

DATE 5<sup>th</sup> October 2023

(1) WEST SUFFOLK COUNCIL

(2) SUFFOLK COUNTY COUNCIL

(3) BRITISH SUGAR PLC

(4) AB AGRI LIMITED

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**Planning Obligation by Deed under Section 106  
of the Town and Country Planning Act 1990**

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relating to

**Land off Compiegne Way Bury St Edmunds Suffolk**

West Suffolk Council  
West Suffolk House  
Western Way  
Bury St. Edmunds  
Suffolk

DATE

5<sup>m</sup> October

2023

**PARTIES:**

- (1) **WEST SUFFOLK COUNCIL** of West Suffolk House Western Way Bury St. Edmunds Suffolk IP33 3YU (hereinafter called the "**Council**")
- (2) **SUFFOLK COUNTY COUNCIL** of Endeavour House 8 Russell Road Ipswich Suffolk IP1 2BX (hereinafter called the "**County Council**")
- (3) **BRITISH SUGAR PLC** (company number 00315158) of Weston Centre 10 Grosvenor Street London W1K 4QY (hereinafter called the "**Owner**")
- (4) **AB AGRI LIMITED** (company number 00193800) of Weston Centre 10 Grosvenor Street London W1K 4QY (hereinafter called the "**Applicant**")

**INTRODUCTION**

- A The Council is a local planning authority for the purposes of the Act for the area in which the Site is situated and by whom the obligations contained in this Deed are enforceable
- B The County Council is the local highway authority (except for trunk roads) and is also a local planning authority for the purposes of the Act for the area in which the Site is situated and by whom the obligations contained in this Deed are enforceable
- C The Owner is the freehold owner of the part of Site which is registered at HM Land Registry under title number SK259258
- D The Owner together with the Applicant has submitted the Application to the Council to grant planning permission for the Development pursuant to the Application subject to the prior completion of this Deed intended to regulate the Development and to secure the planning obligations contained in this Deed
- E The Council and the County Council enter into this Deed to the intent that the requirements of the Council's and the County Council's

policies are met and that any objections by the Council or the County Council to the grant of planning permission on the basis of those policies are overcome

- F The Council and the County Council consider and the Owner and Applicant acknowledge that the Development should not take place until certain restrictions regulating the use of the Site are imposed in the manner hereafter appearing and pursuant to Section 106 of the Act the Parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed
- G The Council is satisfied that the planning obligations sought under the provisions of this Deed meet the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended)

### **NOW THIS DEED WITNESSES AS FOLLOWS:**

#### **1. DEFINITIONS**

For the purposes of this Deed the following expressions shall have the following meanings:

"Act"	the Town and Country Planning Act 1990 (as amended)
"Application"	the full application for planning permission to develop the Site received by the Council on the 19 July 2022 and bearing the Council's reference number DC/22/1294/FUL
"Commencement of Development"	the date on which any material operation (as defined in Section 56(4) of the Act) begins to be carried out on any part of the Site other than operations consisting of site clearance demolition work archaeological investigations for the purpose of assessing ground conditions remedial work in respect of any contamination or other adverse ground conditions diversion and lay of services erection of any temporary means of enclosure the temporary display of site notices or advertisements and "Commenced" and "Commence Development" shall be construed accordingly
"Completion of Development"	the date that the Development approved under the Planning Permission first comes into use as approved by the Planning Permission

"Development"	the development of the Site in accordance with the Planning Permission for <u>an</u> animal feed mill and associated development including ancillary offices silos warehouse improved access route and parking
"Late Payment Interest"	interest at four (4) per cent above the base lending rate of the Bank of England from time to time
"Planning Permission"	the planning permission granted by the Council for the Application together with any amended or varied version of that planning permission pursuant to Sections 73 or 96A of the Act
"RPI Index"	the "All Items" index figure of the Index of Retail Prices published by the Office for National Statistics from time to time or any successor organisation or (if that index shall cease to be published or is otherwise unavailable) such alternative basis of indexation as may be reasonably agreed between the Parties
"RPI Indexed"	the increase in any sum referred to in the Second Schedule by an amount equivalent to the increase in the RPI Index to be calculated in accordance with Clause 10 of this Deed
"Site"	the land forming part of land registered with the Land Registry under title number SK259258 shown edged red in the Site Plan
"Site Plan"	the plan marked "Site Plan" attached to the First Schedule of this Deed
"Travel Plan Contribution"	five thousand pounds (£5,000) RPI Indexed
"Working Days"	Monday to Friday (inclusive) except Good Friday Christmas Day and public or bank holidays from time to time in England

## **2. CONSTRUCTION OF THIS DEED**

- 2.1 Where in this Deed reference is made to any clause sub-clause schedule paragraph sub-paragraph or recital such reference (unless

the context otherwise requires) is a reference to a clause sub-clause schedule paragraph sub-paragraph or recital in this Deed

- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies' corporations and firms and all such words shall be construed as interchangeable in that manner
- 2.4 Wherever more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and severally unless there is an express provision otherwise
- 2.5 Any reference to an Act of Parliament shall include any modification extension or re-enactment of that Act for the time being in force and shall include all instruments orders plans regulations permissions and directions for the time being made issued or given under that Act or deriving validity from it
- 2.6 References to any party to this Deed shall include the successors in title to that party the personal representatives of that party and any party deriving title through or under that party and in the case of the Council and or the County Council the successors to their respective statutory functions
- 2.7 Where this Deed requires a plan or strategy or other document to be submitted to the Council or the County Council for approval or agreement then upon approval of the same it shall be deemed to have been incorporated into this Deed and the same shall apply to any provision requiring a review of any such plan or strategy or other document
- 2.8 References to a "Site Plan" in this Deed shall be references to the plan attached to the First Schedule of this Deed
- 2.9 The obligations in this Deed shall not be enforceable against:
  - 2.9.1 any mortgagee of the Site unless they take possession in title of the Site or any part thereof
  - 2.9.2 any statutory undertaker or other person who acquires any part of the Site or interest therein for the purposes of the supply of electricity gas water drainage telecommunications services or public transport services



- 2.10 The headings are for reference only and shall not affect construction
- 2.11 Any covenant by the Owner and/or Applicant not to do an act or thing shall be deemed to include an obligation not to permit or suffer such act or thing to be done by another person

### **3. LEGAL BASIS**

- 3.1 This Deed is made pursuant to Section 106 of the Act and Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other enabling powers
- 3.2 The covenants restrictions and requirements imposed upon the Owner and Applicant under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council and the County Council as local planning authorities against the Owner and Applicant and their successors in title
- 3.3 This Deed shall only be capable of being varied by a supplemental deed between the Parties hereto or their respective successors in title or assigns made under section 106A of the Act

### **4. CONDITIONALITY**

- 4.1 This Deed is conditional upon:
- 4.1.1 the grant of the Planning Permission and
  - 4.1.2 the Commencement of Development
- SAVE FOR the provisions of this clause and clauses 7.3 7.4 7.5 7.6 7.10 9 12 13 14 18 and 19 (related to legal and monitoring costs change in ownership right of entry dispute resolution jurisdiction and delivery) and any other relevant provisions which shall come into effect immediately upon completion of this Deed
- 4.2 Where the Planning Permission is the subject of any judicial review proceedings or other legal challenge:
- 4.2.1 until such time as such proceedings or challenge including any appeal have been finally resolved the terms and provisions of this Deed will remain without operative effect notwithstanding the issue of the Planning Permission and the Commencement of Development PROVIDED THAT the Owner and Applicant shall not undertake any further works to implement the Planning Permission following the issue of such proceedings

- 4.2.2 if following the conclusion of such proceedings or challenge the Planning Permission is quashed and is not superseded by a subsequent planning permission accepted by the Owner and Applicant this Deed will cease to have any further effect and
  - 4.2.3 if following the conclusion of such proceedings or challenge the Planning Permission remains valid and fully enforceable all of the terms and provisions of this Deed will apply in full
- 4.3 Wherever in this Deed reference is made to a date on which "legal proceedings or challenge in relation to the Planning Permission are concluded" (or cognate expressions are used) the following provisions will apply:
  - 4.3.1 proceedings by way of judicial review are concluded:
    - 4.3.1.1 when permission to apply for judicial review has been refused and no further application can be made
    - 4.3.1.2 when the court has given judgement in the matter and the time for making an appeal expires without any appeal having been made or permission to appeal is refused or
    - 4.3.1.3 when any appeal(s) is or are finally determined
  - 4.3.2 proceedings under Section 288 of the Act are concluded:
    - 4.3.2.1 when the court has given judgement in the matter and the time for making an appeal expires without an appeal having been made or permission to appeal is refused or
    - 4.3.2.2 when any appeal(s) is or are finally determined

## **5. THE OWNERS AND APPLICANTS COVENANTS**

The Owner and Applicant covenant with the County Council as set out in the Second Schedule

## **6. THE COUNTY COUNCILS COVENANTS**

The County Council covenants with the Owner and Applicant as set out in the Third Schedule

## **7. MISCELLANEOUS**

- 7.1 The Owner and Applicant shall act in good faith and shall co-operate both with the Council and the County Council to facilitate the discharge

and performance of all obligations contained herein and the Owner and Applicant shall comply with any reasonable requests either of the Council and or the County Council and their duly authorised officers or agents to have access to any part or all of the Site or any requests to provide documentation within the Owner and/or Applicant's possession (at the Owner and/or Applicant's expense) for the purposes of monitoring compliance with the obligations contained herein

- 7.2 The Owner and Applicant agree declare and covenant both with the Council and the County Council that they shall observe and perform the conditions restrictions and other matters mentioned herein and shall not make any claim for compensation in respect of any condition restriction or provision imposed by this agreement and further shall indemnify the Council and the County Council for any expenses or liability arising to the Council and the County Council in respect of breach by the Owner or Applicant of any obligation contained herein save to the extent that any act or omission of the Council or the County Council its employees or agents has caused or contributed to such expenses or liability
- 7.3 The Owner and Applicant agree declare and covenant to pay to the Council on completion of this Deed the proper and reasonable legal costs of the Council incurred in the negotiation preparation and execution on or before completion of this Deed
- 7.4 The Owner and Applicant agree declare and covenant to pay to the County Council on completion of this Deed the proper and reasonable legal costs of the County Council incurred in the negotiation preparation and execution on or before completion of this Deed
- 7.5 The Owner and Applicant further agree declare and covenant to pay to the County Council four hundred and seventy-six pounds (£476) on or before completion of this Deed towards the costs of reporting and monitoring the obligations contained in this Deed
- 7.6 No provision of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999
- 7.7 This Deed shall be registered as a local land charge by the Council
- 7.8 Where an approval consent or expression of satisfaction or a subsequent deed is required by the Owner or Applicant from either the Council or County Council under the terms of this Deed such approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such consent approval or expression of satisfaction shall be given on behalf of the Council by the Assistant Director of Growth or officer acting under his/her hand



and on behalf of the County Council by the Executive Director of Growth Highways and Infrastructure or duly appointed successor or officer acting under his/her hand

- 7.9 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed
- 7.10 Insofar as any clause or other provision of this Deed is found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed
- 7.11 This Deed 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 expires by effluxion of time for the Commencement of the Development or is modified (without the consent of the Owner or Applicant) and the Council will effect cancellation of all entries in the Register of Local Land Charges in respect of this Deed
- 7.12 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site (or part where such breach occurs) but without prejudice to liability for any subsisting breach arising prior to parting with such interest and for the purposes of this clause a person parts with an interest in the Site notwithstanding the retention of easements or the benefit of covenants restrictions or reservations in respect of it
- 7.13 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed
- 7.14 The Owner and Applicant agree that any rights to claim compensation arising from any limitations or restrictions on the planning use of the Site under the terms of the Deed are hereby waived
- 7.15 Save as otherwise provided in this Deed all works and activities to be carried out under the terms of this Deed (including for the avoidance of doubt such works as are of a preparatory ancillary or of a maintenance nature) are (save where expressly provided otherwise) to be at the sole expense of the Owner and/or Applicant and at no cost to either the Council or the County Council

- 7.16 Nothing contained or implied in this Deed shall prejudice or affect the rights discretions functions powers duties and obligations of the Council or the County Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority
- 7.17 The Owner and Applicant covenant and warrant to the Council and the County Council that they have full power to enter into this Deed and there is no other person having a charge over or any other interest in the Site whose consent is necessary to make this Deed binding on the Site and all estates and interests therein

## **8. WAIVER**

No waiver (whether expressed or implied) by the Council the County Council or the Owner or Applicant of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council the County Council or the Owner or Applicant from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default

## **9. CHANGE IN OWNERSHIP**

The Owner agrees with the Council and the County Council to give each of them independently written notice of any transfer in ownership of any of any freehold interests in the Site occurring before all the positive obligations under this Deed have been discharged such notice to be served within twenty one (21) days of such transfer and to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation purchased by reference to a plan PROVIDED THAT this obligation shall not apply to the transfer or grant of leases of electricity sub-stations or gas governors or the like

## **10. INDEXATION**

All sums referred to in the Second Schedule shall be increased by an amount equivalent to the increase in the RPI Index from the date hereof until the date on which such sum is payable using the application of the formula  $A = B \times (C/D)$  where:

- 10.1 A is the sum payable under this Deed
- 10.2 B is the original sum calculated as the sum payable
- 10.3 C is the RPI Index for the month two (2) months before the date on which the sum is payable

10.4 D is the RPI Index (most recently published) for the month two (2) months before the date of this Deed and

10.5 C/D is greater than 1

## **11. INTEREST**

If any payment due under this Deed is not paid on time Late Payment Interest will be payable from the date payment is due to the date of payment

## **12. VAT**

All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable

## **13. NOTICES**

13.1 Any notices or other written communication to be served or given by one party upon or to any other party under the terms of this Deed shall be deemed to have been validly served or given if delivered by hand or sent by first class recorded delivery post to the party upon whom it is to be served or to whom it is to be given or as otherwise notified for the purpose by notice in writing PROVIDED THAT the notice or other written communication is addressed and delivered or sent by first class recorded delivery post to the address of the party concerned as nominated in clause 13.2

13.2 The address for any notice or other written communication in the case of each of the Parties to this Deed shall be as follows

The Council	The Director of Planning & Growth West Suffolk House Western Way Bury St. Edmunds Suffolk IP33 3YU
The County Council	The Executive Director of Growth Highways and Infrastructure (or a duly appointed successor) Endeavour House 8 Russell Road Ipswich Suffolk IP1 2BX
The Owner	Weston Centre 10 Grosvenor Street London W1K 4QY
The Applicant	Weston Centre 10 Grosvenor Street London W1K 4QY

13.3 Any notice or other written communication to be given by either the Council or the County Council shall be deemed to be valid and effective if on its face it is signed on behalf of the Council or the County Council

by a duly authorised officer of the Council or the County Council as appropriate

- 13.4 The Owner and Applicant covenant to inform the Council and the County Council by way of written notice no later than seven (7) days prior to:

13.4.1 Commencement of Development

13.4.2 Completion of Development

#### **14. DISPUTE RESOLUTION**

- 14.1 Any dispute or difference of any kind whatsoever arising between any or all of the Parties out of or in connection with this Deed (including without limitation any question regarding its existence validity or termination) which cannot be resolved by prior agreement between the parties to the dispute ("the Dispute Parties") shall be referred to arbitration before a single Expert (the "Expert")

- 14.2 The Dispute 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

- 14.3 If the Dispute 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 any of the Dispute Parties as follows:

14.3.1 if the difference or question relates to the rights and liabilities of any Dispute Party or to the terms or conditions to be embodied in the Deed or document appertaining to the Deed it shall be referred to a solicitor or barrister notified by or on behalf of the President for the time being of the Law Society

14.3.2 if the difference or question relates to highway works engineering demolition building or construction works it shall be referred to a chartered civil engineer notified by or on behalf of the President for the time being of the Institution of Civil Engineers

14.3.3 if the difference or question relates to the value of any interest in property it shall be referred to a chartered surveyor agreed upon by the Dispute Parties but in default of agreement appointed at the request of any Dispute Party by or on behalf of the President for the time being of the Royal Institution of Chartered Surveyors or



- 14.3.4 if such difference or question relates to planning and related matters it shall be referred to a chartered town planner agreed upon by the Dispute Parties but in default of agreement by or on behalf of the President for the time being of the Royal Town Planning Institute
- 14.4 In the event of a reference to arbitration the Dispute Parties agree to:
- 14.4.1 prosecute any such reference expeditiously and
- 14.4.2 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
- 14.5 The Expert will have the power to consolidate proceedings or hold concurrent proceedings and to order on a provisional basis any relief which he would have power to grant on a final award
- 14.6 The award shall be in writing signed by the Expert and shall be finalised within fourteen (14) days of the hearing
- 14.7 The award shall be final and binding both on the Dispute Parties and on any persons claiming through or under them and judgment upon the award may be entered in any court having jurisdiction or application may be made to such court for judicial acceptance of the award and an order of enforcement as the case may be
- 14.8 Unless this Deed has already been terminated the Parties shall in every case continue to comply with their obligations under this Deed regardless of the nature of the dispute and notwithstanding the referral of the dispute for resolution pursuant to this Clause but without prejudice to the rights and obligations of the Parties in relation to the termination of the Deed
- 14.9 The provisions of this clause shall not affect the ability of the Council or County Council to apply for and be granted any of the following: declaratory relief injunction specific performance payment of any sum damages and any other means of enforcing this Deed and consequential and interim orders and relief

## **15. SATISFACTION OF ANY OF THE PROVISIONS OF THIS DEED**

Where in the opinion of the Owner and/or Applicant any of the provisions of this Deed have been satisfied the Owner and/or Applicant shall be entitled to apply to the Council or the County Council for confirmation to that effect and upon the Council or County Council being satisfied that the relevant Deed obligation and covenant as the



case may be has been satisfied the Council or the County Council shall forthwith issue confirmation to such effect

**16. APPROVALS**

Where any matters are approved by the Council under the terms of this Deed further amendments thereof if approved by the Council shall replace those previously approved

**17. COMMUNITY INFRASTRUCTURE LEVY**

The Parties to this Deed agree that for the purposes of the Community Infrastructure Levy Regulations 2010 the obligations imposed in this Deed are (a) necessary to make the Development permitted pursuant to the Application acceptable in planning terms (b) directly relate to the Development permitted pursuant to the Application and (c) fairly and reasonably relate in scale and kind to the Development permitted pursuant to the Application

**18. JURISDICTION**

This Deed is governed by and interpreted in accordance with the law of England

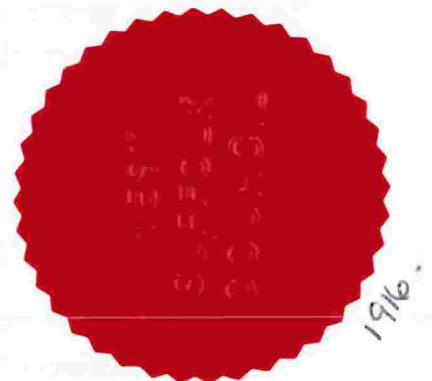
**19. DELIVERY**

The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated

**In witness whereof the Parties hereto have executed this deed on the day and year first before written**

**THE COMMON SEAL OF  
WEST SUFFOLK COUNCIL**

was affixed in the presence of:



[Redacted signature]

Authorised Officer

**COMMON SEAL OF  
SUFFOLK COUNTY COUNCIL**

was affixed in the presence of:

Authorised Officer

[REDACTED]



**EXECUTED AS A DEED BY  
BRITISH SUGAR PLC**

Acting by one director in the presence of:

[REDACTED]

Director

Witness Signature

[REDACTED]

Witness Name

[REDACTED]

Address:

[REDACTED]

Occupatio

**EXECUTED AS A DEED BY**

**AB AGRI LIMITED**

Acting by one director in the presence of:

[Redacted Signature]

Director

Witness Signature

[Redacted Signature]

Witness Name

[Redacted Name]

Address:

[Redacted Address]

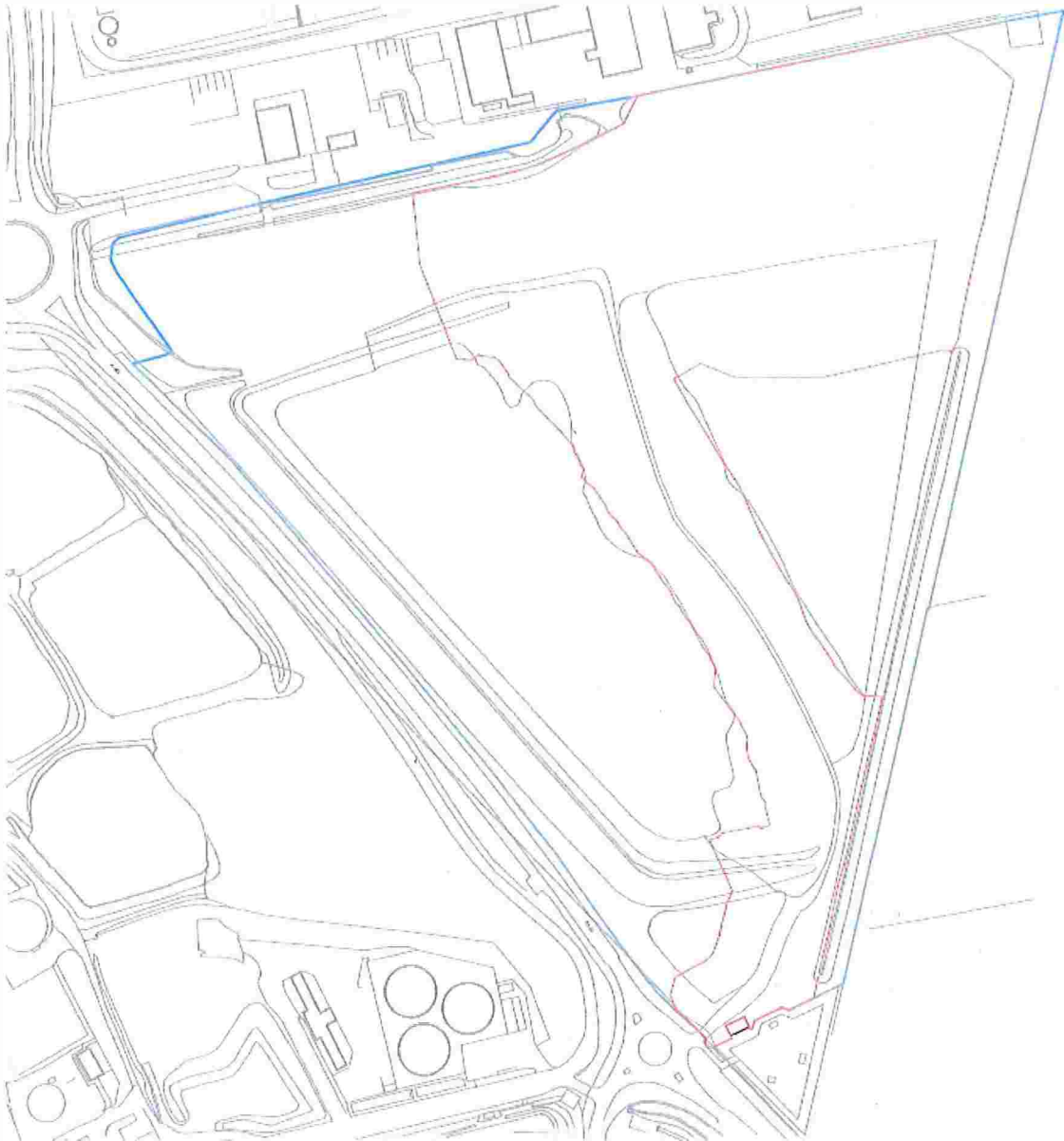
Occupation:

[Redacted Occupation]

## FIRST SCHEDULE

The Land shown for identification purposes edged red in the Site Plan comprising of the Owner land forming part of land registered with the Land Registry under title number SK259258

## SITE PLAN



## **SECOND SCHEDULE**

### **THE OWNER AND APPLICANT COVENANT WITH THE COUNTY COUNCIL:**

#### **1. TRAVEL PLAN CONTRIBUTION**

- 1.1 To pay to the County Council the Travel Plan Contribution prior to the Completion of Development
- 1.2 Not to allow the Completion of Development unless and until the Travel Plan Contribution has been paid to the County Council



### **THIRD SCHEDULE**

#### **THE COUNTY COUNCIL COVENANTS WITH THE OWNER AND APPLICANT:**

##### **1. TRAVEL PLAN CONTRIBUTION**

- 1.1 To use the Travel Plan Contribution for monitoring the travel plan that promotes sustainable travel for the Development
- 1.2 If requested to do so in writing after the expiry of ten (10) years from the Completion of Development within a further period of one (1) year to pay within one month of such request to any person such amount of the Travel Plan Contribution paid by that person which has not been committed or expended by the County Council in accordance with the provisions of this Deed together with any interest accrued at the Bank of England Base Rate minus 2 basis points, compounding annually at financial year end PROVIDED THAT if for any period the Bank of England Base Rate is at or below 0.02% then no interest shall be payable
- 1.3 When the Travel Plan Contribution paid to the County Council pursuant to this Deed has been spent or committed the County Council shall upon written request by the Owner and/or the Applicant after the expiry of ten (10) years from the payment of that sum within a further period of one (1) year notify the Owner and/or the Applicant that such monies have been spent or committed such notice to include full details of what the said monies were spent on or committed to

