2022

Deed of Agreement made pursuant to Section 106 of the Town and Country Planning Act 1990

relating to

Land to the South of HMP Gartree, Gallow Field Road, Leicestershire, LE16 7RP

Harborough District Council (1)

Leicestershire County Council (2) and

The Secretary of State for Justice (3)

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DATE 2022

1. parties
	1. **Harborough District Council** of Council Offices, Adam and Eve Street, Market Harborough, Leicestershire, LE16 7AG (**District** **Council**).
	2. **Leicestershire County Council** of County Hall, Glenfield, Leicester, LE3 8RA (**County Council**).
	3. **The Secretary of State for Justice** of MOJ Property Directorate, 10.41, 102 Petty France, London, SW1H 9AJ (**Owner**).
2. background
	* + 1. By virtue of section 1 of the 1990 Act the District Council is the local planning authority for the area in which the Site is situated.
			2. The District Council and the County Council are both Principal Council's within the meaning of the Local Government Act 1972.
			3. The County Council is responsible for the provision of library, education and civic amenity facilities and is the Highways Authority for the area in which the Site is situate.
			4. The Owner is the proprietor of the freehold titles to the Site which are registered at the Land Registry under Title Numbers LT331114 and LT331115.
			5. The Owner has submitted the Application to the District Council for planning permission for the Development. The District Council issued a decision notice on 7 April 2022 refusing planning permission.
			6. The Owner has lodged the Appeal with the Secretary of State in respect of the District Council's refusal of the Application.
			7. The Owner by entering into this Deed does so to create planning obligations in respect of the Site pursuant to section 106 of the 1990 Act and agrees to be bound by and to observe and perform the covenants agreements conditions and stipulations hereinafter contained.
3. Agreed terms
4. DEFINITIONS AND INTERPRETATION
	1. In this Deed the following expressions shall have the following meanings:

|  |  |
| --- | --- |
| 1990 Act | 1. the Town and Country Planning Act 1990.
 |
| Appeal | 1. the appeal against the District Council's refusal of the Application by way of a decision notice dated 7 April 2022 as made by the Owner and allocated appeal reference number [⚫].
 |
| Application | 1. the application for outline planning permission for the Development which was submitted to the District Council on behalf of the Owner and which was validated by the District Council on 20 September 2021 under reference number 21/01600/OUT.
 |
| Commencement of Development | 1. the date upon which the Development is begun by the carrying out on the Site pursuant to the Planning Permission of a material operation as specified in section 56(4) of the 1990 Act **SAVE THAT** for the purposes of this Deed the term "material operation" shall not include any operations undertaken in connection with or associated with demolition, site clearance, archaeological investigations, investigations for the purpose of assessing ground conditions, remediation works, environmental investigation, site and soil surveys, diversion and laying of services, erection of a contractor's work compound, erection of a site office, erection of fencing to the site boundary and/or the temporary display of site notices or advertisements and **Commence Development** shall be construed accordingly.
 |
| Contributions | 1. the Footpath Contribution and the Public Transport Contribution.
 |
| Decision Letter | 1. means the decision letter issued by the Secretary of State confirming whether or not the Appeal is allowed.
 |
| Development | 1. the construction of a new Category B prison of up to 82,555sqm within a secure perimeter fence, together with access, parking, landscaping and associated engineering works.
 |
| Expert | 1. a person of at least 10 years post qualification continual and continuing experience in the subject matter of the dispute.
 |
| Footpath Contribution | 1. the sum of £102,898.00 (One Hundred and Two Thousand, Eight Hundred and Ninety Eight pounds) to be paid to the County Council for improvement works to footpath A22 between Gallow Field Road and Swingbridge Street, Foxton in accordance with Schedule 3.
 |
| Occupation | 1. occupation for the purposes permitted by the Planning Permission but not including occupation for the purposes of fit out, decoration, marketing, display or security operations and the term **Occupy** and **Occupied** shall be construed accordingly.
 |
| Plan 1 | 1. drawing reference 661277-00-PEV-GTX0011-ZZ-DR-A-9000 Rev PO4 attached hereto at Schedule 1.
 |
| Planning Obligations | 1. the obligations, conditions and stipulations set out in Schedules 2, 3, 4, 5, 6, and 7 of this Deed and the term **Planning Obligation** shall be construed accordingly.
 |
| Planning Permission | 1. a planning permission permitting the Development granted by the Secretary of State pursuant to the Appeal.
 |
| Public Transport Contribution | 1. the sum of £500,000.00 (Five Hundred Thousand pounds) to be paid to the County Council for [the provision of additional public transport within the County Council's administrative area] in accordance with Schedule 3.
 |
| Secretary of State | 1. means the Secretary of State for the Ministry of Levelling Up Housing and Communities from time to time charged with determining the Appeal or (as applicable) any inspector appointed by the Secretary of State in accordance with Schedule 6 of the 1990 Act to determine the Appeal.
 |
| Site | 1. all that Site shown edged red on Plan 1.
 |
| Statutory Undertaker | 1. any company corporation board or authority at the date of this Deed authorised by statute to carry on an undertaking for the supply of telephone or television communications, electricity, gas, water, or drainage and any authorised successor to any such undertaking.
 |
| Working Day | 1. any day from Monday to Friday inclusive which is not Christmas Day, Boxing Day, Good Friday, Easter Monday or a Statutory Bank Holiday.
 |

* 1. Reference in this Deed to any enactment shall be construed as a reference to that enactment as amended extended or re-enacted or repealed by or under any other enactment and shall include all instruments orders and regulations for the time being made, issued or given under that enactment.
	2. Words importing one gender shall be construed as importing any gender and words importing the singular shall be construed as importing the plural and vice versa.
	3. Any words denoting natural persons shall include legal persons and vice versa.
	4. References to clauses paragraphs and schedules are references to clauses paragraphs and schedules to this Deed.
	5. The expression **Owner** shall include their successors in title and assigns.
	6. The expression **District** **Council** and/or **County Council** shall include any successor authority to its statutory functions under the 1990 Act.
	7. Where a party includes more than one person any obligations of that party shall be joint and several.
	8. Clause headings shall not affect the construction of this Deed.
	9. Any phrase introduced by the terms ‘including’ ‘include’ ‘in particular’ or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
1. statutory basis
	1. This Deed secures planning obligations made pursuant to section 106 of the 1990 Act and is enforceable pursuant to section 106(3) of the 1990 Act against the Owner and any person claiming or deriving title to the Site (or any part or parts thereof) through or under the Owner as if that person had been an original covenanting party to this Deed.
	2. This Deed is enforceable by the District Council as local planning authority for the purposes of the 1990 Act.
	3. To the extent that the covenants, restrictions and requirements in this Agreement are not made under section 106 of the 1990 Act they are made under section 1 of the Localism Act 2011, section 111 of the Local Government Act 1972 and all other powers so enabling.
2. CONDITIONS PRECEDENT
	1. This Deed is conditional upon and does not become effective unless and until the Planning Permission is granted.
	2. Clause 4 of this Deed is further conditional upon and does not become effective unless and until the Commencement of Development.
	3. In the event that the Secretary of State grants the Planning Permission pursuant to the Appeal but expressly states in his Decision Letter that any Planning Obligation (or part thereof) contained in this Deed:
		1. Is not a material planning consideration; or
		2. Otherwise fails to comply with Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended)

then such Planning Obligation (or part thereof) will be deemed to be null and void and to be severed from the remainder of this Deed which shall remain in full force and effect.

1. COVENANTS & declarations
	1. The Owner covenants with the District Council to comply with Schedules 2, 6, and 7 of this Deed.
	2. The Owner covenants with the County Council to comply with Schedules 3, 4, and 5 of this Deed.
	3. The County Council covenants with the Owner to comply with the obligations in Schedule 8 of this Deed.
2. exclusions AND release
	1. No party shall be bound by the terms of this Deed or be liable for the breach of any Planning Obligation:
		1. after it has parted with its interest in the Site or the part in respect of which such breach occurs (but without prejudice to liability for any subsisting breach prior to parting with such interest); or
		2. if it is a Statutory Undertaker which has an interest in any part of the Site for the purposes of its undertaking.
	2. If the Planning Permission:
		1. expires before the Commencement of Development; or
		2. is at any time revoked or modified (without the consent of the Owner) pursuant to Part IV of the 1990 Act

this Deed shall determine and cease to have effect.

* 1. No obligation in this Deed shall be binding on or enforceable against any chargee or mortgagee from time to time who shall have the benefit of a charge or mortgage of or over any part of the Site (or any receiver appointed by such chargee or mortgagee) unless and until such chargee, mortgagee or receiver (or any person appointed by them) has taken or entered into possession of the Site or part thereof in which case it shall also be bound by the covenants, restrictions and obligations in this Deed as if it were a person deriving title from an original covenanting party.
1. registration
	1. This Deed is a local land charge and shall be registered as such by the District Council.
	2. Following either:
		1. the performance and satisfaction of all the Planning Obligations contained in this Deed; or
		2. the determination of this Deed in accordance with Clause 5.2;

the District Council shall upon the written request of the Owner as soon as reasonably practicable effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.

1. non-fetter and waiver
	1. Nothing in this Deed restricts or is intended to restrict the proper exercise at any time by the District Council and/or the County Council of any of its statutory powers, functions or discretions.
	2. No waiver (whether expressed or implied) by the District Council and/or the County Council 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 District Council and/or the County Council (as applicable) from enforcing any of the relevant terms or conditions or from acting upon any subsequent breach or default.
	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 before or after the date of this Deed.
2. section 73 of the 1990 act
3. If an application is made under section 73 of the 1990 Act in respect of the Planning Permission to carry out the Development without complying with a condition or conditions to which the Planning Permission is subject (a **S73 Application**) then in the event that the District Council is minded to approve such S73 Application:
4. if the District Council considers that the planning obligations contained in this Deed are both sufficient and necessary to make the development proposed by such S73 Application acceptable in planning terms then references to **Planning Permission** in this Deed shall be deemed to also be references to that new planning permission and the Parties agree that this Deed shall apply to and remain in full force in respect of both that new planning permission and the Planning Permission without the need for a further deed to be made pursuant to section 106 of the 1990 Act; or
5. if the District Council considers that additional or modified planning obligations are necessary to make the development proposed by such S73 Application acceptable in planning terms then for the avoidance of doubt nothing in this Clause 8 shall fetter the District Council's ability in the exercise of its proper planning judgment to require the completion of such further deed made pursuant to section 106 of the 1990 Act as it considers necessary and in such case Clause 8(a) shall be disregarded.
6. vat
7. All payments given in accordance with this Deed shall be exclusive of any value added tax properly payable.
8. severance
9. If any provision in this Deed shall in whole or in part be held to be invalid, illegal or unenforceable under any enactment or rule of law such provisions shall to the extent required be severed from this Deed and shall not affect the validity or enforceability of the remaining provisions of this Deed.
10. change of ownership
11. The Owner agrees with the District Council to give the District Council written notice within 10 Working Days of any change in proprietorship of any of its interests in the Site occurring before all the obligations under this Deed have been discharged such notice 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 purchased by reference to a plan.
12. notification
	1. Any notice, request, demand or other written communication to be given or served under this Deed must be in writing and must be:
		1. delivered by hand; or
		2. sent by pre-paid first class post or other next working day delivery service.
	2. Any notice, request, demand or other written communication to be given or served under this Deed must be sent to the relevant party as follows:
		1. to the District Council at Harborough District Council, The Symington Building, Adam and Eve Street, Market Harborough, LE16 7AG marked for the attention of Adrian Eastwood;
		2. to the County Council at Leicestershire County Council, County Hall, Glenfield, Leicester LE3 8RA marked for the attention of Patrick Taaffe;
		3. to the Owner at FAO: Suky Atwal care of MOJ Property Directorate, 10.41, 102 Petty France, London, SW1H 9AJ

at or as otherwise specified by the relevant party by notice in writing to each other party whether or not in accordance with Clause 12.

* 1. Any notice, request, demand or other written communication given or served in accordance with Clause 12.1 or Clause 12.2 shall be deemed to have been received:
		1. if delivered by hand, on signature of a delivery receipt provided that if delivery occurs after 5.00 pm on a Working Day, or on a day which is not a Working Day, the notice shall be deemed to have been received at 9.00 am on the next Working Day; or
		2. if sent by pre-paid first class post or other next working day delivery service, on the Working Day after posting.
	2. A notice, request, demand or other written communication given under this deed shall not be validly given if sent by e-mail.
	3. This Clause 12 does not apply to the service of any proceedings or other documents in any legal action.
1. dispute resolution
	1. Where the agreement, approval, consent or expression of satisfaction is required by any party under the terms of this Deed such agreement, approval, consent or expression of satisfaction shall not be unreasonably withheld or delayed.
	2. Any dispute or disagreement arising under this Deed which has been identified by notice in writing by one party to the other(s) and which has not been resolved within 20 Working Days (or such lesser period as may be agreed) of the date of receipt by the other party(s) of such written notice may be referred at the instance of any party for determination by an Expert whose decision (except in cases of manifest error or fraud) shall be final and binding on the parties.
	3. The following provisions and terms of appointment shall apply to such disputes or disagreements:-
		1. the Expert shall be agreed between the parties or, in default of agreement within 10 Working Days of receipt of the notice in Clause 13.2 above, shall be appointed or identified by the following persons:
			1. in the case of disputes relating to land or valuation matters the President of the Royal Institution of Chartered Surveyors;
			2. in the case of disputes relating to planning or design matters the President of the Royal Town Planning Institute; or
			3. in the case of any other dispute the President of the Bar Council.
		2. the Expert shall act as an expert and not as an arbitrator
		3. the Expert shall be required to give notice of their appointment to each of the parties (**Expert's Notice**) and thereafter:
			1. the persons calling for the determination shall make written submissions to the Expert and the other parties within 20 Working Days of receipt of the Expert’s Notice;
			2. the other parties shall have 20 Working Days from the receipt of such written submission (or such extended period as the Expert shall allow) to respond;
			3. the Expert shall disregard any representations made out of this time;
			4. the Expert may request further information or documentation and the parties shall comply with any requests by the Expert for further information or documentation within a reasonable time; and
			5. to the extent not provided for by this clause the Expert may in their reasonable discretion determine such other procedures to assist with the conduct of the determination as they consider just or appropriate including (to the extent considered necessary) instructing professional advisers to assist them in reaching their determination.
		4. the Expert shall make his decision within 20 Working Days of the close of the period for submissions of written representations;
		5. the Expert’s decision shall be in writing and shall give reasons for the decision; and
		6. each party shall bear its own costs and the Expert's costs will be payable in the determination of the Expert.
	4. If the Expert dies or becomes unwilling or incapable of acting, or does not deliver the decision within the time required by this clause then:
		1. either party may apply to the relevant body as per Clause 13.3.1 to discharge the Expert and appoint a replacement Expert with the required expertise; and
		2. Clause 13.3 shall apply to the new Expert as if they were the first Expert appointed.
2. THIRD PARTy rights
3. No person who is not a party to this Deed may enforce any terms hereof pursuant to the Contracts (Rights of Third Parties) Act 1999 **PROVIDED THAT** this clause shall not affect any right of action of any person to whom this Deed has been lawfully assigned or becomes vested in law including successors in title to the Site.
4. Jurisdiction
5. This Deed is governed by and interpreted in accordance with the law of England and Wales and the parties submit to the exclusive jurisdiction of the courts of England and Wales.

**This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.**

1.

Plan 1

1.

Social Value Obligations

|  |  |
| --- | --- |
| Social Value Plan | 1. the social value plan to be prepared on behalf of the Owner and as may be amended with the District Council's consent.
 |
| Social Value Manager | 1. a social value manager to carry out the duties described in the Social Value Plan to be appointed by the Owner and approved in writing by the District Council.
 |

social value plan

1.1. The Owner covenants with the District Council that it shall, not less than three months from Commencement of the Development, submit the Social Value Plan for approval by the District Council.

1.2 The Owner covenants that, following approval of the Social Value Plan, it will be implemented 3 months prior to the first Occupation of the Development and shall thereafter keep implemented the approved Social Value Plan for a period of 30 years from the date of first approval.

* 1. 1.3. The Owner covenants with the District Council that it will implement and comply with the Social Value Plan in accordance with the timescales and time periods contained therein and (without prejudice to any other requirements of the Social Value Plan) shall:
1. appoint a nominated Social Value Manager and notify the details of the Social Value Manager to the District Council;
2. use reasonable endeavours to procure that the Social Value Manager complies with its obligations and duties set out in the Social Value Plan for the duration of its appointment; and
3. Include arrangements within the Social Value Plan setting out how the Owner and its contractors will work directly with local employment/training agencies to provide employment and training opportunities for people within the locality of the Site including measures to be implemented to secure employment opportunities for local people during both the Construction and Operational phases of the development.
4.

Contributions

* + 1. The Owner covenants with the County Council that it shall:
			1. Prior to Commencement of Development pay to the County Council the Footpath Contribution.
				1. Not Commence the Development until it has paid to the County Council the Footpath Contribution.
			2. Prior to [Commencement of Development] pay to the County Council the Public Transport Contribution.
				1. Not [Commence the Development] until it has paid to the County Council the Public Transport Contribution.
1.

 Travel Plan

|  |  |
| --- | --- |
| Travel Plan | 1. the travel plan prepared on behalf of the Owner to be secured by way of planning condition of the Planning Permission and as may be amended from time to time with the County Council's prior written approval.
 |
| Travel Plan Co-ordinator | 1. a travel plan co-ordinator to carry out the duties described in the Travel Plan to be appointed by the Owner and approved in writing by the County Council.
 |
| Travel Plan Monitoring Contribution | 1. the sum of £6,000.00 (Six Thousand pounds) to be paid by the Owner to the County Council for the purposes of monitoring the implementation of and compliance with the Travel Plan.
 |

TRAVEL PLAN

* 1. 1.1. The Owner covenants with the County Council that it shall implement and comply with the Travel Plan in accordance with the timescales and time periods contained therein and (without prejudice to any other requirements of the Travel Plan) shall:
1. appoint a nominated Travel Plan Co-ordinator and notify the details of the Travel Plan Co-ordinator to the County Council;
2. use reasonable endeavours to procure that the Travel Plan Co-ordinator complies with its obligations and duties set out in the Travel Plan for the duration of its appointment;
3. procure that the Travel Plan Co-ordinator remains appointed from Commencement of Development until 5 years after first Occupation and that it complies with its obligations and duties set out in the Travel Plan for this period;
4. to review the Travel Plan annually in accordance with the provisions of the approved Travel Plan for the duration set out therein and submit the results of each review to the County Council;
5. have regard to any reasonable recommendations made by the County Council from each annual review and incorporate and implement such recommendations; and
6. prior to Commencement of Development pay the Travel Plan Monitoring Contribution to the County Council.
7.

Construction Traffic Management

|  |  |
| --- | --- |
| Construction Traffic Management Plan | A plan to regulate the routes and times to be observed by construction vehicles visiting the Site for the purposes of carrying out the Development with the objective of ensuring that constructionvehicle movements avoid peak traffic periods and do not1. adversely affect pedestrian routes within or close to the Site.
 |

construction traffic management

* 1. 1.1. The Owner covenants with the County Council that it will not Commence Development until the Construction Traffic Management Plan has been submitted to and approved by the County Council (such approval not to be unreasonably withheld or delayed).
	2. 1.2. During the construction of the Development the Owner covenants with the County Council to direct and ensure that all contractors’ delivery vehicles and construction traffic going to and from the Site comply with the terms of the approved Construction Traffic Management Plan and shall use the agreed access route as provided for in the Construction Traffic Management Plan.

1.

Community Engagement Scheme

|  |  |
| --- | --- |
| Community Engagement Scheme | 1. a scheme detailing initiatives to promote engagement with the local community in the use of the Development.
 |

community engagement scheme

* 1. 1.1. The Owner covenants with the District Council that not less than three months prior to Commencement of the Development it will submit the Community Engagement Scheme for approval by the District Council (such approval not to be unreasonably withheld or delayed) and:
	2. (a) that it shall implement and comply with the Community Engagement Scheme from the date it is approved and shall thereafter keep implemented the approved Community Engagement Scheme for a period of 30 years from the date of first approval ;
	3. (b) the Community Engagement Scheme will be reviewed and resubmitted every 5 years from first approval by the District Council for a period of 30 years; and
	4. (c) should the security category of the Development be proposed to change, the Owner covenants to, where practicable, revisit the Community Engagement Scheme and resubmit it to the District Council for approval no later than 6 months prior to the potential change in security category.
1.

Biodiversity Enhancement Plan

|  |  |
| --- | --- |
| Biodiversity Enhancement Plan | 1. the 30 year biodiversity enhancement plan to be submitted by the Owner to the District Council for approval.
 |
| Habitat Units | the habitat units detailed within the Biodiversity Enhancement Plan. |
| Hedgerow Units | the hedgerow units detailed within the Biodiversity Enhancement Plan. |

biodiversity enhancement plan

1.1. The Owner covenants with the District Council that it shall submit prior to Commencement of Development a Biodiversity Enhancement Plan in writing for the District Council's approval (such approval not to be unreasonably withheld or delayed).

1.2. The Owner shall commence the implementation of the approved Biodiversity Enhancement Plan no later than 12 months from Commencement of the Development and shall thereafter keep implemented the approved Biodiversity Enhancement Plan for a period of 30 years.

1.3. The Biodiversity Enhancement Plan will include, but not necessarily be limited to, the following:

(a) details for the provision of biodiversity net gain for the development of at least 22.32 Habitat Units and 2.65 Hedgerow Units.

1.

County Council's Covenants

* + 1. The County Council shall issue separate receipts on request for any sum paid to it under this Deed.
		2. The County Council shall place the Contributions and any other sums paid to it pursuant to this Deed in an interest bearing account or in separate accounts as the County Council shall at its discretion decide.
		3. The County Council shall not apply the Contributions or any other sums paid to it pursuant to this Deed for any purpose other than for the purposes set out within this Deed.
		4. In the event that any Contribution or other sum paid to it pursuant to this Deed (or any part or parts thereof) are not expended within 5 (five) years of the date of payment then the sum or sums not expended plus interest accrued shall be repaid to the party that paid it or their nominee.

**This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.**

|  |  |
| --- | --- |
| Executed as a deed by affixing the common seal of **Harborough District Council** in the presence of a duly authorised signatory: Signature Print Name | *Insert Common Seal of Company* |

|  |  |
| --- | --- |
|  |  |
| Executed as a Deed by **The Secretary of State for Justice.** The Corporate Seal of the **Secretary of State for Justice** hereunto affixed is authenticated by:  Authorised Signatory |  |

|  |  |
| --- | --- |
| Executed as a deed by affixing the common seal of **Leicestershire County Council** in the presence of a duly authorised signatory: Signature Print Name | *Insert Common Seal of Company* |