

**DATED**

*29<sup>th</sup> October*

**2009**

**C WALTON LIMITED (1)**

to

**HARBOROUGH DISTRICT COUNCIL (2)**

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**UNILATERAL UNDERTAKING**

Pursuant Section 106 of the Town and Country Planning Act 1990  
relating to Bruntingthorpe Aerodrome and Proving Ground, Lutterworth,  
Leicestershire LE17 5QS

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Marrons  
Solicitors  
1 Meridian South  
Meridian Business Park  
Leicester  
LE19 1WY  
Ref: RJ 291-15-7

THIS DEED is made the 29<sup>th</sup> day of October 2009

**BY**

1. **C WALTON LIMITED** (Company Registration Number 00559275) whose registered office is situate at Bruntingthorpe Aerodrome and Proving Ground Bruntingthorpe Lutterworth Leicestershire LE17 5QS ("the Owner")

**TO**

2. **HARBOROUGH DISTRICT COUNCIL** of Council Offices Adam and Eve Street Market Harborough LE16 7AG ("the Council")

**RECITALS:**

- A. The Council is the Local Planning Authority for the purposes of the Act and is a Principal Council for the purposes of this Deed and for the purposes of the Local Government Act 1972 for the District of Harborough within which the Land is situated
- B. The Owner is the freehold owner of the Land.
- C. The Council issued the Enforcement Notice to the Owner alleging various breaches of planning control
- D. The Owner has made the Appeal against the Enforcement Notice
- E. In consideration of the ground A appeal, the Secretary of State grants the Appeal Permission. For the avoidance of doubt, the Secretary of State grants planning permission for the Events (as defined below) only.
- F. The Owner has agreed to enter into this Deed with the intent that its interest in the Land shall be subject to the covenants and obligations entered into by it and with the intention that the covenants and obligations entered into by it should create planning obligations

pursuant to Section 106 of the Act in the manner hereinafter appearing in the event that the Appeal Permission is granted

- G. The Inspector will decide whether the obligations contained within this Deed will be required and therefore the obligations are conditional upon them being required by the Inspector's decision of the Planning Appeal and issuing of the Appeal Permission.

## **OPERATIVE PROVISIONS:**

### **1. DEFINITIONS AND INTERPRETATION**

In this Agreement (including the Operational Programme scheduled to the Agreement) the following expressions shall have the following meanings:

“Act”	the Town & Country Planning Act 1990
“the Appeal”	the appeal made by the Owner to the Secretary of State against the Enforcement Notice and pursuant Section 174 of the Act and ascribed reference number APP/F2415/C/09/2096741
“Appeal Permission”	the planning permission granted pursuant to the Appeal
“Event Days”	means the days upon which the Events take place within the Land
“Events”	means any of the activities which are permitted by the Appeal Permission, as set out in condition 1 to the Appeal Permission, namely: (i) Emergency Services; (ii) Media (iii) Go Karts;



- (iv) Driver Tuition; and
- (v) Corporate Entertainment;
- (vi) Cycling.

“the Enforcement Notice”      The enforcement notice issued by the Council to the Owner with reference number 452 and dated 22 December 2008

“the Inspector”                      the person appointed by the Secretary of State to determine the Planning Appeal

“the Land”                              means the land edged red on the Plan annexed to this Deed

“the Operational Programme”      means the programme of Events contained in the Schedule intended to be carried out by the Owner on the Land pursuant to the Appeal Permission

1.1                      Words in this Deed importing the singular meaning shall where the context so admits include the plural meaning and vice versa

1.2                      Words in this Deed of the masculine gender shall include the feminine and neuter genders and vice versa and words denoting natural persons shall include corporations and vice versa

1.3                      References in this Deed to any statutes or statutory instruments shall include and refer to any statute or statutory instrument amending consolidating or replacing them respectively from time to time and for the time being in force

1.4                      Where in this Deed reference is made to a clause schedule or plan such reference (unless the context otherwise requires) is a reference to a clause or schedule of or in the case of a plan attached to this Deed

1.5                      The expression “the Owner” shall where the context so admits include

its respective successors and assigns

2. **GENERAL PROVISIONS**

**Statutory Authority**

2.1 This Deed and each of the covenants given by the Owner contained herein is a planning obligation and is made pursuant to Section 106 of the Act

2.2 The covenants by the Owner contained herein shall be enforceable by the Council

**Liability**

2.3 The covenants given by the Owner contained herein are made with the intent that the covenants will bind the Land and be binding on and enforceable against its successors in title or assigns those deriving title under the Owner **PROVIDED THAT** without prejudice to the enforcement of covenants against successors in title no person shall be liable for any breach or non-performance of the covenants contained herein or for the performance of any obligations which arise from the carrying out of Events on and in respect of any land of which he is no longer seised save in respect of any prior subsisting breach

2.4 Nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Appeal Permission as defined herein or any renewal thereof or any reserved matters approval with respect thereto) granted (whether or not on appeal) after the date of this Deed in respect of which development this Deed will not apply

2.5 In the event that the Owner disposes of its interest in the Land or any part thereof it shall within twenty-eight days of such disposal give written notice of the name and address of its successors in title to the Council together with sufficient details of the land included in the disposal to allow its identification



### **Contingencies**

- 2.6 With the exception of this clause the obligations contained in this Deed are conditional upon them being required by the Inspector's decision of the Planning Appeal and the issuing of the Appeal Permission and until such time as these conditions are satisfied the respective obligations contained herein shall be of no effect

### **Notices**

- 2.7 The service of notices and communications pursuant to this Deed shall be sent to the addressee at the address stated in this Deed or at such other address as the addressee shall have notified to the others in writing

- 2.8 Notices and communications under this Deed may be sent by personal delivery or by First Class Post (recorded delivery) and any notice or communication sent by First Class Post (recorded delivery) and correctly addressed shall be conclusively deemed to have been received by the addressee on the second business day following the date of posting

### **Exclusion of the Contracts (Rights of Third Parties) Act 1999**

- 2.9 Nothing herein contained or implied shall give or be construed as giving rights, privileges, powers or enforceability other than to the specific parties executing this document and their successors (if any) as defined herein and the provisions of the Contracts (Rights of Third Parties) Act 1999 and any benefits or rights which could arise therefrom are expressly excluded to the intent that no third party within the meaning of that Act shall have any rights of enforcement in respect of any matter herein contained

### **Perpetuity Period**

- 2.10 For the purposes of such parts of this Deed as may be subject to the law against perpetuities, the perpetuity period shall be a period of 80

years from the date hereof

**Void Provisions**

- 2.11 If any provision of this Deed is declared by any judicial or other competent authority to be void voidable illegal or otherwise unenforceable the remaining provisions of this Deed shall continue in full force and effect and the parties shall amend that provision in such reasonable manner as achieves the intention of the parties without illegality provided that any party may seek the consent of the other or others to the termination of this Deed on such terms as may in all the circumstances be reasonable if the effect of the forgoing provisions would be to defeat the original intention of the parties

3. **THE OWNER'S PLANNING OBLIGATIONS WITH THE COUNCIL**

- 3.1 The Owner covenants with the Council to carry out activities pursuant to the Appeal Permission in accordance with the Operational Programme

**IN WITNESS** whereof the parties hereto have executed this Deed on the date first above written

**SCHEDULE**  
**OPERATIONAL PROGRAMME**

1. Interpretation of Terms

In this Operational Programme the following expressions will have the following meanings: -

- |                    |   |
|--------------------|---|
| “C Walton Limited” | means C Walton Limited whose registered office is at Bruntingthorpe Proving Ground Bruntingthorpe Lutterworth Leicestershire LE17 5QS |
| “Operational Plan” | means the drawing appended to this Schedule and marked “Operational Plan”.  |

2. **General**

2.1 This Operational Programme is designed to set out details of the Events to enable the Council to monitor and control the activities and to enable the local community to clearly understand the nature of those activities.

2.2 C Walton Limited undertakes to run the Events as set out in this Operational Programme, in a responsible manner, with the intention not to cause undue disturbance to local residents and to the satisfaction of the Council. The following sections of this Operational Programme set out the means by which this will be achieved.

3. **Corporate Entertainment**

3.1 These are corporate motor events involving demonstration and testing of motor vehicles and related driving instruction, hospitality, vehicle maintenance and repair. The emphasis of these events will be on skills based activities rather than competition between the participants. As a consequence, high speed driving activities will not be a significant part of any daily activities and will in any event be very strictly controlled. For reasons of safety, guests are given instruction before using any of



the vehicles.

3.2 The driving activities will not commence before 09:00 hours or finish after 18:00.

3.3 Corporate Entertainment will take place on no more than fifty (50) days per annum.

3.4 Corporate Entertainment will not take place on weekends, save for a maximum of six (6) Saturdays per annum. For the avoidance of doubt, Corporate Entertainment will not place on Sundays.

#### Vehicles

3.5 For Corporate Entertainment the following vehicles will be available for use:

3.5.1 Volvo FH12 Truck and trailer articulated unit (4 vehicles)

3.5.2 Mitsubishi L200 4 X 4 pick up (4 vehicles)

3.5.3 Ariel Atoms (4 vehicles)

3.5.4 Legends (4 vehicles)

3.5.5 VW Lupo GTi (4 vehicles)

3.5.6 Westfield sports cars (4 vehicles)

3.5.7 Stryker sports car (1 vehicle)

3.5.8 Skid car and frame (2 available)

3.5.9 Ferrari 355 or Vauxhall Monaro (1 vehicle)

3.5.10 Noble M400 (1 vehicle)

3.5.11 Twin four stroke engined Karts (8 vehicles)

3.6 The vehicles referred to in this Section 3 may be changed from time to time with the approval of the Council which shall be deemed to have

been granted providing that:

- 3.6.1 the Council are provided with 2 weeks notice of the proposed change
- 3.6.2 any such new vehicles conform to the noise limitations stipulated within this document;
- 3.6.3 results of noise testing of the proposed new vehicle shall be supplied to the Council;
- 3.6.4 the Council has the opportunity to noise test the vehicles itself;
- 3.6.5 a period of at least two weeks has passed from notice of the changes, which shall include the supply of the above information to the Council; and
- 3.6.6 no reasonable objection is received from the Council.

#### Noise Controls

- 3.7 All the vehicles in this Section 3 apart from the Karts and the Legends are silenced to road legal standards and operated without any modification whatsoever to cause increased noise emission. The Legends are heavily modified from their racing origins to bring noise output down to a level that would be well below the road legal limit and similar to the other road cars used. This is achieved by increased exhaust silencing with double silencer boxes and inlet air boxes to eliminate intake noise. The Karts are designed for indoor use and are silenced to comply with workplace regulations.
- 3.8 Before any of the vehicles referred to in this Section 3 are used on the circuits it will be tested to ensure that it complies with both the static and the drive by noise tests detailed below.
- 3.9 A static test shall be carried out initially as a screen to ensure that no vehicle is passed through for the drive by test where it is obviously too noisy. Passing the **Static test** shall not permit a vehicle to be used in the Events. All vehicles must pass the **Drive by test** prior to or during

the Events.

#### Static Test

- 3.10 Measurements to be made at 0.5 metres from the end of the exhaust pipe with the microphone at the exhaust outlet level at an angle of 45 degrees with the exhaust outlet. Background noise levels are to be at least 10dB (A) below the measured level. The engine is to be warm and speed set at 3,500 rpm or 75% of the maximum if this is less than 4,500 rpm. The measurement shall be over a minimum of a 3 second duration.
- 3.11 The maximum permitted level for the static test is 101 dB(A) as defined by the Single Vehicle DoT Motor Vehicle Approval Regulations 1996 (SI 1996 No. 3013).

#### Drive by Test

- 3.12 Measurements shall be made at a maximum distance of 20 metres from the centre line of the path of the vehicle at a height of between 1.2 and 1.5 metres above ground level. Vehicles shall be driven past this point accelerating under full throttle.
- 3.13 The maximum permitted level (LA max slow) for the drive by test is 87.5 dB (A).
- 3.14 The date of testing of all vehicles to be used at the premises and levels recorded shall be documented and this information supplied to the Council within one month of the grant of planning permission.
- 3.15 In addition, any vehicles which are to be used at the site, pursuant to the Appeal Permission, but which were not tested initially in accordance with paragraph [3.8] shall be subject to the same static and drive by test before they are used. The date of testing and levels recorded shall be documented and supplied to the Council at its request.



### Frequency of noise testing

3.16 C Walton Limited undertakes to perform Drive By monitoring during each of the Corporate Entertainment events in accordance with the above procedure. A full record of this monitoring shall be kept and supplied to the Council within seven (7) days of the Council's written request.

3.17 Subject to reasonable notice, the Council Officers shall be able to attend any Corporate Entertainment events and carry out any of the above noise testing procedures in association with a member of C. Walton Limited personnel.

3.18 C. Walton Limited will ensure that any areas of the track surface used for the events which give rise to particular noise problems through deterioration or disrepair are repaired at the earliest opportunity.

### 4. **Agreed monitoring**

4.1 C Walton Ltd will install and maintain one permanent noise monitor at the location shown on the Operational Plan. The outputs of such monitoring equipment shall be made available to the Council at the Council's request.

4.2 There is currently a noise monitor that has been installed and is maintained by Caterpillar UK Ltd at the location shown on the Operational Plan. Should Caterpillar move off-site, C Walton Ltd will assume maintenance of this noise monitor and shall make the output of the monitoring equipment available to the Council at the Council's request.

4.3 C Walton Ltd will acquire a portable sound recording device (type 2) which can be placed at strategic locations around the circuit. C Walton Ltd shall supply details of the sound recording equipment to the Council.

4.4 C Walton Ltd will ensure that the level of noise emitted from Corporate Entertainment, driver tuition, emergency service use and go-karting pursuant to the Appeal Permission shall not exceed LAeq (10 minutes) = 40 dB at any time as measured or determined at any location in villages adjacent to the Land. Measurements shall be made in accordance with the provisions of BS7445. The “downwind” assessment method within the Standard will be applied.

5. **Driver tuition**

5.1 The driving activities will not commence before 09:00 hours or finish after 19:00 hours.

5.2 All vehicles used will be subject to the noise controls set out at paragraphs [3.8 – 3.18].

6. **Emergency services**

6.1 Sirens will not be used during the demonstration or testing of vehicles or equipment.

7. **Cycling**

7.1 Cycling activities will not commence before 09:00 hours or finish after 21:00 hours

8. **Media use**

8.1 The driving activities will not commence before 09:00 hours or finish after 18:00 hours.

8.2 All vehicles used will be subject to the noise controls set out at paragraphs [3.8 – 3.18].

9. **Go karting**

9.1 The following paragraphs are intended to address the driving of Go-

karts other than the Go-kart sessions included within Corporate Driving Events.

9.2 Driving activities will not commence before 09:00 hours or finish after 21:00 hours.

9.3 The go-karts are designed for indoor use and are silenced to comply with workplace regulations. They will be subject to the noise controls set out at paragraphs [3.8 – 3.18].

## 10. **Events Diary**

10.1 C Walton Ltd will maintain a diary of Events that take place at the proving ground. The diary will be held at the proving ground and will be made available for inspection by the Council on the Council's request.

## 11. **Resolution of Disputes**

11.1 In the event of any dispute or difference arising between C Walton Limited and the Council touching or concerning any matter or thing arising out of this Operational Programme (other than a dispute or difference touching or concerning the meaning or construction of this document) such dispute or difference shall be referred to some independent and fit person holding appropriate professional qualifications to be appointed (in the absence of agreement) by the President (or equivalent person) for the time being of the professional body chiefly relevant in England to such qualifications and such person shall act as an expert and his decision shall be final and binding on the parties to the dispute or difference and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties to the dispute or difference in equal shares.

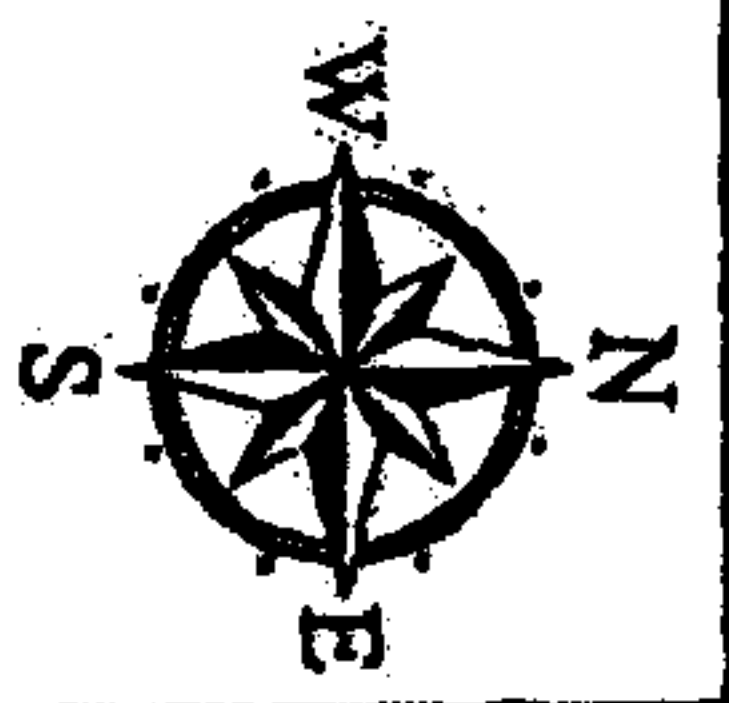
11.2 In the absence of agreement between the parties to the dispute or difference as to the professional qualifications of the person to be



REV.

Scale

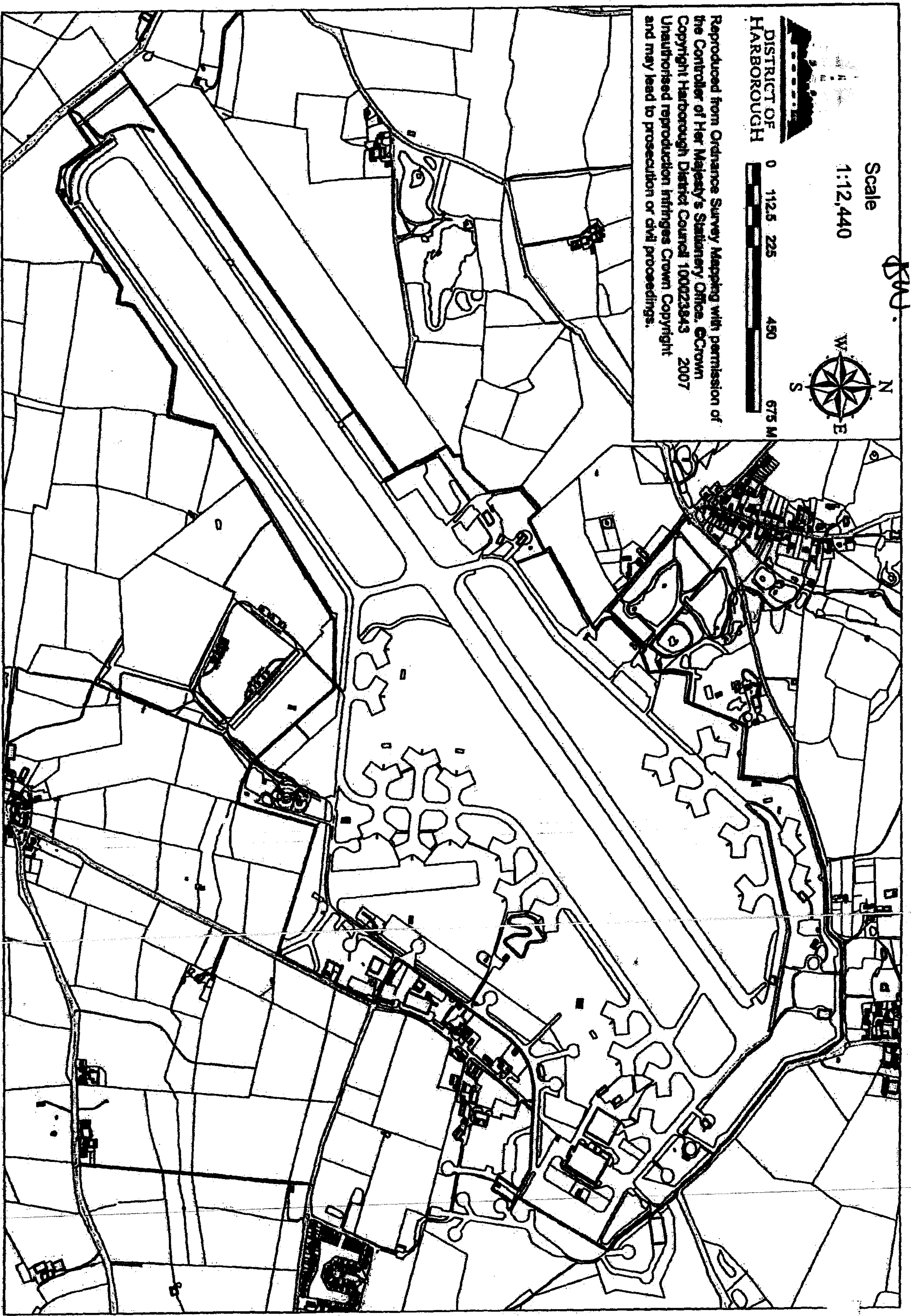
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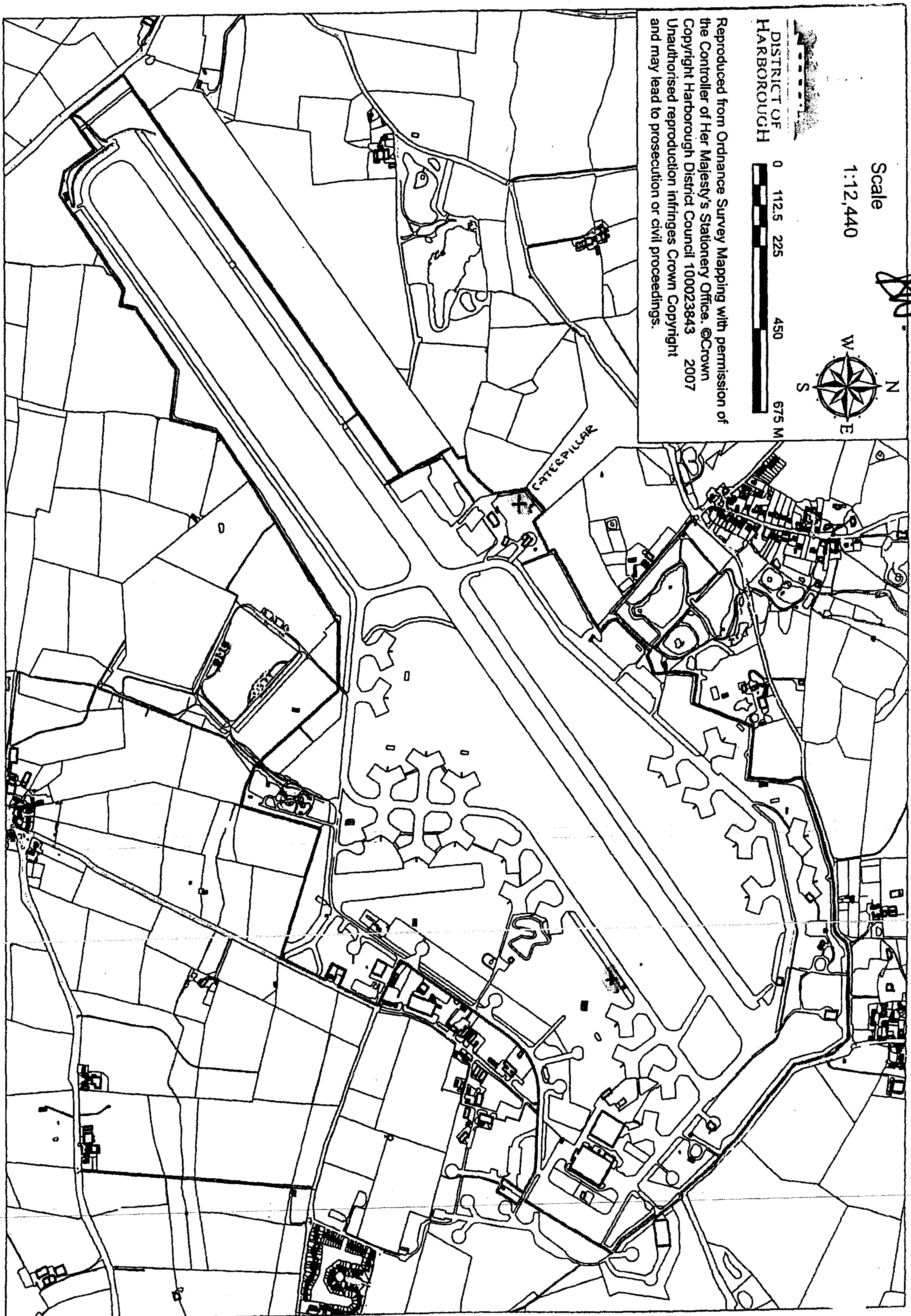
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appointed pursuant to sub-clause 10.1 hereof or as to the appropriate professional body within fourteen (14) days after any party has given to the other parties to the dispute or difference a written request to concur in the professional qualifications of the person to be appointed pursuant to sub-clause 10.1 hereof then the question of the appropriate qualifications or professional body shall be referred to a solicitor to be appointed by the President for the time being of the Law Society of England and Wales on the application of any party to the dispute or difference and such solicitor shall act as an expert and his decision as to the professional qualifications of such person or as to the appropriate professional body shall be final and binding on the parties to the dispute or difference and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties to the dispute or difference in equal shares.

**SIGNED AS A DEED** on behalf of            )  
**C WALTON LIMITED** by:-                    )

Director           *L. W. Walton*

Director/Secretary