



Unilateral Planning Obligation

under Section 106 of the Town and
Country Planning Act 1990

(1) The Secretary of State for Transport
(2) Ashford Borough Council
relating to land at on the north side of Highfield
Lane Sevington

Dated 20[●]

[●Draft] [●]: [●date] [●(TLT)]

One Redcliff Street
Bristol BS1 6TP
T +44 (0)117 917 7777
F +44 (0)117 917 7778
DX 7815 Bristol

www.tlt.com
[●TEAM CODE]/[●STAFF CODE]/[●CLIENT
NUMBER]/[●MATTER NUMBER]/91967019.5

Contents

Clauses

1	Definitions and interpretation	1
2	Background	4
3	Condition precedent.....	4
4	Statutory provisions and covenants.....	5
5	Obligations	5
6	Notices	Error! Bookmark not defined.
7	Waiver	5
8	Miscellaneous	5
9	Third Parties.....	6
10	[●Mortgagee's consent	Error! Bookmark not defined.

Schedule 1 The Owner's obligations

This Unilateral Planning Obligation is made the [●] day of [●] 20[●]

And given by:

(1) The Secretary of State for Transport c/o the Department for Transport of Great Minster House 33 Horseferry Road, London, SW1P 4DR (**Owner**)

to

(2) Ashford Borough Council of Civic Centre, Tannery Lane, Ashford, Kent TN23 1PL (**Council**)

1 Definitions and interpretation

1.1 In this Unilateral Planning Obligation the following expressions shall where the context so requires or admits have the following meanings:

Act	the Town and Country Planning Act 1990 (as amended) or any re-enactment or modification thereof for the time being in force
Additional Church Works Contribution (Remainder)	means the remaining balance of the corresponding sum secured under the Original S106 Agreement and the payment of the Church Works Contribution Remainder being Twenty Three Thousand Nine Hundred and Sixty One Pounds and Two pence (£23,961.02) for the funding of the Church Works
Additional Pedestrian and Cycle Connection Contribution	means the sum of Three Thousand Four Hundred and Sixteen pounds and Thirty Seven pence (£3,416.37)
Application	the application made by the Owner to the Planning Inspectorate pursuant to Section 293D of the Act for full planning permission to develop the Application Site under reference number [●]
Application Site	the land shown edged red on Plan 1 being land at the Sevington Inland Border Facility registered at the Land Registry under title numbers K917394, K421661, K582402, Part TT113567, K528400 and K582395 and for the avoidance of doubt this Unilateral Planning Obligation is not intended to bind or be enforceable against any part of title number SGL792369 (the title plan for which is attached at Schedule 2 of this Unilateral Planning Obligation) which is in different ownership
BNG Plan	the plan annexed to this Unilateral Planning Obligation and marked "BNG Plan"
CIL Regulations	the Community Infrastructure Regulations 2010 (as amended)

Church Works	means upgrade and repair works to St. Mary's Church, Sevington in order to help enable the church to meet the long term needs of the local community
Church Works Contribution (Remainder)	means the remaining balance of the corresponding sum secured under the Original S106 Agreement Two Hundred and Three Thousand Five Hundred and Seventy-Eight Pounds and Ninety-Three Pence (£203,578.93) for the funding of the Church Works (which for the avoidance of doubt shall be added to the £40,000.00 part payment already received by the Council pursuant to the Original S106 Agreement)
Contributions	means the Additional Church Works Contribution (Remainder) the Additional Pedestrian and Cycle Connection Improvement Contribution the Church Works Contribution (Remainder), the Junction 10A Works Contribution, the Pedestrian Cycle Connection Improvement Contribution and the Public Footpath Reinstatement Contribution
Crown	means an owner of a "Crown Interest" as defined by s.293 of the Planning Act
Decision Letter	the letter containing the decision of the Planning Inspector in respect of the Application
Development	such development as may be authorised by the Planning Permission
Habitat Enhancement Works	the works set out in the Landscape and Environmental Management Plan dated []2023
Junction 10A Works Contribution	means the sum of four million nine hundred and seventy-three thousand and twelve pounds and eighty-three pence (£4,973,012.83) payable in accordance with paragraph 1 of Schedule 1 of this Agreement as a proportionate contribution towards the 'developer funding' of Junction 10A of the M20 in accordance with Policy TRA1 of the Ashford Local Plan 2030
Off Site BNG Land	the land edged blue on the BNG Plan
Original Section 106 Agreement	the agreement dated 13 September 2017 made between the Council (1) the Kent County Council (2) and Friends Life Limited (3)
Pedestrian and Cycle Connection Improvement Contribution"	means the sum of thirty-eight thousand three hundred and twenty-seven pounds and forty pence (£38,327.40) for the funding of Improvements to facilitate improved pedestrian and cycle connections between the Site and Duckworth Close, Willesborough

(as shown for indicative purposes only marked in blue on Plan 3)

Plan 1	means drawing reference 419419-MMD-01-MO-DR-Z-0005 PO1 attached to this Unilateral Planning Obligation
Plan 2	means drawing reference 419-19-MMD-01-MO-DR-C 0169-Rev PO1 attached to this Unilateral Planning Obligation
Plan 3	means drawing titled 'Pedestrian & Cycle Connectivity Improvement Plan' reference RM1 dated 18 February 2021 attached to this Unilateral Planning Obligation
Plan 4	means drawing titled "Future EU roads relationship Sevington IBF Substation Lease Plan and Plan 2 of s106 combined drawing number 4194 19-MMD-01-MO-DR-C-0170 attached to this Unilateral Planning Obligation
Planning Inspector	the inspector appointed to determine the Application
Planning Permission	the planning permission granted pursuant to the Application
Working Day	any day from Monday to Friday (inclusive) which is not Christmas Day, Good Friday or a statutory bank holiday and Working Days shall be construed accordingly

1.2 In this Unilateral Planning Obligation, unless the context otherwise requires:

- 1.2.1 any reference to a statute or a provision of a statute shall be construed as a reference to that statute or provisions as amended, re-enacted or extended at the relevant time;
- 1.2.2 any reference to a person shall be construed as a reference to any person, firm, company, corporation, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) or one or more of the foregoing;
- 1.2.3 any reference to the singular shall include the plural and vice versa;
- 1.2.4 any reference to the masculine gender shall include the feminine and neuter and vice versa;
- 1.2.5 the table of contents and headings are inserted for ease of reference only and shall not affect the construction of this Unilateral Planning Obligation;
- 1.2.6 where any party comprises two or more persons, any obligations of that party in, under or arising from this Unilateral Planning Obligation is undertaken by or binding upon such two or more persons jointly and severally;

- 1.2.7 references to any party to this Unilateral Planning Obligation include its successors-in-title and permitted assignees and in the case of any local authority shall also include any successor in function;
- 1.2.8 references to numbered clauses, schedules or paragraphs are references to the relevant clauses or schedules in this Unilateral Planning Obligation or the relevant paragraph of this Unilateral Planning Obligation respectively;
- 1.2.9 where in this Unilateral Planning Obligation any approval or consent or a certificate is required to be given by the Council then such approval or consent shall unless otherwise stated be given by such officer as the Council as appropriate shall from time to time notify in writing to the Owner;
- 1.2.10 all payments in accordance with the terms of this Unilateral Planning Obligation shall be exclusive of any VAT payable in respect thereof.

2 Background

- 2.1 The Council is a Local Planning Authority as defined in the Act and a Local Planning Authority for the purposes of planning obligations imposed pursuant to the provisions of Section 106 of the Act.
- 2.2 The Owner is the owner in fee simple in possession of the Application Site with title absolute registered at HM Land Registry under title numbers K917394 Part TT113567, K582400 and K582395 which are subject to the Lease together with K421661 K582402 (it is not intended that title numbers TT29528 and SGL792369 be bound by the obligations in this Unilateral Planning Obligation.
- 2.3 The Application has been submitted to the Planning Inspectorate for Planning Permission for the development of the Application Site as described in the Application.
- 2.4 The Owner has submitted the Application and is willing to give an undertaking to perform the obligations set out in this Unilateral Planning Obligation in the event of the Application being granted.
- 2.5 The Owner is willing to give an undertaking to perform the obligations set out in this Unilateral Planning Obligation in order to facilitate the grant of Planning Permission by ensuring that the Council can regulate the Development by securing the benefits contained in this Unilateral Planning Obligation.
- 2.6 If the Planning Inspector concludes that any of the planning obligations set out in this Unilateral Planning Obligation are incompatible with any one of the tests for planning obligations set out at Regulation 122 of the CIL Regulations, and accordingly attached no weight to that obligation in determining the Application then the relevant obligation shall from the date of the Decision Letter cease to have effect and the Owner shall be under no obligation to comply with them.

3 Condition precedent

- 3.1 This Unilateral Planning Obligation (with the exception of clauses 3, 4, 6, 7 and 8 which shall take effect on the date hereof) is conditional on and shall only have effect on the date six weeks after the grant of the Planning Permission in circumstances in which no legal proceedings shall have been issued by any person to challenge the validity of the Planning Permission.
- 3.2 If before the expiry of six weeks after the grant of the Planning Permission any person shall issue legal proceedings to challenge the validity of the Planning Permission then the period of six weeks referred to in Clause 3.1 shall be extended until a date seven days after the final determination of such legal proceedings (including for the avoidance

of doubt the expiry of the period allowed for any appeal) and any necessary determination or re-determination by the Council as appropriate (when the preceding provision shall apply again).

- 3.3 If on the expiry of the period referred to in Clause 3.2 the Planning Permission is not extant then this Unilateral Planning Obligation shall absolutely determine and become null and void.

4 Statutory provisions and covenants

- 4.1 This Unilateral Planning Obligation is entered into pursuant to the provisions of sections 106 of the Act and section 111 of Local Government Act 1972 and shall be deemed to be planning obligations in respect of the Application Site for the purposes of that section but without prejudice to all and any other means of enforcing them at law or in equity or by statute.
- 4.2 The covenants and obligations created by this Unilateral Planning Obligation are planning obligations for the purposes of Section 106 of the Act and are enforceable by the Council as Local Planning Authority.
- 4.3 This Unilateral Planning Obligation shall cease to have effect in respect of any then outstanding obligations in the event that the Planning Permission is quashed as a result of legal proceedings is revoked, or is modified without the Owner's consent.
- 4.4 No person will be liable for any breach of this Unilateral Planning Obligation unless they hold an interest in that part of the Application Site in respect of which such breach occurs or hold such an interest at the date of the breach provided that the person shall remain liable for any antecedent breach.

5 Obligations

- 5.1 The Owner covenants with the Council as set out in Schedule 1.

6 Waiver

- 6.1 No delay or failure on the part of any party in enforcing any provision in this Unilateral Planning Obligation shall be deemed to be a waiver or create a precedent or in any way prejudice any party's rights under this Unilateral Planning Obligation.
- 6.2 The rights and remedies provided in this Unilateral Planning Obligation are cumulative and are additional to any rights or remedies provided by law.

7 Miscellaneous

- 7.1 If any party defaults in the payment when due of any sum payable under this Unilateral Planning Obligation (whether pursuant to a court order or otherwise) the liability of that party in default shall be increased to include interest on such sum from the date when such payment was due until the date of actual payment at a rate of 4% above the base rate from time to time of Barclays Bank plc such interest shall accrue from day to day and shall be compounded annually.
- 7.2 The Owner hereby consents to the registration of this Deed as a Local Land Charge.
- 7.3 If any provision in this Unilateral Planning Obligation shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions hereof shall not in any way be deemed thereby to be affected or impaired.

- 7.4 Nothing in this Unilateral Planning Obligation shall prohibit or limit the right to develop any part of the Application Site in accordance with any planning permission (other than the Planning Permission) granted after the date of the Planning Permission **save for** if the Council grant a planning permission pursuant to an application to vary or amend the Planning Permission made by the Owner under section 73 of the Act the covenants and provisions of this Unilateral Planning Obligation shall be deemed to bind the varied permission and to apply in equal terms to the new planning permission unless that application to vary the Planning Permission is itself supported by a completed planning obligation under section 106 of the Act and/or completed deed of variation under section 106A of the Act.
- 7.5 This Unilateral Planning Obligation constitutes a Deed.

8 Third Parties

The Owner declares and confirms that with the exception of any person who becomes an Owner of the Application Site no term of this Unilateral Planning Obligation is enforceable under the Contract (Rights of Third Parties) Act 1999 by a person who is not a party to this Unilateral Planning Obligation.

Schedule 1

The Owner's Obligations

1 Junction 10A Works Contribution

The Owner covenants to pay to the Council the Junction 10A Works Contribution within 14 days of the date of the grant of the Planning Permission

2 Pedestrian and Cycle Connection Improvement contribution and the Additional Pedestrian and Cycle Connections Improvement Contribution

The Owner covenants to pay the Council the Pedestrian and Cycle Connection Improvements Contribution to the Council prior to completion of this Agreement and the Additional Pedestrian and Cycle Connection Improvements contribution within 14 days of the date of the grant of the Planning Permission

3 Church Works Contribution (Remainder) and the Additional Church Works Contribution (Remainder)

The Owner covenants to pay to the Council the Church Works Contribution (Remainder) prior to completion of this Unilateral Planning Obligation and the Additional Church Works Contribution (Remainder) within 14 days of the date of the grant of the Planning Permission

4 Off Site Habitat Enhancement Works

The Owner covenants to carry out the Habitat Enhancement Works to the Off Site BNG Land within 36 months of the date of the grant of Planning Permission and to maintain the Off Site BNG Land for a period of 30 years from the date of completion of the Habitat Enhancement Works

Schedule 2

Title Plan SGL792369

In witness whereof this deed has been duly executed by the parties the day and year first before written.

The Common Seal of)
[•])
was affixed to this deed (which is)
not delivered until dated))
in the presence of:)

Director

Director/Secretary

The Common Seal of)
[•])
was affixed to this deed (which is)
not delivered until dated))
in the presence of:)

Director

Director/Secretary

Signed as a Deed by)
[•Company name])
acting by [•Name of Director])
in the presence of)

.....
Director

Witness signature:

Name:

Address:

Occupation: