County Council under this Agreement shall be in writing, and shall be duly served if it is delivered personally or sent by first class post or special delivery post to the Owner's address as is given in this Agreement or their registered offices and marked for the attention of the Company Secretary or such other address as it may notify to the Borough Council or County Council in writing from time to time.
- 6.2 Any notice to the Borough Council shall be in writing and shall be duly served on the actual date of delivery of the notice to the Borough Council at the address as given in this Agreement (addressed to the Head of Strategic Sites and Design) and for the County Council to the Head of Law and Governance at Sessions House, County Hall, Maidstone, Kent ME14 1XQ or such other addresses as the Borough Council or County Council may notify to the Owner in writing from time to time.

## 7 DETERMINATION OF DISPUTES

- 7.1 Any dispute arising between the parties in connection with this Agreement (other than legal disputes and differences) may be referred by either party to an Expert for determination.
- 7.2 The parties shall jointly appoint the Expert not later than twenty eight (28) days after service of a request in writing by either party to do so.
- 7.3 If the parties are unable to agree within twenty eight (28) days as to the appointment of such Expert then the Expert shall be appointed on the application of either of the parties as follows:
- (a) if such dispute or difference relates to highway works, engineering, demolition, building or construction works it shall be referred to a Chartered Civil Engineer appointed by or on behalf of the President for the time being of the Institution of Civil Engineers;
  - (b) if such dispute or difference relates to the value of any interest in property it shall be referred to a chartered surveyor appointed by or on behalf of the President for the time being of the Royal Institution of Chartered Surveyors;
  - (c) if such dispute or difference relates to planning and related matters it shall be referred to a Chartered Town Planner appointed by or on behalf of the President for the time being of the Royal Town Planning Institute; or
  - (d) otherwise it shall be referred to the President for the time being of the Law Society who shall determine which an independent person should be appointed by the parties to the dispute or difference.
- 7.4 In the event of a reference to the Expert the respective parties agree to:
- (a) prosecute any such reference expeditiously; and
  - (b) do all things or take all steps reasonably necessary in order to enable the Expert to deliver any award (interim, final or otherwise) as soon as reasonably practicable.
- 7.5 The Expert shall be entitled to adopt the procedure which he believes is most appropriate for the resolution of the dispute and the parties agree to be bound by such procedure.

- 7.6 The award shall be in writing signed by the Expert.
- 7.7 The Expert's fees and expenses including the costs of his appointment shall be borne as he directs or failing such direction by the parties to the dispute equally.
- 7.8 If the Expert dies or delays in giving his decision or becomes unwilling, unfit or incapable of acting or for any reason the relevant person referred to in clause 7.3 may on the application of any of the parties to the dispute or difference discharge the Expert and appoint another in his place.
- 7.9 The parties shall be bound by the decision of the Expert (except in the case of manifest error) unless and until the parties otherwise agree or the matter is decided by legal proceedings.
- 7.10 Unless this Agreement has already been terminated, each of the respective parties shall in every case continue to comply with its obligations under this Agreement notwithstanding any referral under this clause 7 and notwithstanding the nature of the dispute or difference and the fact of the referral of the dispute for resolution until such time as the Expert makes his determination.

## **8 INDEXATION**

- 8.1 Where any sum mentioned in this Agreement is stated to be "Index Linked" the stated sum shall be increased or decreased in the same proportion as the final figure for the appropriate index published in the month preceding the date of payment of the stated sum or relevant part thereof (as the case may be) compared to the final figure for the appropriate index as of 18 May 2016 and:
- (a) with regard to the Church Works Contribution and the Pedestrian and Cycle Connection Improvement Contribution the index to be used shall be the All in Tender Price Index (as published by the Building Costs Information Service on behalf of the Royal Institution of Chartered Surveyors); and
  - (b) with regard to the Monitoring Fee and Travel Plan Monitoring Fee the index to be used shall be the Retail Prices Index (All Items).
- 8.2 In the event that any of the indices referred to in this clause 8 cease to be published or are otherwise unavailable for use, the basis of indexation shall be such as is agreed between the Owner and the Borough Council or County Council as the case may be as most closely comparable to the relevant index.

## **9 THIRD PARTY RIGHTS**

No provisions of this deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.

## **10 PARTNERSHIP**

Nothing in this Agreement shall create a legal partnership between any of the parties to this Agreement.



## **11 SEVERANCE**

If any provision in this Agreement shall be held to be invalid, illegal or unenforceable by a court, that shall not affect the validity, legality and enforceability of the remaining provisions of this Agreement.

## **12 NO FETTER OF DISCRETION**

Save where legally or equitably permitted, nothing contained or implied in this Agreement shall prejudice or affect the rights, powers, duties and obligations of the Borough Council and County Council in the exercise of any of their functions, and the rights, powers, duties and obligations of the Borough Council and County Council under all public and private statutes, byelaws, orders and regulations may be as fully and effectually exercised as if the Borough Council or County Council were not a party to this Agreement.

## **13 LATE PAYMENT**

If any payment properly due by any party under any of the provisions of this Agreement is not made on or before the date on which it is due (for which purpose where no other due date is given, a sum shall be taken as due the day before the relevant Occupation or Commencement of Development or other event prior to which the payment is to be made) the sum shall bear interest at the rate of two per cent (2%) above the base rate from time to time of the Royal Bank of Scotland plc for the contributions due to the Borough Council (or if it shall cease to exist or have a base rate such reasonably comparable rate as the Borough Council shall stipulate in writing) and for the contributions due to the County Council the sum shall bear the interest rate at four per cent (4%) above the above the base rate from time to time of the Natwest Bank Plc from the due date until the date of payment.

## **14 APPROVAL**

14.1 Any approval given by the Borough Council or County Council under this Agreement or for the purposes of this Agreement shall not be, nor be deemed to be, approval for any other purpose whatsoever.

14.2 Where any provision of this Agreement requires the agreement, approval, certification, confirmation, consent, direction or expression of satisfaction or expression of opinion or notification in writing of the Borough Council or County Council or one of its officers, such approval shall only be treated as given on headed paper and signed by or on behalf of the Borough Council or County Council or such officer (as the case may be).

14.3 Where for any purpose under this Agreement the agreement, approval, certification, confirmation, consent, direction or expression of satisfaction or expression of opinion or notification or expression of requirement by the Borough Council or County Council is required, such agreement, approval, certification, confirmation, consent, direction or expression of satisfaction or expression of opinion or notification or expression of requirement shall not be unreasonably withheld or delayed but the Borough Council or County Council shall not be liable for damages by virtue of this clause.

## **15 WAIVER BY THE COUNCIL AND COUNTY COUNCIL**

No waiver (express or implied) by the Borough Council or County Council of any breach or default by the Owner in performing or observing any of the terms and conditions of this

Agreement shall constitute a continuing waiver and no such waiver shall prevent the Borough Council or County Council from enforcing any of the said terms or conditions which it is entitled to enforce or from acting upon any subsequent breach or default in respect thereof by the Owner unless such waiver is given in writing on headed paper and signed by or on behalf of the Borough Council or County Council or officer thereof (as the case may be).

## **16 RIGHT OF INSPECTION**

16.1 The Owner shall (without prejudice to the Borough Council's or County Council's statutory rights of entry) in circumstances where the Borough Council or County Council acting reasonably considers that there is a breach of the obligations contained in this Agreement permit any person duly authorised by the Borough Council or County Council for the express purposes of this clause to enter at a reasonable time and on reasonable notice that part of the Application Site which is being or has been developed pursuant to the Planning Permission to ascertain whether there is or has been any breach of the obligations hereunder PROVIDED THAT any person so authorised by the Borough Council or County Council shall observe all reasonable site security access and health and safety arrangements required of them.

16.2 In the event of the Borough Council or County Council being concerned with regard to a possible breach, it shall use all reasonable endeavours to notify the Owner in order that the matter may be discussed with the Owner and any remedial action agreed if appropriate before taking steps to enforce the relevant obligation contained in this Agreement.

16.3 Nothing within this clause 16 shall prevent the Borough Council or County Council exercising its statutory rights of inspection or from taking legal proceedings to enforce the obligations on the part of the Owner contained in this Agreement.

## **17 PERPETUITY PERIOD**

For the purposes of any parts of this Agreement as may be subject to the rule against perpetuities, the perpetuity period shall be a period of 80 years from the date hereof.

## **18 DISCHARGE OF OBLIGATIONS**

18.1 Upon the Owner's written request following the performance, satisfaction or discharge of all the obligations contained in this Agreement, the Borough Council shall (if it at that time it continues to be responsible for maintaining the register of local land charges) as soon as reasonably practicable effect the cancellation of all entries made in the register in respect of this Agreement.

18.2 This Agreement shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development.

## **19 OTHER PLANNING PERMISSIONS**

Nothing in this Agreement shall prohibit the right to develop any part of the Application Site in accordance with a planning permission other than the Planning Permission whether granted before or after the date of this Agreement, and this Agreement shall not apply to development carried out under any planning permission other than the Planning Permission.

**20 FUTURE MORTGAGEE'S CONSENT**

Any future mortgagee acknowledges and declares that the security of the mortgage over the Land shall take effect subject to this Deed PROVIDED THAT any future mortgagee shall otherwise have no liability under this Deed unless it takes possession of the Land (or part thereof) in which case it too will be bound by the obligations as if it were a person deriving title from the Owner.

**IN WITNESS** whereof the parties hereto have executed this Agreement as a deed the day and year first before written.

**SCHEDULE 1**  
**THE DEVELOPMENT**  
**DRAFT PLANNING PERMISSION**



## ASHFORD BOROUGH COUNCIL

### GRANT OF PLANNING PERMISSION



### IMPORTANT NOTES

Notification of permission under the Planning Acts does **NOT** convey consent under The Building Regulations

1. The development to which the attached planning permission relates may also require a separate approval under the Building Regulations.
2. If the planning permission refers to amended plans, any necessary Building Regulations approval should also cover those amendments.
3. If the development involves any demolition work, notice of this is required under the Building Act 1984.

ADVICE ON EACH OF THE ABOVE IS AVAILABLE FROM THE BUILDING CONTROL SECTION – CONTACT 01233 330282 OR ALTERNATIVELY EMAIL [building.control@ashford.gov.uk](mailto:building.control@ashford.gov.uk)

4. Where plans for the erection or extension of a building are submitted for Building Regulations approval, Section 53 of the County of Kent Act 1981 requires that the Plans are rejected unless they show;
  - a) adequate means of access for the Fire Brigade to the building or buildings as extended and;
  - b) that the building and extension will not render inadequate, existing means of access for the Fire Brigade to a neighbouring building.

ADVICE ON THIS MATTER IS AVAILABLE FROM THE FIRE PREVENTION OFFICER, ASHFORD FIRE STATION, HENWOOD, ASHFORD, KENT TN24 8YF

# ASHFORD BOROUGH COUNCIL

## GRANT OF PLANNING PERMISSION WITH CONDITIONS

### Notes for the Applicant



#### *Appeals*

1. If you are unhappy with the disclosed Decision to grant permission subject to conditions, you may appeal to the Secretary of State under section 78 of the Town and Country Planning Act 1990. **Any appeal must be made within 6 months of the date of decision.** The necessary form is obtainable from the Planning Inspectorate, Customer Support Unit, Temple Quay House, 2 The Square, Temple Quay, Bristol BS1 6PN or via their website: [www.planning-inspectorate.gov.uk/pins/index.htm](http://www.planning-inspectorate.gov.uk/pins/index.htm)

A longer period for the giving of notice of an appeal may be allowed by the Planning Inspectorate but normally asks what special circumstances there are which excuse the delay in giving notice of an appeal.

The Secretary of State is not required to entertain an appeal if it appears to him that permission for the proposed development could not have been granted by the Borough Council.

#### *Beneficial Use*

2. If permission to develop land is granted subject to conditions, whether by the Borough Council or by the Secretary of State and you, as owner of the land, claim that it has become incapable of reasonable beneficial use, you may serve on the Borough Council a Purchase Notice requiring the Borough Council to purchase your interest in the land in accordance with the provision of Part IV of the Town and Country Planning Act 1990.

Before following this course of action it is suggested that you seek the advice of a Planning Consultant or a Solicitor.

#### *Discharging of Conditions*

3. Some conditions attached to the grant of permission may require you to submit details and/or information before you start work.

4. From 6<sup>th</sup> April 2008, a national charge was set by Government to discharge conditions. The charges are as follows:

Where the request relates to a permission relating to an enlargement, improvement or other alteration of existing dwelling houses or the erection of a building within the curtilage of an existing dwelling house for purposes ancillary to the enjoyment of the dwelling house the fee will be **£28** per submission. Where the request relates to permission for development which falls within any other category the fee will be **£97** per submission. **Together with the fee, you are also required to complete an application form for this process. The forms are available on our website.**

Please note that we aim to deal with these requests within 8 weeks.



**NOTIFICATION OF DECISION  
OF THE LOCAL PLANNING AUTHORITY**

Date of Decision    **DRAFT**



**ASHFORD**  
BOROUGH COUNCIL

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**Town and Country Planning Act 1990 (as amended)**  
**Application for Outline Planning Permission**

**APPLICATION NO:**    14/00906/AS

**PROPOSAL:**            Development to provide an employment led mixed use scheme, to include site clearance, the alteration of highways, engineering works and construction of new buildings and structures of up to 157,616 sq m comprising: up to 140,000 sq m Class B8 (storage and distribution) use; up to 23,500 sq m of B1a/B1c Business (of which a maximum of 20,000 sq m of B1a); up to 15,000 sq m of B2 (general industry); up to 250 sq m of A1 (retail shops) and 5,500 sq m of sui generis to accommodate Kent Wool Growers together with ancillary and associated development including utilities and transport infrastructure, car parking and landscaping.

**LOCATION:**             Land On The North Side Of, Highfield Lane, Sevington, Kent

**APPLICANT:**          Friends Life Limited

**DECISION:**    **PLANNING PERMISSION IS GRANTED** in accordance with the application and plans

Subject to the following conditions:

**Time periods**

- 1    (A) Approval of the phase 1 works involving the siting, design, appearance and landscaping of the estate roads, the sustainable drainage system embedded within open space and the landscaping and layout of that open space (including measures specifically designed for ecological/biodiversity enhancement purposes within that open space) shall be obtained from the local planning authority prior to the approval of the first new building to be constructed within the site and thereafter the phase 1 works shall be carried out in accordance with such approval unless the Local Planning Authority has agreed to any variation in writing.

(B) Approval of the siting design and external appearance of each of the buildings, the means of access thereto within the site interior, and the landscaping of each individual building plot to be constructed, hereinafter called "the reserved matters" shall be obtained from the local planning authority in writing before the development of the site or any individual plot within the site is commenced.

**Reason:** To comply with the provisions of Article 3 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 and Section 92 of the Town and Country Planning Act 1990 (as amended) and in order to ensure that phase 1 works are considered in advance of the approach to individual areas of the site containing development plots coming forward for approval.

- 2 (A) Application for approval of the reserved matters shall be made to the Local Planning Authority not later than the expiration of 7 years from the date of this permission.

(B) The development hereby permitted shall be first begun no later than 2 years from the date of this permission and any development permitted pursuant to reserved matters approvals shall be begun either not later than the expiration of 7 years from the date of this permission, or before the expiration of 2 years from the date of approval of the reserved matters, whichever is the later.

**Reason:** To comply with the provisions of Article 3 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 and Section 92 of the Town and Country Planning Act 1990 (as amended)

**Content of applications for approval of reserved matters**

- 3 All proposals submitted pursuant to condition 1(B) of this permission shall be accompanied by a statement demonstrating how the proposals;-

(i) conform generally with the layout and building design principles set out in the Design and Access Statement, the Development Specification and the illustrative master plan with any proposed departures being justified,

(ii) conform specifically with the Design Code subject of condition 6 of this permission,

(iii) conform specifically with the Local Ecological Management Plan subject of condition 48 of this permission, and

(iv) confirm specifically with the Lighting Strategy subject of conditions 8 and 9 of this permission.

**Reason:** To ensure that the fine detail of the site's development is appropriate in order to mitigate its visual, landscape, amenity and ecological impacts.

- 4 Details of the final finished level to ground floors of any proposed building shall be submitted to and approved in writing by the Local Planning Authority at the same time as the details submitted pursuant to condition 1(B) and the development shall be carried out to the approved level.

**Reason:** In the interests of visual amenity.

- 5 Written details and sample boards of all external cladding materials shall be submitted to and approved by the Local Planning Authority in writing at the same time as the details required by condition 1(B) of this permission and the development shall only be carried out using the approved external cladding materials.

**Reason:** In the interests of visual amenity.

### **Design Code**

- 6 (A) Prior to the approval of any floorspace proposed pursuant to this permission, a Design Code shall have been submitted to and (following critical review by independent consultants to be commissioned to assist the Local Planning Authority and the making of any necessary amendments) approved in writing by the Local Planning Authority containing the following minimum elements to inform detailed building, plot and site design;-

(i) plot configuration (including the position of buildings, yards and car parks and surfacing materials),

(ii) plot boundary demarcation (including differing approaches according to context and innovative ways of softening visual impact thereof)

(iii) general building form (including shape, configuration, and heights),

(iv) roof and eaves profiles (including materials, types including green roofs, eaves treatments to soften the impact of concealed rain water goods),

(v) approach to office elements (including both separate pod and integral arrangements, entrances, materials, adaptability, articulation, site-wide and on-plot legibility),

(vi) building appearance, aesthetic and creation of a strong sense of place (cladding and materials, wall / eave / roof colours, green walls, doors and openings, signage, façade illumination),

(vii) materials (car parks, yards, roads, paths), and

(viii) street furniture (including bus shelters, approach to way-finding and public art, street and open space furniture.

The Design Code shall include a time period for its future review.

(B) All applications submitted pursuant to Condition 1(B) of this permission shall include a written statement identifying how the detailed design that is proposed complies with the provisions of the Code.

**Reason:** To help ensure that the principles of development set out in the application are translated by subsequent designers to help mitigate the impact of the development on its surroundings.

### **Sustainable design & construction**

- 7 (A) Each and every building at the development hereby approved shall be carbon neutral and shall be constructed to achieve a target Building Research Establishment BREEAM (or subsequent equivalent quality assured scheme) overall 'Excellent' standard comprising the following minimum credit requirements:-
- (i) 'Excellent' standard in respect of energy credits,
  - (ii) 'Maximum standard in respect of water credits,
  - (iii) 'Excellent standard in respect of materials credits, and
  - (iv) under criterion Ene4 (Low and Zero Carbon Technologies) (or subsequent equivalent criterion) 1 credit for a feasibility study and 2 credits for a 30% reduction in carbon emissions.
- (B) Unless otherwise agreed in writing by the Local Planning Authority, no work on any building floorspace hereby permitted shall commence until the following for that new building floorspace has been submitted to and approved in writing by the Local Planning Authority:-
- (i) A feasibility study to establish the most appropriate local low and zero carbon ("LZC") technologies to install and which shall be in accordance with the feasibility study requirements set out within BREEAM 2011 New Construction (or subsequent equivalent requirements),
  - (ii) Standard Assessment Procedure ("SAP") calculations from a competent person stating the estimated amount of carbon emissions from energy demand with and without LZC technologies installed,
  - (iii) A BREEAM 'Design Stage' report and related certification produced by a registered assessor, and
  - (iv) Details of the measures, LZC and other technologies to be used to achieve the BREEAM standard and credit requirements specified above.
- (C) Thereafter, each approved new building shall be carried out in accordance with the approved report and details and the approved measures and LZC and other technologies for achieving the BREEAM standard and credit requirements specified above shall thereafter be retained in working order in perpetuity unless otherwise agreed in writing by the Local Planning Authority.
- (D) Unless otherwise agreed in writing by the Local Planning Authority, each approved new building shall not be occupied until (i) and (ii) below have been submitted to and approved in writing by the Local Planning Authority for that building:
- (i) SAP calculations from a competent person stating (i) the actual amount of carbon emissions from energy demand with the LZC technologies that have been installed and what the emissions would have been without them and (ii) the actual amount of residual carbon emissions, and

(ii) a BREEAM 'Post Construction Stage' report and related certification produced by a registered assessor confirming the BREEAM standard that has been achieved and the credits awarded under Ene4.

**Reason:** In order to (a) achieve zero carbon growth and ensure the construction of sustainable buildings and a reduction in the consumption of natural resources, (b) seek to achieve a carbon neutral development through sustainable design features and on-site low and/or zero carbon technologies and (c) confirm the sustainability of the development and a reduction in the consumption of natural resources and to calculate any amount payable into the Ashford Carbon Fund, thereby making the development carbon neutral, all pursuant to Core Strategy policy CS10, the Sustainable Design and Construction SPD and NPFF.

#### **Street, amenity/open space and development plot lighting**

- 8 All proposals submitted pursuant to conditions 1(A) and 1(B) of this permission shall be accompanied by a statement demonstrating how the proposals conform with the Lighting Design Specification as set out in Appendix D of the Development Specification October 2015, with particular attention being paid to ensuring that the proposals minimise the impact on wildlife and reduce unnecessary light spillage in areas that need to be lit. The statement shall include confirmation from a qualified ecologist that the proposals would minimise the impact on wildlife.

**Reason:** To ensure that the approach to site lighting is appropriate and reduces the impact of the development.

- 9 The following details shall be submitted to the Local Planning Authority at the same time as the details required by conditions 1(A) and 1(B) and (following consultation with the Kent Wildlife Trust and KCC Ecology) be approved by the Local Planning Authority in writing:-

(a) 1:50 scale elevations of lighting (and any other) columns to be installed and details of final colour finish,

(b) a 1:500 scale layout plan showing the location of lighting (and any other columns), and

(c) full details of levels of luminance for columnar lighting and measures and specifications employed to limit light spillage and minimise impact on bats within the locality.

Only the approved details shall thereafter be implemented and shall be subsequently retained in perpetuity unless the Local Planning Authority has subsequently agreed otherwise in writing.

**Reason:** No such fine details have yet been supplied and in order to ensure, generally, that the approach to lighting and any other columns is contextually appropriate for the urban edge location taking into account the relationship with the undeveloped surrounding land and residential uses and, specifically, takes into account the need to minimise impact on bats present in the locality.



#### **Bat roosting, bird nesting and hibernacula**

- 10 Prior to any approved floorspace being made available for use, the following details shall have been submitted to and approved by the Local Planning Authority in writing:-
- (a) full details of proposed bat roosting and bird nesting boxes to be provided on the plot including number, location, method and height of fixings, visual appearance and external colour finish, and
  - (b) full details of proposed hibernacula to be provided including number, location and appearance. Unless any subsequent variation is agreed in writing by the Local Planning Authority, the approved details shall be installed prior to the car park being available for use and shall thereafter be retained.

**Reason:** No such fine detail has been submitted. To ensure that protected and important species are adequately provided for as part of the proposed development mitigation and in the interests of biodiversity and habitat protection and enhancement.

#### **Site access arrangements and quantum of development so served**

- 11 Prior to the occupation of any development on the site, Church Road shall be upgraded in accordance with the details shown on the application drawings and the works opened to traffic

**Reason:** In the interests of highway safety.

- 12 No more development than is equal to 1 DU of traffic impact (in accordance with the provisions of SPG6: Providing for transport needs arising from the South of Ashford Transport Study) shall be occupied on the site prior to the granting of a Development Consent Order (DCO) for the works to form J10A of the M20 motorway and the link road from J10A to the A2070.

**Reason:** The traffic impact of development at the site (in excess of 1DU of traffic already catered for to serve development of the site via J10 as upgraded) can only be accommodated by enhanced capacity of the strategic highway network achieved through the granting of a DCO consenting the construction of J10A and the link road from J10A to the A2070.

- 13 No more development than is equal to 1 DU of traffic impact (in accordance with the provisions of SPG6: Providing for transport needs arising from the South of Ashford Transport Study) shall be occupied on the site unless either (A) the works to form J10A of the M20 motorway have formally commenced or (B) the Church Road/A2070 junction has been signalised and is open to traffic in accordance with a scheme that shall previously have been agreed by the Local Planning Authority in consultation with Highways England.

**Reason:** The traffic impact of development at the site (in excess of 1DU of traffic already catered for to serve development of the site via J10 as upgraded) can only be accommodated by enhanced capacity of the strategic highway network to be achieved through the implementation of a DCO consenting the construction of J10A and the link road from J10A to the A2070 OR the signalisation of Church Road/A2070 whilst the works subject of DCO are under construction but not yet open to traffic.

- 14 No more development than is equal to 2.75 DU of traffic impact (in accordance with the provisions of SPG6: Providing for transport needs arising from the South of Ashford Transport Study) shall be occupied on the site unless the works for J10A and the link road to the A2070 and the principal/main access into the site from the link road have all been opened to traffic.

**Reason:** Until strategic highway capacity is enhanced in this manner, the traffic impacts of development at the site in excess of 2.75DU cannot be satisfactorily accommodated.

- 15 Within 6 months of the principal/main access into the site being opened to traffic, the access into the development site from Church Road shall have been downgraded by means of traffic management measures (including weight, height and width restrictions but not limited thereto) to be carried out within the site (in accordance with a scheme previously agreed with the Local Planning Authority in writing following consultation with the highway authorities) with such measures within the site to thereafter be retained in order that priority is given to use of the principal/main site access by all traffic generated by the development.

**Reason:** The quantum of traffic generated by the development site should be served primarily by the principal/main access from the new road to J10A with the Church Road/A2070 junction having only a limited role in meeting the needs of the development.

#### **Visibility splays and access**

- 16 Any pedestrian and vehicular visibility splays approved pursuant to the details within the reserved matters shall be provided prior to commencement of work for that part of the development and shall be subsequently maintained clear of any obstruction over 0.6 metres above footway level.

**Reason:** In the interests of highway safety.

- 17 No building shall be occupied until the means of vehicular and pedestrian access for that part of the site has been constructed in accordance with the approved plans.

**Reason:** In the interests of highway, pedestrian and cycle safety.



**Construction phase(site set up and operation): construction traffic routing, construction compounds, hours of operation, wheel washing to be agreed**

- 18 Prior to any development commencing at the site, details shall be submitted to and approved in writing by the Local Planning Authority which show:-
- (i) the location of any proposed site compound in addition to those that may be required in connection with the development of specific development plots,
  - (ii) routing of large goods vehicles to and from the site via the M20 and associated measures to be put in place to ensure compliance with that routing,
  - (iii) hours of site access for long goods vehicles. Thereafter, unless any variation is agreed in writing by the Local Planning Authority, the approved site compound and lorry routing shall be implemented in accordance with the approved details and shall be retained as such for the duration of the works hereby approved.

**Reason:** In the interests of highway safety and the amenities of neighbouring residents.

- 19 Prior to works commencing on site, the following details shall be submitted to and (following consultation with the local highway authority as appropriate) shall be approved by the Local Planning Authority in writing:-
- (i) details of parking for site personnel and visitors during construction,
  - (ii) details of access points, loading / unloading and turning areas for all construction related traffic,
  - (iii) details of proposed dust suppression, odour suppression and vapour suppression methods,
  - (iv) details of proposed surrounding fencing / hoardings to any compounds,
  - (v) details of proposed structures to be located within compounds and any proposed lighting (including measures to limit light spillage to the public highway and to nearby residents), and
  - (vi) details of any plant, equipment and machinery to be installed as part of the compound including details of hours of operation and noise during operation.

Thereafter the approved details shall be provided prior to the commencement of works and retained for the duration of the construction of the permitted development unless the Local Planning Authority has agreed otherwise in writing.

**Reason:** To ensure provision of adequate parking, loading and turning facilities for vehicles in the interests of highway safety and to protect the amenities of local residents in accordance with policy.

- 20 (A) Prior to the commencement of development, a Site Waste Management Plan (SWMP) shall have been submitted to and approved by the Local Planning Authority in writing. The SWMP shall include a detailed management plan for reducing construction waste during the construction phases of development in the form of site management, waste management and project design and planning. The approved SWMP shall be implemented throughout the period of demolition and construction work within the application site.

(B) Before any construction commences a Scheme of Minimum Environmental Requirements for Construction (SMERFC) shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, construction shall be implemented in accordance with the SMERFC.

The matters to be addressed in the SMERFC shall include the following:-

(i) design, implementation and protection of landscaping to relevant British Standards,

(ii) Considerate Contractors / Code of Construction Practice,

(iii) methodology of protecting existing and new trees to the relevant British Standard during construction, and

(iv) a method statement for any piling or other noisy construction activities, or the installation and removal of any large static construction equipment such as cranes.

**Reason:** To ensure that the impacts of construction on adjoining areas are minimised for the benefit of the local environment and the amenities of nearby residents.

- 21 No site clearance or construction activities shall take place, other than between 0730 to 1800 hours (Monday to Friday) and 0730 to 1300 hours (Saturday) with no working activities on any Sunday or Bank or Public Holiday unless first agreed in writing by the Local Planning Authority.

**Reason:** To protect the amenity of local residents in accordance with Policy CS1 of the Local Development Framework Core Strategy.

- 22 Prior to the commencement of any works on site, details of facilities by which vehicles will have their wheels, chassis and bodywork effectively cleaned and washed free of mud and similar substances at the application site, shall be submitted to and approved in writing by the Local Planning Authority. Unless any subsequent change has been agreed in writing by the Local Planning Authority, the approved facilities shall then be provided prior to the works commencing on site and thereafter shall be maintained in an effective working condition and used before vehicles exit the site and enter onto the adopted highway for the duration of the works.

**Reason:** To ensure that no mud, spoil, surface water or other material is taken from the site onto the neighbouring highway by wheels of vehicles leaving the site to the detriment of highway safety and the amenities of local residents.

**Construction (and operational) phase: remediation, environmental and waste management plans/strategies to be agreed**

- 23 Prior to the commencement of works, a detailed Remediation Strategy (RS) to ensure that the site is suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment shall have been submitted to and approved by the Local Planning Authority in writing. The RS must describe all the relevant works to be undertaken during construction and post-completion operation stages and include the following:-

- (i) proposed remediation objectives,
- (ii) performance criteria,
- (iii) a schedule of works, and
- (iv) site management protocols.

The RS is required to deliver a site that will not qualify as 'contaminated land' under Part 2A of the Environmental Protection Act 1990, having regard to the intended use of the land after remediation. The RS shall only be carried out in accordance with the approved details unless any subsequent change has been agreed in writing by the Local Planning Authority. The Local Planning Authority must be notified in writing at least two weeks prior to commencement of the approved RS works.

**Reason:** To ensure that risks from land contamination to the future users of the site and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

- 24 Within 3 months of the completion of the approved RS measures applicable to the demolition and construction stages, a verification report that demonstrates the effectiveness of the remediation carried out by must be submitted to and approved in writing by the Local Planning Authority.

**Reason:** To verify the effectiveness of the approved RS and to ensure that risks from land contamination to future users of the site and neighbouring land are minimised, together with those to controlled waters, property and ecological systems.

- 25 Prior to the commencement of development, a Construction and Environmental Management Plan (CEMP) shall have been submitted to and approved by the Local Planning Authority in writing. The CEMP shall include:-

- (i) Code of Construction Practice,
- (ii) hours of working for noisy activities and details of the installation and removal of any large equipment such as cranes relating to those works,
- (iii) details of all general measures to be put in place to ensure that during construction phases all works are managed so as to minimise their environmental impact in terms of noise, pollution and protection of natural

resources including the use of petrol interceptors and on-site protection of temporary chemical and fuel stores,

(iv) details of specific measures that will be put in place in the event that on-site construction works identify contamination including the prevention of onward contamination, suppression of contamination, removal of contamination and the use of personal protective equipment for construction workers,

(v) details of specific measures that will be put in place to prevent damage to the riparian habitats in the locality from works taking place on site, and

(vi) details of all measures to be put in place and thereafter retained during the operational phase of the development permitted, including the use of petrol interceptors.

Thereafter, the approved CEMP shall be implemented in full unless the Local Planning Authority has agreed in writing to any subsequent variation or iteration of the Plan.

**Reason:** To ensure appropriate environmental management systems are put in place during the construction and operational phases of the development in order to prevent adverse impacts on the environment and to ensure that the impacts of construction on adjoining areas are minimised for the benefit of the amenities of nearby residents.

#### **Design to encourage and facilitate cycling**

- 26 No building shall be occupied until space has been laid out within that site for bicycles to be parked under cover in accordance with details that shall have been submitted to and approved by the Local Planning Authority and such cycle parking facilities shall subsequently be retained available for use by staff and visitors to the premises.

**Reason:** In the interests of promoting alternative modes of transport generally and, specifically, to ensure that each development plot provides an acceptable number of good quality cycle parking facilities to help facilitate transport choice for staff and visitors, to reduce reliance on the private car and to accord with the approach to car parking on the site pursuant to the SPG6 South of Ashford Transport Study.

- 27 Unless otherwise agreed with the Local Planning Authority, no building shall be occupied until cycle changing/shower facilities/drying facilities/locker facilities have been provided for that building (whether in that building or in an adjoining one or in a centralised facility within the site) in accordance with details that shall have been submitted to and approved by the Local Planning Authority and these facilities shall subsequently be retained available for use by staff and visitors to the premises.

**Reason:** In the interests of promoting alternative modes of transport generally and, specifically, to ensure that the necessary facilities for cyclists, both staff and visitors, are provided in order to reduce reliance on the private car and to accord with the approach to car parking on the site pursuant to the SPG6 South of Ashford Transport Study.



## **Framework and Workplace Travel Plans**

- 28 (A) Prior to the first occupation of any building at the site, a Framework Travel Plan (FTP) shall have been submitted to and approved in writing by the Local Planning Authority. The FTP shall set the long term management arrangements for the FTP.

(B) The FTP shall include the overarching Travel Plan approach for the whole site and establish a threshold whereby occupiers of floorspace either are required to produce an individual Workplace Travel Plan taking forward the content of the FTP, or, due to small size, are required to adopt and work towards the targets and objectives of the FTP via a pro-forma/template (with said pro-forma/template to be agreed in writing by the Local Planning Authority as part of the FTP).

**Reason:** In order to help realise a sustainable pattern of development in the area, comply with the provisions of the NPPF and the principles of sustainable development, assist smaller scale occupants of the site work towards Travel Plan objectives and targets and assist all other occupiers in the formulation of individual Workplace Travel Plans.

- 29 Within 7 months of first occupation of a building or any part of a building of a size identified in the FTP as necessitating a Workplace Travel Plan (WTP), WTP for the occupier of that floorspace that accords with Best Practice and the principles of (i) encouraging sustainable movement and (ii) reducing the reliance on the private motor vehicle as set out in the NPPF and builds on baseline survey work carried out by the occupier within a maximum 6 months of first occupation shall have been submitted to and (following consultation with the local highway authority) be approved by the Local Planning Authority. WTPs shall contain:

(a) Details of measures designed to achieve and maintain an appropriate target modal split of travel to and from that building,

(b) The contact details of an individual who will be appointed as WTP Co-ordinator within his/her job description and who will act as the contact point for the Local Planning Authority and the measures set out within the WTP,

(c) A mechanism for information to be provided to the Local Planning Authority annually (or as agreed in writing) as to the implementation of the measures set out in the WTP, and

(d) Proposed measures to maintain the appropriate modal split for the site and to monitor the performance of the WTP and appropriate measures to cover against failure to meet the agreed targets.

The agreed WTP for each occupier shall subsequently be implemented in full within 3 months of written approval by the Local Planning Authority and thereafter shall be maintained unless otherwise agreed in writing by the Local Planning Authority.

**Reason:** In order to realise a sustainable pattern of development in the area, to comply with the provisions of the NPPF and the principles of sustainable development and take forward the provisions of the FTP for the site.

## **Archaeology**

- 30 No development shall take place until:-

(A) The applicant (or the applicant's agents or successors in title) has located the Royal Observer Corps underground post at the site and provided a report (detailing its precise location, its physical condition, and measures by which the underground post can be physically protected and/or referenced as appropriate as part of the overall site layout, with an associated timescale for the implementation of said measures) to the Local Planning Authority and the report has been approved by the Local Planning Authority in writing. Thereafter, the measures so approved shall be implemented in accordance with the approved timescale.

(B) The applicant (or the applicant's agents or successors in title) has secured the implementation of a programme of archaeological work other than the matter identified in (A) above in accordance with a plan covering the site, a written specification and timetable which has previously been submitted to and approved by the Local Planning Authority in writing.

**Reason:** To ensure that features of archaeological interest – including the Royal Observer Corps underground post - are properly examined and recorded across the site.

- 31 Within 3 months of the completion of the approved archaeological works a report containing details of the final archaeological recording work and the archaeological work report from the appointed archaeological contractor shall be submitted to and approved by the Local Planning Authority in writing.

**Reason:** To ensure that features of archaeological interest are properly examined and recorded across the site.

## **Fenestration**

- 32 No building permitted pursuant to this permission shall be commenced until details of doors and fenestration, including cross sections of the elevation to show cills and reveals, eaves and parapets and jointing of any cladding or brickwork has been submitted to and approved in writing by the Local Planning Authority at a scale of 1:20. Thereafter the development of each building shall be undertaken in accordance with the approved details.

**Reason:** In the interests of visual amenity and to ensure a satisfactory appearance of the building.

## **Surface water drainage**

- 33 No development shall be commenced until a detailed sustainable surface water drainage scheme for the site has been submitted to and approved in writing by the local planning authority. The detailed drainage scheme shall demonstrate that the surface water generated by this development (for all rainfall durations and intensities up to and including the climate change adjusted critical 100yr storm) can be accommodated and disposed of without increase to on-site or off-site flood risk and shall ensure all surface water is directed to its natural catchment unless agreed in writing with the local

planning authority following prior consultation with Kent County Council as the Lead Local Flooding Authority and the River Stour Inland Drainage Board.

**Reasons:** To ensure that the principles of sustainable drainage that are incorporated into the development are maintained in effective working condition and will protect vulnerable groundwater resources and ensure compliance with the provisions of the National Planning Policy Framework and Policies CS19 and CS20 of the adopted Core Strategy 2008.

- 34 Prior to commencement, the arrangements for the disposal of surface water and flows from excavation dewatering shall be approved by the local planning authority in writing. These details shall be included within a sediment and erosion control plan to ensure run-off is managed adequately without pollution to receiving waters or increase to flood risk during construction.

**Reasons:** To ensure that the principles of sustainable drainage that are incorporated into the development are maintained in effective working condition and will protect vulnerable groundwater resources and ensure compliance with the provisions of the National Planning Policy Framework and Policies CS19 and CS20 of the adopted Core Strategy 2008.

- 35 No building shall be occupied until details of the implementation, maintenance and management of the sustainable drainage scheme have been submitted to and approved in writing by the local planning authority. The scheme shall be implemented and thereafter managed and maintained in accordance with the approved details. Those details shall include:

(i) a timetable for its implementation, and

(ii) a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the operation of the sustainable drainage system throughout its lifetime.

**Reasons:** To ensure that the principles of sustainable drainage that are incorporated into the development are maintained in effective working condition and will protect vulnerable groundwater resources and ensure compliance with the provisions of the National Planning Policy Framework and Policies CS19 and CS20 of the adopted Core Strategy 2008.

- 36 No infiltration of surface water drainage into the ground is permitted other than with the written approval of the local planning authority (following prior consultation with the Environment Agency); this may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to controlled waters. The development shall be carried out in accordance with the approval details.

**Reasons:** To ensure that the principles of sustainable drainage that are incorporated into the development are maintained in effective working condition and will protect vulnerable groundwater resources and ensure compliance with the provisions of the National Planning Policy Framework and Policies CS19 and CS20 of the adopted Core Strategy 2008.



### **Preventing pollution of the water environment when premises are in use**

- 37 Any facilities for the storage of oils, fuels or chemicals shall be sited on impervious bund walls. The volume of the bunded compound should be at least equivalent to the capacity of the tank plus 10%. If there is multiple tankage, the compound should be at least equivalent to the capacity of the largest tank, or the combined capacity of interconnected tanks, plus 10%. All filling points, vents, gauges and sight glasses shall be located within the bund. The drainage system of the bund shall be sealed with no discharge to any watercourse, land or underground strata. Associated pipework should be located above ground and protected from accidental damage. All filling points and tank overflow pipe outlets should be detailed to discharge downwards into the bund.

**Reason:** To prevent pollution of the water environment.

- 38 Prior to being discharged into any watercourse, surface water sewer or soakaway system, all surface water drainage from parking areas and hardstandings shall be passed through an oil interceptor designed and constructed to have a capacity and details compatible with the site being drained. Roof water shall not pass through the interceptor.

**Reason:** To prevent pollution of the water environment.

### **Public rights of way**

- 39 No development should take place over any public right of way until the confirmation of its diversion or extinguishment and certification of the new route has been provided by Kent County Council.

**Reason:** To ensure that public rights of way are properly safeguarded in the public interest.

### **Landscaping (including protection)**

- 40 At the same time as the submission of details pursuant to condition 1, a survey of the development site as existing shall be submitted to the Local Planning Authority concurrently with the submission of the site layout drawings and shall include, as appropriate, the following information at a suitable scale:

(a) Location, species, girth or stem diameter, accurately planned crown spread and reference number of all trees on and adjoining the site with a stem diameter of 75mm or greater at a point 1.5 metres above ground level.

(b) A numbered tree condition schedule with proposals for removal of trees and for surgery or other works, where applicable, to retained trees.

(c) Existing and proposed levels including, where appropriate, sufficient detail to allow proper consideration of existing tree protection.

(d) Location, spread and other relevant details of existing hedgerows, hedges and other significant areas of vegetation.

- (e) Location and dimensions of existing watercourses, drainage channels and other aquatic features with water, invert and bank levels as appropriate.
- (f) Existing boundary treatments and forms of enclosure.
- (g) Existing structures, services and other artifacts, including hard surfaces.
- (h) Indication of land use, roads or other means of access, structures and natural features on land adjoining the development site.
- (i) Route of existing footpaths and public rights of way on and adjoining the site.
- (j) North point and scale.
- (k) Location map.

**Reason:** To allow the proper consideration of the impact of the proposed development on the amenity value of the existing site.

- 41 In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars; and paragraphs (a) and (b) below shall have effect until the expiration of 15 years from the date of the completion of the development.

(a) No retained tree shall be cut down, uprooted or destroyed, nor shall any retained tree be topped or lopped other than in accordance with the approved plans and particulars, without the written approval of the Local Planning Authority. Any topping or lopping approved shall be carried out in accordance with British Standard 3998 (Tree Work).

(b) If any tree is removed, uprooted or destroyed or dies, another tree shall be planted at the same place and that tree shall be of such size and species, and shall be planted at such time, as may be specified in writing by the Local Planning Authority.

(c) The erection of fencing for the protection of any retained tree shall be undertaken in accordance with the approved plans and particulars before any equipment machinery or materials are brought on to the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the written consent of the Local Planning Authority.

**Reason:** In order to protect and enhance the amenity of the area.

- 42 All existing hedges or hedgerows shall be retained, unless shown on the approved drawings as being removed. All hedges and hedgerows on and immediately adjoining the site shall be protected from damage for the duration of works on the site. Any parts of hedges or hedgerows removed without the Local Planning Authority's prior consent or which die or become, in the opinion of the Local Planning Authority, seriously diseased or otherwise damaged within ten years following contractual practical completion of the approved development shall be replaced as soon as is reasonably practicable and, in any case, by not later than the end of the first available planting season, with plants of such size and species and in such positions as may be agreed with the Authority.

**Reason:** To ensure the continuity of amenity afforded by existing hedges or hedgerows.

- 43 All trees planted shall be protected against stock and rabbits when planted in accordance with details that shall have been previously agreed with the Local Planning Authority and such protection shall be maintained at all times.

**Reason:** In the interests of good forestry and amenity.

- 44 (A) The landscaping scheme approved in relation to the phase 1 works pursuant to Condition 1 (A) of this permission shall be carried out within a timescale that shall have been previously agreed in writing by the Local Planning Authority.

(B) The Local Planning Authority shall be notified in writing of the completion of those phase 1 works.

(C) Any tree or plants which, within a period of 15 years from the completion of those phase 1 works, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species unless agreed otherwise by the Local Planning Authority in writing.

**Reason:** In order to mitigate the impact of the development through the implementation of agreed phase 1 works landscaping.

- 45 (A) The landscaping schemes approved in relation to individual development plots pursuant to Condition 1 (B) of this permission shall be carried out within 12 months of the building on the plot being substantially complete and available for occupation.

(B) The Local Planning Authority shall be notified in writing of the completion of the approved landscaping works.

(C) Any tree or plants which, within a period of 15 years from the completion of those works, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species unless agreed otherwise by the Local Planning Authority in writing.

**Reason:** In order to mitigate the impact of the development through the implementation of agreed landscaping for individual plots.

### **Hard landscaping**

- 46 Full details of hard landscape works shall be submitted to the Local Planning Authority at the same time as the details required by Condition 1(A) and Condition 1(B) of this permission and shall be approved in writing by the Local Planning Authority prior to commencement of hard landscaping works and the works shall only thereafter be carried out as so approved.

The hard landscape details shall include proposed finished levels or land contours; means of enclosure; car parking layouts; other vehicle and pedestrian access and circulation areas, hard surfacing materials; minor artefacts and structures (e.g. furniture, art, refuse or other storage units (including litter and dog bins), signs, lighting etc); proposed and existing functional services above and below ground (e.g. drainage, power, communications cables etc indicating lines, manholes, supports etc) together with full details of maintenance.

**Reason:** In order to ensure that hard landscaping works are appropriate to the context of the site.

### **Ecological Management Strategy, Landscape Environmental Management Plan and Structural Tree Screen Landscape Management Plan**

- 47 (A) Prior to commencement of development, a Framework Ecological Management Strategy (FEMS), shall have been submitted to and approved by the Local Planning Authority in writing. The FEMS shall include:-
- (i) a timescale for implementation of the measures identified, and
  - (ii) a time period for the active management of those ecological measures,
  - (iii) a timetable for regular reports to be made to the Local Planning Authority identifying the success of the measures identified in the FEMS as a result of on-going ecological surveys during the active management period and,
  - (iv) a methodology for any proposed variations to the FEMS (in order to deal with the findings of said ecological surveys) to be proposed to the Local Planning Authority.
- (B) Thereafter, the approved FEMS (including any agreed revisions arising from (iv) above) shall be carried out in accordance with the details in (A) above unless the Local Planning Authority has agreed to any other variation in writing.

**Reason:** In order to ensure an appropriate ecological management strategy is put in place to properly mitigate the ecological impacts of the development.

- 48 (A) Prior to commencement of development, a Landscape Environmental Management Plan (LEMP), shall have been submitted to and approved by the Local Planning Authority in writing. The LEMP shall include:-
- (i) a timescale for implementation of the measures identified,
  - (ii) a time period for the active management of those landscape measures, and

(iii) a timetable for regular reports to be made to the Local Planning Authority identifying the success of the measures identified in the LEMP as a result of on-going landscape environmental surveys during the active management period and,

(iv) a methodology for any proposed variations to the LEMP (in order to deal with the findings of said landscape environmental surveys) to be proposed to the Local Planning Authority.

(B) Thereafter, the approved LEMP (including any agreed revisions arising from (iv) above) shall be carried out in accordance with the details in (A) above unless the Local Planning Authority has agreed to any other variation in writing.

**Reason:** In order to ensure an appropriate landscape environmental management plan is put in place to properly mitigate the landscape impacts of the development.

49 Prior to commencement of development, a Structural Tree Screen Landscape Management Plan (STSLMP), shall have been submitted to and approved by the Local Planning Authority in writing. The STSLMP shall include the following;-

(i) a timescale for first implementation of the measures identified in the Plan,

(ii) the location of the Structural Tree Screen belts to be planted and managed in accordance with the Plan,

(iii) a time period for the duration of the Plan being not less than 15 years from the first implementation of the Plan,

(iv) details of the proposed management measures to be carried out by the applicant – including frequency thereof – during Years 1-5, Years 5-10, Years 10-15 and beyond - to ensure that the trees forming the Structural Tree Screen belts are regularly monitored and action is taken as appropriate in accordance with best arboricultural practice to assist trees planted within the belts maturing and early action is taken in respect of any trees found to be diseased or dying.

Thereafter, the STSLMP shall be carried out in accordance with the approved details unless the Local Planning Authority has agreed to any variation in writing.

**Reason:** In order to ensure appropriate management measures are put in place to ensure the success of structural tree screen planting.



### Management of HGVs (as defined in the HGV Road User Levy Act 2013)

50 (A) All proposals submitted pursuant to condition 1(B) of this permission shall be accompanied by an Individual Occupier Operating Strategy (IOOS) for each proposed building and its associated plot which shall include the details listed below:-

(i) the provision of electrified arrival bays/parking points for Heavy Goods Vehicles (HGV) at the premises for use by owned fleet and others,

(ii) as far as possible, measures to be undertaken by the occupier to help minimise HGV emissions through use of owned fleet HGVs fitted with clean technologies helping to ensure low emissions when in use and when loading/unloading,

(iii) HGV operating practices including matters of waiting times, turnaround of deliveries, and docking and unloading, and

(iv) HGV traffic management operating practices to ensure against off-site HGV parking problems occurring as a result of HGVs arriving at the premises at inconvenient times and/or being unable to access loading and unloading facilities.

Each building shall not be occupied until the relevant IOOS has been approved in writing by the Local Planning Authority and the electrified points for HGVs provided as approved. Thereafter, those premises shall only be occupied and operated in accordance with the approved IOOS unless the Local Planning Authority has agreed to any variation in writing

**Reason:** To help reduce HGV emissions and avoidable deterioration of air quality through adoption of best practice and clean technologies. To help minimise noise and disturbance to the local residential community from HGVs waiting to access premises and parking in residential streets as a consequence.

### Use of the premises

51 The buildings permitted shall not be used for any purposes other than Class B1 business use (including a maximum of 20,000sq.m of Class B1a use), Class B2 general industrial use, Class B8 storage and distribution use, Class A1 shop use (to a maximum 250 sq.m) of the Schedule to the Town and Country Planning (Use Classes) Order 1987 and the Kent Woolgrowers sui generis use and no alternative use whether permitted by virtue of the Town and Country Planning (General Permitted Development) (England) Order 2015 or any Order revoking or re-enacting that Order shall occur without the prior written approval of the Local Planning Authority.

**Reason:** In order to preserve the amenity of the locality and ensure that the uses remain appropriate to the planning context of the site.



- 52 (A) The total building floorspace shall not exceed that which is applied for and which is detailed on the application form dated 30/10/2015.
- (B) No new building floorspace shall be created within the 133m landscape corridor shown on the Land Use and Layout Parameter Plan Drawing No. PL10\_160\_J (or any subsequent iteration thereof) and, in any event, no individual building to be used for Class B8 storage and distribution uses shall be created exceeding 80,000 sq.m.
- (C) Site coverage of the total site area forming the DPD allocation as shown on Drawing 9031 SK160509\_01 (Boundary Sketch Plan) shall through the aggregate of individual building footprints not exceed more than 40% of that total site area.
- (D) Any proposal for B1 office development that is not ancillary to or allied to B1a/B2/B8 uses proposed or existing on the site, shall be required to demonstrate why that floorspace cannot be accommodated in the town centre. In any event no stand-alone B1 office building shall exceed 5, 000 sq m in gross floorspace.

**Reason:** In order to preserve the amenity of the locality and mitigate the impact of the development on the setting of St. Mary's church and as the impact of any additional floorspace has not been assessed by the local planning authority and in order to give priority to Ashford Town Centre for B1 employment purposes.

- 53 Prior to the principal/main access into the site from the J10A link road and J10A being opened to traffic and prior to the traffic management measures within the site being carried out in accordance with the provisions of Condition 15, no work shall be carried out from any new premises on the site already constructed and in use before 07:30 or after 22:00 on any day.

**Reason:** To ensure that vehicle movements arising from those uses in advance of the principal/main access becoming available have an acceptable impact on the amenities of nearby residential occupiers to the A2070 Church Road junction.

### **Services**

- 54 Underground ducts shall be installed before each of the buildings hereby permitted are occupied, to enable telephone services, electricity services and communal television services to be connected to any premises within the application site without recourse to the erection of distribution poles and overhead lines and notwithstanding the provisions of Article 3(1) of the Town and Country Planning (General Permitted Development) Order 1995 or any other Order or any subsequent Order revoking or re-enacting that Order no distribution pole or overhead line within the application site shall be erected without the express consent of the Local Planning Authority.

**Reason:** In the interests of visual amenity.

### Availability for inspection

- 55 The development shall be made available for inspection, at a reasonable time, by the local planning authority to ascertain whether a breach of planning control may have occurred on the site (e.g. as a result of departure from the plans hereby approved and/or the terms of this permission).

**Reason:** In the interests of ensuring the proper planning of the locality and the protection of amenity and the environment, securing high-quality development through adherence to the terms of planning approvals, and ensuring community confidence in the planning system.

### Notes to Applicant

This grant of planning permission does not give any legal right to carry out the development on over or under the land of another person or contrary to the rights of any such person. If there is any doubt the applicant should seek his/her own independent legal advice before implementing the planning permission.

- 1 This development is also the subject of an Obligation under Section 106 of the Town and Country Planning Act 1990 which affects the way in which the property may be used.
- 2 Public rights of way cross the site. The granting of planning permission confers on the developer no other permission or consent or right to close or divert any public right of way at any time without the express permission of Kent County Council as the highway authority. Additionally, no furniture may be erected on or across public rights of way without the express consent of Kent County Council as the highway authority, there must be no disturbance of the surface of the right of way or obstruction of its use either during construction of development or thereafter and no new hedging or shrubs should be planted within 1.5 metres of the edge of the public path.
- 3 This permission requires the submission of a Design Code for approval by the local planning authority. Following approval, the Code will build on the detail submitted with the outline application and act as a framework to assist those taking forward the fine detail of new development for various parts of the site. The local planning authority will expect the Code to require innovative, sensitive and responsive architectural solutions to help mitigate the visual impact of new development in the landscape at an importance entrance to the Ashford and to help create a coherent and clear sense of place within the site. The local planning authority will expect the Code to set a clear quality standard. Poor quality design will not be acceptable and will be refused.
- 4 A High Pressure Gas Main crosses the site and the applicant should comply with PADHI requirements and best practice at all times.
- 5 The quality of the screen landscaping identified on the parameter and illustrative master plans is critical to mitigate the visual impact of the

development. The local planning authority expects high quality detailed landscaping to come forward pursuant to the requirements of this permission and wishes the applicant's landscaping designers to work with officers on preparing proposals prior to submission for approval. The local planning authority will monitor all screen landscaping and consider the making of Tree Preservation Orders to protect matured screen landscaping at the appropriate time.

- 6 The approach taken to the depth of landscaping on the northern boundary of the site will need to interface with the approach taken by Highways England and be adjusted as appropriate if further space is liberated through the detailed design proposed by Highways England for the A2070 link road. The local planning authority wished to see the land to the south of the link road being strongly tree planted to add to the screen landscaping shown on the parameter and illustrative master plans.
- 7 The permission is granted with conditions following the approach currently taken to car parking in adopted SPG6 (Providing for Transport Needs Arising from the South of Ashford Transport Study) to the Ashford Borough Local Plan 2000. Applicants bringing forward detailed proposals for plots will be expected to comply with prevailing adopted car parking standards at the time.

#### 8 **Working with the Applicant**

In accordance with paragraphs 186 and 187 of the NPPF Ashford Borough Council (ABC) takes a positive and proactive approach to development proposals focused on solutions. ABC works with applicants/agents in a positive and proactive manner by;

- offering a pre-application advice service,
- as appropriate updating applicants/agents of any issues that may arise in the processing of their application
- where possible suggesting solutions to secure a successful outcome,
- informing applicants/agents of any likely recommendation of refusal prior to a decision and,
- by adhering to the requirements of the Development Management Customer Charter.

In this instance:

- was provided with pre-application advice,
- the applicant was provided with feedback on the deposited application
- The applicant was provided the opportunity to submit amendments to the scheme/ address issues.
- The application was dealt with/approved without delay.
- The application was considered by the Planning Committee where the applicant/agent had the opportunity to speak to the committee and promote the application.

Plans/Documents approved by this decision

Letter dated 27/04/2016 from Montagu Evans

Letter from Bradbrook Consulting 21/03/2016

Application Covering Letter dated 30/10/2015 from Montagu Evans  
Application Form dated 30/10/2016

Drawing 9031 PL10_164_I	Access & Circulation
Drawing 9031 PL10_159_F	Application Site
Drawing 9031 PL10_160_J	Land Use and Layout
Drawing 9031 PL10_162_G	Building Heights & Density
Drawing 9031 PL10_163_J	Open Space, Landscape topography and Ecology
Drawing 9031 PL10_166_A	Phasing
Drawing 9031 PL10_170_E	Tree Retention & Removal
Drawing 9031 PL10_171_B	Existing Ground Levels
Drawing 9031 PL10_172_C	Proposed Ground Levels
Drawing 22233105-31	Highfield Lane Closure
Drawing 22233105-32	Swept Path Analysis
Drawing 22233105-24 Sheet 01 Rev A	Highway Adoption Plan
Drawing 22233105-24 Sheet 02 Rev A	Stage 1 Scheme (Church Road Priority Junction)
	Stage 2 Scheme (Church Road Signalised Junction)
Drawing 22233105-20 Rev A	Proposed Layout Church Road(A2070 Swept Path & Visibility)
Drawing 22233105-17 Rev -	Church Road Junction Improvements – Cross Section

Development Specification dated October 2015 (Waterman Infrastructure & Environmental Ltd)  
Design & Access Statement (including Utilities and Landscaping) dated October 2015 (PRC Architecture & Planning Ltd)

Planning Statement October 2015 (Montagu Evans LLP)

Transport Assessment October 2015 (Steer Davies Gleave)

Draft Travel Plan Appendix A to Transport Assessment October 2015 (Steer Davies Gleave)

Market Context Report October 2015 (JLL)

Heritage Impact Assessment October 2015 (Montagu Evans LLP)

Energy Statement & BREEAM Pre-Assessment October 2015 (Cudd Bentley Consulting)

Sustainability Statement October 2015 (Cudd Bentley Consulting)

Flood Risk Assessment October 2015 (Bradbrook Consulting)

Geoenvironmental & Geotechnical Interpretative Report October 2015 (Card Geotechnics Ltd)

Preliminary Ecological Assessment October 2015 (Middlemarch Environmental)

Aboricultural Survey October 2015 (Middlemarch Environmental)

Environmental Statement October 2015 (Waterman Infrastructure & Environmental Ltd)

Statement of Community Involvement August 2014

Illustrative material forming part of the application submission (but not submitted for approval)

Drawing 9031 Rev A	Illustrative Masterplan 03 Alternative Layout 0
Drawing 9031 FE354_Rev A	Illustrative Masterplan Alternative Layout 7
Drawing 9031 Rev A	Illustrative Masterplan 04 Layout 1
Drawing 9031 Rev A	Illustrative Masterplan 05 Layout 2
Drawing 9031 PL10_167_L	Illustrative Masterplan
Drawing SK160509_01	Boundary Sketch Plan

The Council as Local Planning Authority expects the above Conditions to be complied with promptly. Where Conditions require details or other matters to be approved by the Council prior to commencement or occupation of the development, these must be submitted to the Council for its consideration well in advance, to ensure that there is no delay or loss to your project. Failure to observe the Conditions may result in enforcement action by the Council.

  
Head of Development Strategic Sites and Design Manager

*Please refer to the statement of the Applicants rights following this decision and the general information enclosed with this notice.*



## SCHEDULE 2

### THE OWNER'S OBLIGATIONS

#### 1 JUNCTION 10A WORKS CONTRIBUTIONS

- 1.1 The Owner covenants with the Borough Council that it shall not Occupy any Building unless the Owner (or its successor in title) has entered into an agreement with Highways England (or subsequent licensee for the M20 appointed by the Secretary of State) pursuant to section 278 of the Highways Act 1980 for the Junction 10A Works in relation to the Application Site for the payment of four million seven hundred and fifty six thousand four hundred and thirty one pounds and sixty eight pence (£4,756,431.68) plus an indexation increase as specified below (representing 13.64 DU's at £348,712.00 per DU) as a contribution towards the Junction 10A Works the detailed terms thereof to be agreed with Highways England save as specified in this paragraph 1.

- 1.2 Notwithstanding paragraph 1.1 the Owner shall not:

1.2.1 Commence the Development; or

1.2.2 Occupy any of the Buildings

after 31 December 2018 unless the Owner (or any successor in title of the Owner) has entered into the aforementioned section 278 agreement before that date or as otherwise agreed in writing by the Borough Council.

- 1.3 The section 278 agreement shall provide for an indexation increase in the said sum (or part thereof) to be calculated using the following formula (unless otherwise agreed with Highways England):

$$\left[ \left( \frac{\text{Most recent quarterly index figure for the Road Construction Tender Price Index relevant to new construction in the South-East of England of a value of £7,000,000 when the payment is due under the section 278 agreement}}{\text{Index figure for the Road Construction Tender Price Index relevant to new construction in the South-East of England of a value of £7,000,000 for Quarter 1 of 2004}} - 1 \right) \times \text{the said sum (or part thereof)} \right]$$

- 1.4 If the Road Construction Tender Price Index relevant to new construction in the South-East of England of a value of £7,000,000 ceases to be published, the above formula shall be used to calculate the indexation increase until such cessation, and the indexation increase thereafter shall be calculated in a similar manner using such replacement index as may be agreed between the Owner and Highways England.

#### 2 CARBON OFF-SETTING SUMS

- 2.1 The Owner shall on the date of Substantial Completion of each Building pay to the Borough Council the Carbon Off-Setting Sum in respect of that Building.



- 2.2 The Carbon Off-setting Sum for each Building shall be calculated in accordance with Schedule 6.

### **3 BUS STRATEGY**

- 3.1 The Owner covenants with the Borough Council not to Occupy any Building prior to submitting to the Borough Council the Bus Strategy for the Borough Council's written approval.
- 3.2 The Borough Council shall provide the Owner with written notification of its decision to approve or not approve the Bus Strategy within twenty five (25) Working Days of the date the Borough Council receives the Bus Strategy, and if the Bus Strategy is not approved by the Borough Council the Borough Council shall specify the reasons for its decision.
- 3.3 If the Owner receives a written notification from the Borough Council that the Bus Strategy has not been approved, the Owner shall consider the Borough Council's reasons given and shall submit to the Borough Council a revised Bus Strategy within twenty five (25) Working Days of the date of receipt of the Borough Council's notice and the terms of paragraphs 3.2 shall apply to that revised Bus Strategy.
- 3.4 The provisions of paragraph 3.2 and 3.3 shall continue until the Borough Council provides the Owner written approval of the Bus Strategy.
- 3.5 The Owner covenants with the Borough Council to operate or procure the operation of the Bus Service prior to the Occupation of 6.75 DUs of Development and in accordance with the approved Bus Strategy for a minimum period of five (5) years from the date of the commencement of the Bus Service.

### **4 TRAVEL PLAN**

- 4.1 The Owner covenants with the Borough Council not to Occupy any Building prior to the implementation of those parts of the Framework Travel Plan that are capable of being implemented prior to Occupation. Those parts capable of being implemented only after Occupation shall be implemented in accordance with the timings in the Framework Travel Plan.
- 4.2 The Owner covenants with the Borough Council:
- (a) to implement or require the Occupier of each Building to implement and comply with each of the measures set out in the approved Framework Travel Plan (and where appropriate the Workplace Travel Plan) in accordance with the timings set out in the Framework Travel Plan; and
  - (b) following implementation of each such measure, to maintain it in force at all times thereafter or in accordance with any other timings approved, subject to the outcomes of any review which may be carried out pursuant to the provisions of the approved Framework Travel Plan (and where appropriate the Workplace Travel Plan).

## **5 PEDESTRIAN AND CYCLE CONNECTION IMPROVEMENTS CONTRIBUTION**

The Owner covenants with the Borough Council and County Council not to Occupy any Building until it has paid the Pedestrian and Cycle Connection Improvements Contribution to the Borough Council.

## **6 PUBLIC FOOTPATH IMPROVEMENT**

6.1 The Owner covenants with the Borough Council and County Council not to Commence the Development unless:

(a) the Owner has submitted to and obtained the County Council's approval in writing (having consulted with the Borough Council) for the Public Footpath Improvement Specification; and

(b) the Owner has at its own expense submitted all the necessary applications for public footpath orders to the County Council for the Public Footpath Improvement in accordance with the Public Footpath Improvement Specification as approved.

6.2 The Owner covenants with the Borough Council and County Council to carry out the Public Footpath Improvement Works at its own expense within 3 months of the date each public footpath order is confirmed.

## **7 ESTATE ROAD**

7.1 The Owner acknowledges that the Future Highway Works together with the Estate Road Works are intended to form the Link Road.

7.2 The Owner covenants with the Borough Council and County Council not to carry out or permit the carrying out of any development or works on the Estate Road Land and ensure that it remains clear and capable of the future development except for the Estate Road Works.

7.3 The Owner covenants with the Borough Council and County Council not to Commence the Development unless the Owner has submitted to and obtained the written approval of the Borough Council and the County Council to a specification for the Estate Road Works and a timetable for provision.

7.4 The Owner covenants with the Borough Council and County Council to carry out the Estate Road Works in accordance with the approved timetable and specification and to enter into a s.38 agreement with the County Council for the aforementioned works and to transfer the Estate Road to the County Council once constructed to an adoptable standard

7.5 The Owner covenants with the Borough Council and County Council not to carry out or permit the carrying out of any works or development on the Future Highway Land and to ensure that the Future Highway Land remains clear and capable of future development until the Future Highway Works Trigger is met or such time as the Borough Council (having consulted with the County Council) notifies the Owner in writing that the Future Highway Land is no longer needed for the purposes of the Future Highway Works.

- 7.6 The Owner covenants with the Borough Council and County Council to undertake the Future Highway Works to an adoptable standard within 12 months of the Future Highway Works Trigger being met (provided that it is acknowledged where any part of the Future Highway Works can only be carried out with the consent of the relevant rail undertaker for the Channel Tunnel Rail Link, the time between applying for that consent and receiving it shall be added to the 12 month period in respect of that part of those works).

## **8 TRAFFIC REGULATION ORDER (CHURCH ROAD)**

- 8.1 The Owner covenants with the Borough Council and County Council not to Commence the Development unless the Owner has at its own expense obtained the Traffic Regulation Order (Church Road) from the County Council.
- 8.2 The Owner covenants with the Borough Council and County Council to carry out the works which are given effect to by the Traffic Regulation Order (Church Road) prior to Occupation of the Development and shall not Occupy any Building until it has done so.

## **9 TURNING FACILITY WORKS**

- 9.1 The Owner covenants with the Borough Council and County Council:
- (a) not to carry out or permit the carrying out of any development or works on the Turning Facility Land and ensure that it remains clear and capable for the future development of the Turning Facility Works;
  - (b) (i) not to Commence the Development unless the Owner shall have transferred the Turning Facility Land to the County Council and
 

(ii) Notwithstanding paragraph 9.1 (b) (i) to dedicate the Turning Facility Land to the County Council no later than eight weeks from the date of this agreement provided that in the event that the Planning Permission is subject to proceedings for judicial review this paragraph 9.1(b)(ii) of Schedule 2 is conditional upon those proceedings being determined and the Planning Permission not being quashed whereupon the Owner will dedicate the Turning Facility Land to the County Council no later than 2 (two) weeks from the date of these proceedings being finalised provided further that Highways England have not acquired or compulsorily acquired the Turning Facility Land pursuant to the DCO.
  - (c) To dedicate the Turning Facility Land to the County Council in accordance with paragraph 9.1 (b) and enter into a Deed of Dedication with the County Council and to pay all of the County Council's legal and administrative costs of accepting the dedication of the Turning Facility Land;
  - (d) to pay to the County Council the Turning Facility Works Costs Estimate within 14 days of receipt of the Turning Facility Works Cost Estimate Notice (which for the avoidance of doubt such notice may be served after the later of the Commencement of Development or at any time after 6 weeks of the date of grant of the Planning Permission and no judicial review challenge has been made to the grant of Planning

Permission within this time) or such other trigger as agreed in writing by the Owner and the County Council;

- (e) to pay to the County Council the reasonable cost of obtaining the Traffic Regulation Order (Highfield Lane and Kingsford Street) within 14 days of receipt of evidence of the costs incurred or such other trigger as agreed in writing by the Owner and the County Council;
- (f) the Turning Facility Works Costs Estimate shall be subject to review by the County Council on the completion of the Turning Facility Works and following such review the County Council shall serve the Owner with the Actual Turning Facility Works Costs Notice together with invoices in respect of the said works and in the event that the costs of implementing and completing the Turning Facility Works:
  - (i) exceed the Turning Facility Works Costs Estimate as demonstrated by invoices the Owner shall pay to the County Council the additional costs and expenses incurred by the County Council in carrying out the Turning Facility Works within 28 days of receipt of such notice
  - (ii) are less than the Turning Facility Works Costs Estimate the County Council shall repay to the Owner the difference between the Turning Facility Works Costs Estimate and the Actual Turning Facility Works Costs as demonstrated by invoices within 28 days of receipt of such notice

9.2 The Borough Council the County Council and the Owner acknowledge that

- (a) the Owner has received notification from Highways England that the Turning Facility Land is the subject to compulsory acquisition by Highways England under the Development Consent Order
- (b) In the event that the Development Consent Order is made by the Secretary of State and Highways England has acquired the Turning Facility Land under compulsory acquisition prior to the construction of the Turning Facility Works Highways England have agreed that they will not obstruct or prevent the delivery of the Turning Facility Works on the Turning Facility Land **provided that** the County Council have agreed that it will not commence the Turning Facility Works at any time after 13 November 2017 unless the project permitted by the Development Consent Order has been completed and Highways England's contractors are no longer in control of the Turning Facility Land for the purposes of the CDM Regulations or other relevant legislation and in the event that the Turning Facility Works are ongoing when Highways England enter the Turning Facility Land the County Council have agreed with Highways England to complete such works and vacate the Turning Facility Land no later than 5 February 2018.

## 10 CHURCH WORKS CONTRIBUTION

The Owner covenants with the Borough Council not to Commence the Development unless the Owner has paid to the Borough Council the Church Works Contribution.

**11 CAR PARK WORKS**

- 11.1 The Owner covenants with the Borough Council not to Commence the Development unless it has submitted to and obtained the Borough Council's written approval of the Car Park Works Specification.
- 11.2 The Owner covenants with the Borough Council not to Occupy any Building until it has completed the Car Park Works, in accordance with the Car Park Works Specification unless otherwise agreed with the Borough Council in writing.

**SCHEDULE 3****BOROUGH COUNCIL'S OBLIGATIONS**

1. The Borough Council shall issue the Planning Permission within 10 Working Days of completion of this Agreement.
2. The Borough Council shall expend and apply the Contributions for the purposes stated in this Agreement and not otherwise.
3. The Council shall repay to the Owner (with any accrued interest earned thereon) upon the Owner's request any amount of the Carbon Off-Setting Contributions paid to the Borough Council by the Owner under this Agreement which remain unspent after 10 years of the date of receipt of the final payment of all of the Carbon Off-Setting Contributions.
4. The Borough Council shall not release the Church Works Contribution to enable the Church Works to be carried out until the Borough Council has received and approved in writing:
  - 4.1 the Church Works Specification; and
  - 4.2 the report detailing the consultation carried out with the local community and Mersham and Sevington Parish Councils on the future use of St Mary's Church by the local community, including the emerging business community.
5. In the event that the Borough Council does not approve the Church Work Specification and the report under paragraph 4 of this Schedule within 5 years of the date of this Agreement the Borough Council will refund at the Owner's request the Church Works Contribution.
6. The Borough Council will not release the Pedestrian and Cycle Improvements Contribution to the County Council unless the Borough Council first obtains confirmation from the County Council that the Pedestrian and Cycle Improvements Contribution will be spent within 10 years of date of receipt of the final payment of Pedestrian and Cycle Improvements Contribution and it will only be used for the purposes set out in this Agreement.
7. The Borough Council will refund upon the Owner's request the Pedestrian and Cycle Improvements Contribution in the event the Borough Council is unable to obtain the necessary confirmation from the County Council within 2 years of date of receipt of the final payment of Pedestrian and Cycle Improvements Contribution.
8. At the reasonable written request of the Owner the Borough Council shall provide the Owner (at the Owner's expense) written confirmation of compliance with obligations in this Agreement.





**SCHEDULE 4****COUNTY COUNCIL'S OBLIGATIONS**

1. Following receipt of the Pedestrian and Cycle Improvements Contribution by the County Council from the Borough Council the County Council shall spend the Pedestrian and Cycle Improvements Contribution within 10 years of date of receipt of the final payment of Pedestrian and Cycle Improvements Contribution for the purposes set out in this Agreement.
2. Unless the County Council and the Owner agree otherwise the County Council covenants on written request from the person that made the payment of the Pedestrian and Cycle Improvements Contribution to repay any amount of the Pedestrian and Cycle Improvements Contribution which remains unspent after 10 years from the date of payment to the person who paid the contribution together with any accrued interest (if any)



**SCHEDULE 5****TITLE**

The Land on the north side of Highfield Lane, Sevington registered at the Land Registry under title numbers K917394, K421661 and K582402

**SCHEDULE 6**  
**CARBON OFF-SETTING SUMS**

The Carbon Off-Setting Sum in relation to each Building shall be calculated in accordance with the following methodology.

1. Insert into the table the total number of tonnes of carbon dioxide emissions for the Building (as indicated on the energy performance certificate) in the column for the year in which the Building was made ready for Occupation.
2. Insert the same number in the columns for the 9 subsequent years.
3. Multiply each of those 10 numbers by the corresponding figure in the "multiplier" row and insert each result in the corresponding cell in the "subtotal" row.
4. Add the 10 sub-totals together in the final column – the result, C, is the Carbon Off-Setting Sum for the Building.

	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	C
CO <sub>2</sub> /tonnes																					
multiplier	31.6	32.3	32.9	33.6	34.3	34.9	35.6	36.4	37.1	37.8	38.6	39.4	40.1	40.9	41.8	42.6	43.4	44.3	45.2	46.1	
sub-total																					C = sum of sub-totals Index Linked

### The Common Seal of

**ASHFORD BOROUGH COUNCIL**

was hereunto affixed to this Deed

in the presence of:

Mayor:

~~Solicitor/Director of Law and Governance~~

**THE COMMON SEAL of**

**THE KENT COUNTY COUNCIL**

was hereunto affixed to this Deed in the presence of:-

**Authorised Signatory**

Executed as a deed by **FRIENDS LIFE LIMITED**  
acting by a director *an authorised signatory*  
and its secretary or two directors:

Director

Authorized Signatory

Director/Secretary      Witness Name  
Signature Name  
Address  
Job Title





**APPENDICES****PLANS**

RED LINE  
EXISTING FOOTPATH / CYCLE LINK  
ESTATE ROAD  
FUTURE HIGHWAY LAND

THE COMMON SEAL OF THE KENT  
COUNTY COUNCIL WAS HEREUNTO  
AFFIXED IN THE PRESENCE OF:-

Authorised Signatory

THE COMMON SEAL OF ASHFORD  
BOROUGH COUNCIL WAS HEREUNTO  
AFFIXED IN THE PRESENCE OF

**MAYOR**

**SOLICITOR**



<b>Client:</b>	FRIENDS LIFE
<b>Project:</b>	SEWINGTON
<b>Drawing Title:</b>	LEGAL PLAN HIGHWAYS
<b>Scale @ A3:</b>	1:5000
<b>Checked by:</b>	SC
<b>Date:</b>	NOV 16
<b>Job No:</b>	9031
<b>Stage:</b>	LP
<b>Drawing No:</b>	01
<b>Rev:</b>	*
<b>Construction</b>	<input type="checkbox"/>
<b>Preliminary</b>	<input checked="" type="checkbox"/> <input type="checkbox"/>
<b>Approval</b>	<input type="checkbox"/>
<b>Tender</b>	<input type="checkbox"/>
<b>Information</b>	<input type="checkbox"/>

**PRC Architecture & Planning**

Revisions: \_\_\_\_\_ Drawn/Ok'd: \_\_\_\_\_ Date: \_\_\_\_\_

**Offices** Architecture Planning  
Marketing Master Planning  
Urban Design  
Urban Design  
Interior

24 Church St. West  
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THE COMMON SEAL OF ASHFORD  
BOROUGH COUNCIL WAS HEREUNTO  
AFFIXED IN THE PRESENCE OF

MAYOR

**SOLICITOR**