

HERTFORDSHIRE COUNTY COUNCIL
SECTION 106 UNILATERAL UNDERTAKING

Date: 2021

PARTIES:

FROM:

1. **BRETT AGGREGATES LIMITED** (Co. Regn. No 316788) whose registered office is situate at Robert Brett House, Ashford Road, Canterbury, Kent CT4 7PP ("the Developer")
2. **ARLINGTON BUSINESS PARKS GP LIMITED** (Co. Regn. No 4233559) whose registered office is at Ground Floor, 1230 Parkview, Arlington Business Park, Theale, Reading, Berkshire RG7 4SA acting as general partner of the limited partnership carrying on business under the name Arlington Business Parks Partnership (registered in England and Wales as a limited partnership under the Limited Partnerships Act 1907 with number LP8624) ("the Owner")

TO:

3. **HERTFORDSHIRE COUNTY COUNCIL** of County Hall Hertford Hertfordshire SG13 8DE ("the County Council")

WHEREAS

- (1) The County Council is the local planning authority for the purposes of the 1990 Act for the area in which the Site is situate and as such is the local planning authority entitled to enforce the planning obligations hereinafter recited
- (2) The County Council is the Minerals and Waste Authority for Hertfordshire

- (3) The Owner is the freehold owner of the whole of the Site
- (4) The Developer has an interest in the Site by way of an option agreement to enter into a mineral lease between the Developer and the Owner dated 10 November 2016
- (5) The Developer has submitted the Planning Application to the County Council
- (6) On 6 January 2021 the County Council refused to approve the Planning Application and the Developer has submitted the Appeal
- (7) This Deed is entered into to make provision for regulating the Development and securing the matters hereinafter referred to which are required in order to enable the Development to go ahead

NOW THIS DEED WITNESSETH as follows:

OPERATIVE PART

1. DEFINITIONS

- 1.1 In this Deed the following expressions shall have the following meanings:-

“the 1990 Act” means the Town and Country Planning Act 1990 (as amended);

“Appeal” means the appeal lodged in respect of the refusal by the County Council to approve the Planning Application given the appeal reference APP/M1900/W/21/3278097 by the Planning Inspectorate;

“Chief Legal Officer” means the County Council’s Chief Legal Officer for the time being and his officers and agents;

“Commencement Date” means the date on which any material operation (as defined in Section 56(4) of the 1990 Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and no other purpose) operations consisting of site clearance, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and the expressions “Commence” and “Commencement” shall be construed accordingly;

“Development” means the development of the Site for the establishment of a new quarry as set out in the Planning Application;

"Minerals and Waste Authority" means Hertfordshire County Council in its capacity as the minerals and waste authority;

“Plan” means the plan annexed to this Deed at Annexure 1 titled “Plan 1 - Application Site Layout”;

“Planning Application” means the application for the establishment of a new quarry on land at the Former Hatfield Aerodrome including a new access onto the A1057, aggregate processing plant, concrete batching plant and other ancillary facilities, together with the importation of inert fill materials for the restoration of the minerals working dated 22 January 2016 bearing the Council’s reference number 5/0394-16;

"Planning Permission" means such permission as is granted pursuant to the Appeal by or on behalf of the Secretary of State;

“Secretary of State” means the Secretary of State for Levelling Up, Housing and Communities or any planning inspector authorised by him;

“Site” means the land known as land lying to the north-west of Hatfield Road, Smallford, St Albans and registered at the Land Registry under title number HD551580 and land known as land on the north west side of St Albans Road, Hatfield and registered with the Land Registry under title number HD430220 all of which land is shown for identification purposes only edged red on the Plan;

“Working Day” means any day other than a Saturday or a Sunday or a Public Holiday or Bank Holiday;

1.2 In this Deed:-

1.2.1 the clause headings do not affect its interpretation;

1.2.2 words of the masculine gender shall incorporate the feminine and neuter genders and words of the singular shall include the plural and vice versa;

1.2.3 the reference to any statute or section of a statute includes 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;

1.2.4 any reference to a clause, a paragraph or a schedule is unless the context otherwise requires a reference to a clause, a paragraph or a schedule of this Deed and any reference to a sub clause is a reference to a sub clause of the clause in which the reference appears;

- 1.2.5 references to the Site include any part of it;
- 1.2.6 where two or more people form a party to this Deed the obligations they undertake may be enforced against them all jointly or against each of them individually;
- 1.2.7 references to any party to this Deed shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the County Council the successors to its functions;
- 1.2.8 any covenant by the Owner and the Developer not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing and words denoting an obligation on the Owner and the Developer to do any act matter or thing include an obligation to procure that it be done;

2. EFFECT OF THIS DEED

- 2.1. This Deed is entered into pursuant to Section 106 of the 1990 Act. To the extent that they fall within the terms of Section 106 of the 1990 Act the obligations contained in this Deed are planning obligations for the purposes of Section 106 of the 1990 Act and are enforceable by the County Council;
- 2.2 To the extent that any of the obligations contained in this Deed are not planning obligations within the meaning of the 1990 Act, they are entered into pursuant to the powers contained in Section 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011 and all other enabling powers;
- 2.3 The Owner and Developer enter into the obligations for themselves and their successors in title to the intent that the obligations hereunder shall be enforceable not only against the Owner and the Developer but also against the successors in title of the Owner and the Developer and any

person claiming through or under the Owner and the Developer an interest or estate in the Site or any part thereof

3. CONDITIONALITY

- 3.1 This Deed is conditional upon the grant of the Planning Permission save for the provisions of Clauses 5.1 and 6.1 which shall come into effect immediately upon completion of this Deed
- 3.2 The Deed shall be null and void if for any reason the Secretary of State decides not to grant the Planning Permission for the Development pursuant to the Appeal.
- 3.3 Should a court or the Secretary of State determine that any provision in this Deed does not meet the statutory tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) and/or paragraphs 54-58 of the National Planning Policy Framework (July 2021) then those provisions shall not be enforceable by the County Council AND FOR THE AVOIDANCE OF DOUBT the Owner and the Developer do not need to comply with them.

4. OWNER'S AND DEVELOPER'S COVENANTS

- 4.1 The Owner and the Developer covenant to the County Council to observe and perform the covenants restrictions stipulations and obligations contained in Schedule 1 hereto

5. MISCELLANEOUS

- 5.1 The Owner hereby warrants that it is the owner of the freehold of the Site and that no other party save for the Developer has an interest in the Site save as disclosed in writing to the Chief Legal Officer prior to completion of this Deed
- 5.2 The parties agree that this Deed shall be registered as a local land charge

- 5.3 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.
- 5.4 Notwithstanding the provisions of the Contracts (Rights of Third Parties) Act 1999 nothing in this Deed confers or purports to confer any right to enforce any of the terms and provisions herein on any person who is not a party hereto or a successor in title or a statutory successor to a party hereto
- 5.5 Any notice to the parties hereto under this Deed shall be deemed to be sufficiently served if delivered personally or sent by recorded delivery service to the following officials/persons at the respective addresses hereinafter specified (or such other address as is notified in writing by a party to each of the other parties to this Deed):

<u>In respect of the Owner :</u>	<u>In respect of the Developer:</u>	<u>In respect of the County Council:</u>
Arlington Business Parks GP Limited 1230 Parkview Arlington Business Park Theale RG7 4SA (marked for the attention of the Legal Department) with a copy to Harwell, HQ Building, Thomson Avenue, Harwell Campus, Oxfordshire OX11 0GD (marked for the attention of the Legal Department)	Robert Brett House, Ashford Road, Canterbury, Kent CT4 7PP (marked for the attention of the Company Secretary and the Director of Legal Property Services)	The Chief Legal Officer, Hertfordshire County Council, County Hall, Pegs Lane, Hertford, Herts SG13 8DE

- 5.6 Insofar as any clause or clauses of this Deed are 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 provision of this Deed.

- 5.7 Nothing in this Deed shall be construed as imposing a contractual obligation upon the County Council as to the issue of the Planning Permission or as restricting the exercise by the County Council of any powers exercisable by them under the 1990 Act or under any other Act or authority
- 5.8 No waiver whether express or implied by the County Council of any breach or default by the Owner and/or Developer in performing or observing any of the obligations contained herein shall constitute a continuing waiver and no such waiver shall prevent the County Council from enforcing the relevant obligations or from acting upon any subsequent breach or default
- 5.9 This Deed shall cease to have any effect (insofar only as it has not been complied with) if the Planning Permission shall be quashed revoked or otherwise withdrawn or the Commencement Date has not been initiated in accordance with section 56 of the 1990 Act before the expiration of the period specified in the Planning Permission
- 5.10 Without prejudice to the County Council's statutory rights the Owner and the Developer hereby grant to the County Council or any person duly authorised or instructed by it an irrevocable licence at all reasonable times and upon prior notice (save for in emergencies notice will be provided as soon as possible thereafter) and subject to the County Council and its authorised officers complying with all appropriate health and safety regulations relating to the Site as may be imposed by the Developer from time to time to enter such parts of the Site to inspect any of the works to be carried out for the purposes of the Development and any materials to be used in carrying out those works for any purpose directly or indirectly connected with or contemplated by this Deed
- 5.11 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 but without prejudice to liability for any subsisting breach prior to parting with such interest

6. LAW AND JURISDICTION

- 6.1 This Deed is governed by and interpreted in accordance with the law of England and the parties agree to submit to the exclusive jurisdiction of the courts of England

IN WITNESS whereof the parties hereto have executed this Deed as a Deed but the same remains undelivered until the day and year first before written

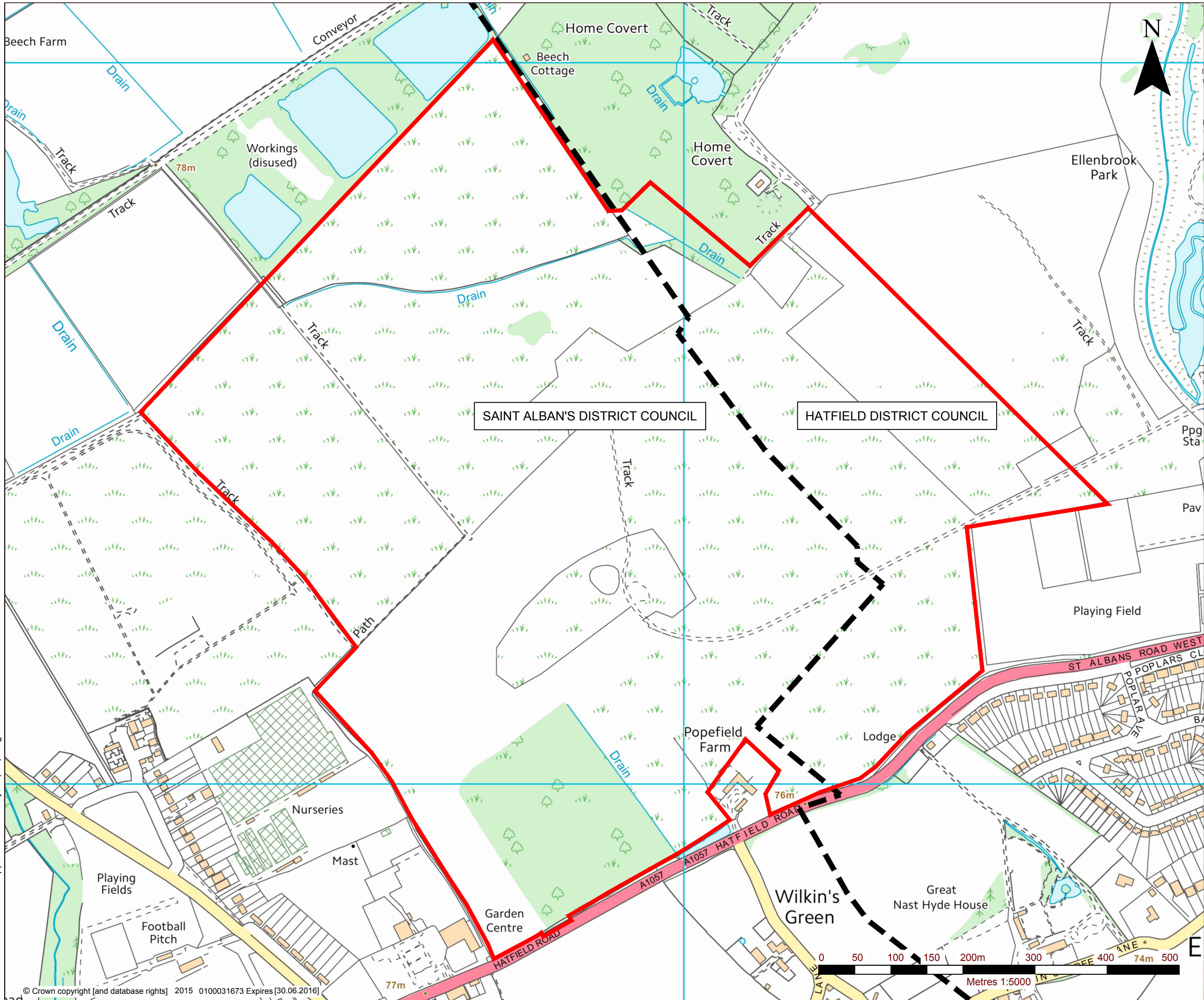
SCHEDULE 1

The Owner's and Developer's Covenants stipulations and Obligations

The Owner and the Developer covenant that should the Planning Permission be granted they will not construct nor operate any concrete batching plant forming part of the Development.

Annexure 1

Plan



LEGEND

APPLICATION SITE BOUNDARY

DISTRICT BOUNDARY



built on relationships



ASPECT HOUSE
ASPECT BUSINESS PARK
BENNERLEY ROAD
NOTTINGHAM. NG6 8WR
T: 01159 647280
F: 01159 751576
www.slrconsulting.com

HATFIELD AERODROME
PLANNING APPLICATION
APPLICATION SITE LAYOUT
PLAN 1

Scale 1:5 000 @ A3
Date NOVEMBER 2015

01009.00132.16.HQ2-2.0 Application Site Layout(PS).dwg

Executed as a deed by **BRETT
AGGREGATES LIMITED** acting by
a director,
in the presence of:

.....
Director

Witness Signature

Witness Name

Witness Address

Executed as a Deed by)
ARLINGTON BUSINESS PARKS)
GP LIMITED as general partner of)
ARLINGTON BUSINESS PARKS
PARTNERSHIP acting by one
director in the presence of:

sign here:

Director

print name: _____

In the presence of:

Witness signature:

Witness sign here: _____

Witness name:

print name: _____

Witness address:

Witness occupation:

Date 2021

BRETT AGGREGATES LIMITED

- and –

**ARLINGTON BUSINESS PARKS GP
LIMITED**

- to -

HERTFORDSHIRE COUNTY COUNCIL

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Deed of Unilateral Undertaking pursuant to
S.106 Town and Country Planning Act 1990
(as amended) in relation to the development
of Site at land lying to the north-west of
Hatfield Road, Smallford, St Albans (former
Hatfield Aerodrome Site)

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QUENTIN BAKER
Chief Legal Officer
County Hall
Hertford
SG13 8DE