

**APPLICATION BY SUFFOLK COUNTY COUNCIL FOR AN ORDER GRANTING
DEVELOPMENT CONSENT FOR THE LAKE LOTHING THIRD CROSSING**



PFK LING LIMITED

**WRITTEN REPRESENTATION ON
THE SECOND DRAFT OF THE DRAFT DEVELOPMENT CONSENT ORDER
FOR ISSUE SPECIFIC HEARING 1:
matters relating to the Second draft Development Consent Order (2dDCO).**

PINS REFERENCE: TR010023



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PFK Ling Limited (CG/322701.0002)

INTRODUCTION

1. This is the Written Representation of PFK Ling Limited (“Lings”) on the second draft of the draft development consent order in relation to the application for a development consent order by Suffolk County Council (“SCC”) under the Planning Act 2008 (“PA 2008”).

THE SECOND DRAFT OF THE DEVELOPMENT CONSENT ORDER

2. The Second Draft of the Development Consent Order (“2dDCO”) continues to include in Part 3 proposed powers of compulsory purchase of the “Order land” including parts of the land owned by Lings notwithstanding the shortfall or gap in funding of land acquisition and absence of justification for the areas envisaged to be taken.
3. The areas of Order land are identified by descriptions in the book of reference.

AGENDA ITEM 5

POTENTIAL DUST NUISANCE ARISING FROM CONSTRUCTION AND MAINTENANCE

4. The situation of Lings adjacent to the proposed Southern Approach to the proposed bridge will result in dust engendered by construction works falling upon the vehicles kept on Lings’ land for sale.
5. Page 35 of TR010023-000819 properly recognises the particular potential for such a nuisance in relation to Lings’ land due to vehicles required to be maintained in shiny condition being recurrently affected by dust accumulating from envisaged adjacent works relating to the authorised development:

... the Applicant is mindful of the sensitivity of the landowner’s business to such disturbance and additional costs and, as such, the Applicant has sought to provide reassurances to the landowner and their representatives in respect of the compensation code providing the landowner with protection and recourse to claim compensation for all reasonable heads of claim in respect of business disturbance, including the costs of additional car washing to deal with dust caused by construction works.

6. Article 54(1) currently proposes a defence to noise nuisance. The Environmental Protection Act 1990, section 79(1)(d), creates a statutory nuisance in relation to “any dust” arising on business premises and (e) any accumulation or deposit which is prejudicial to health or a nuisance.
7. Further, Requirement 4 in Part 1 of Schedule 2 makes no express provision to provide for a scheme of dust suppression nor for a scheme of recording vehicles kept on Lings’

land required to be cleaned of dust from the construction of the authorised development nor financing of the same.

8. It can be a defence to nuisance that a party relies on statutory authority. Section 158 of the PA 2008 appears to broaden the opportunity for the statutory immunity defence to be used:

158. Nuisance: statutory authority

- 1) *This subsection confers statutory authority for—*
 - a) *carrying out development for which consent is granted by an order granting development consent;*
 - b) *doing anything else authorised by an order granting development consent.*
 - 2) *Statutory authority under subsection (1) is conferred only for the purpose of providing a defence in civil or criminal proceedings for nuisance...*
9. It is not appropriate to merely rely on a potential compensation claim for disturbance where such a statutory defence may defeat such a claim.
 10. Therefore, Lings requests that:
 - a) Article 3(1) be amended so as to include a new “(f)” that reads:

“section 158 of the 2008 Act shall not apply in relation to HM Title SK 245 554”;
 - b) Schedule 2, Part 1, Requirement 4, Code of Construction Practice, include an express requirement to include a “dust management scheme” relating to Lings’ land and that includes provision for ensuring dust suppression during demolition and construction works relating to the authorised development and a system for recurring identification of dust affected vehicles and their cleaning, together with financing of the same. Such a scheme would enable the potential defence of “best practicable means” to be tested in the event of proceedings for dust nuisance affecting vehicles for sale on HM Title SK 245 554 during construction.
 11. These amendments are necessary and would ensure that the sensitivity of Lings’ situation to dust is preserved so far as may be practicable during construction works and, subsequently, during any maintenance of the authorised development.

AGENDA ITEM 4

12. By proposed Article 22(1), a power would arise to acquire compulsorily land. By Article 22(2), Article 22 is proposed to be subject to Article 25.
13. However, important new provisions in Article 25(2)-(3) and (5) propose to entitle as yet unidentified third parties (“a statutory undertaker”), of as yet unidentified means (if any), to acquire land. The scope, nature and financial status, of those third parties remains unknown. It is also not known at this time whether such third party or parties can provide for compensation required to be paid pursuant to the exercise of those powers or on what terms this will be done. Consequently, these new provisions should be deleted. See paragraph 16-17 of “Planning Act 2008, Guidance related to procedures for the compulsory acquisition of land” and which state:

17. Any application for a consent order authorising compulsory acquisition must be accompanied by a statement explaining how it will be funded. This statement should provide as much information as possible about the resource implications of both acquiring the land and implementing the project for which the land is required.

14. No statement has been provided showing how the unidentified third party will fund its proposed potential exercise of the envisaged compulsory purchase powers. In such a situation paragraph 16 provides:

16. There may be circumstances where the Secretary of State could reasonably justify granting development consent for a project, but decide against including in an order the provisions authorising the compulsory acquisition of the land.

15. The same guidance applies also to the funding situation envisaged by the Applicant. By the recent evidence in Appendix E of its document reference TR010023-000819, the Applicant has evidenced that it cannot show that it will fund the compulsory acquisition of the Lings land (and other Order land), has no authorisation to exceed the Scheme Cost identified in Table 4-2 of the Business Case for land acquisition, and, at best, has a preference to seek third party funding to potential cover an accepted (and evidenced) current shortfall or gap in authorised land acquisition costs.
16. Paragraph 16 of the guidance makes clear that the ExA can recommend, and the Secretary of State can confirm the proposed DCO without powers of acquisition at this time. It is clear from paragraph 16 that that is not an unorthodox situation and that that can occur where, as here, the Applicant is not in a position to show how land acquisition will be funded (as opposed to aspired to be funded). Lings requests that the ExA recommend severance of Part 3 2dDCO acquisition powers.

17. Were the dDCO to be confirmed without powers of acquisition, it would remain open to the Applicant (or a third party undertaker) to secure funding in due course and to apply at that time for acquisition powers under appropriate provisions or in partnership with a relevant authority having such powers and potentially based on the justification of the DCO (if confirmed). Since the DCO is subject to a time limit, such an approach would ensure prompt attention to funding certainty if the proposal were to be progressed.
18. Further, by Article 25(4):

In the case of the Order land specified in columns (1) and (2) of Part 2 of Schedule 6 (land in which only new rights etc., may be acquired) , the undertaker's powers of compulsory acquisition under paragraph (1) are limited to the acquisition of such wayleaves, easements, new rights in the land or the imposition of such restrictive covenants as the undertaker may require for or in connection with the authorised development for the purposes specified in the corresponding entry column (3) of Part 1 or Part 2 of Schedule 6 in relation to that land.

19. Schedule 6, Part 1, Column (2) includes Plot 3-32. That Plot comprises an area of freehold land immediately north within Lings' land HM Title SK 245 554 and that is laid out as a roadway. The Application development proposes a raised embanked bridge approach to the western end of the roadway. Column (3) of Part 1 confirms that only new rights remain required to be imposed on Plot 3-32. That is, Plot 3-32 is not itself proposed to be *acquired*. Since the scope of Article 22(1) is subject to Article 25(4), the scope of the acquisition power remains limited to the imposition of new rights.
20. The roadway land is subject to a right of way under Clause 13.4(i) in favour of the Nexen land to the north of the Ling's land. See **Appendices A & B** hereto. Consequently, the proposed power of acquisition cannot extend to extinguish the subsisting right of way over Plot 3-32. Therefore, the area of Plot 3-32 would remain unavailable for use by Lings for stationing of any vehicles because that would obstruct the right of way.
21. This situation also means that the roadway land cannot be made available in due course.
22. The Applicant continues to propose changes to its draft DCO terms. However, this have not to date included the potential for extinguishment of all existing rights over the roadway land so that it does not remain in due course sterilised from practical use notwithstanding the proposed creation of an embanked western end. Lings invites the Applicant to further consider the scope of the acquisition rights that it seeks and their purpose in relation to Plot 3-32 and reserves its right to add to or respond in due course also in relation to such.

23. The Applicant must have a clear idea of how the land will be used and this is the test upon which each site must be assessed.
24. In relation to Plot 3-32, the use of the land is not clear and no evidence is provided as to why the land is required or the extent of the acquisition. On this basis Plot 3-32 should be deleted from the Book of Reference for the reasons given by Mr Dewey in paragraphs 6.16-6.19 of his evidence.
25. The same submissions apply to Plot 5-10 which should also be deleted from the Book of Reference for the reasons given by Mr Dewey in paragraphs 6.20-6.21 of his evidence.
26. The same submissions apply to Plot 5-14 which should also be deleted from the Book of Reference for the reasons given by Mr Dewey in paragraph 6.22 of his evidence, being that the acquisition is excessive.
27. The same submissions apply to Plot 5-31 which should be amended in the Book of Reference for the reasons given by Mr Dewey in paragraph 6.23 of his evidence.
28. The same submissions apply to Plot 3-57 which should also be deleted from the Book of Reference for the reasons given by Mr Dewey in paragraphs 6.24-6.28 of his evidence.
29. The same submissions apply to Plot 5-28 which should also be deleted from the Book of Reference for the reasons given by Mr Dewey in paragraphs 6.29-6.30 of his evidence.

APPENDIX A

These are the notes referred to on the following official copy

Title Number SK245554

The electronic official copy of the document follows this message.

This copy may not be the same size as the original.

Please note that this is the only official copy we will issue. We will not issue a paper official copy.

Transfer of part
of registered title(s)

HM Land Registry

TP1

(if you need more room than is provided for in a panel, use continuation sheet CS and staple to this form)

1. Stamp Duty



Place "X" in the box that applies and complete the box in the appropriate certificate.

☐ It is certified that this instrument falls within category ☐ in the Schedule to the Stamp Duty (Exempt Instruments) Regulations 1987

☐ It is certified that the transaction effected does not form part of a larger transaction or of a series of transactions in respect of which the amount or value or the aggregate amount or value of the consideration exceeds the sum of

£

2. Title number(s) out of which the Property is transferred (leave blank if not yet registered)

SK 140578

3. Other title number(s) against which matters contained in this transfer are to be registered (if any)

4. Property transferred (Insert address, including postcode, or other description of the property transferred. Any physical exclusions, eg mines and minerals, should be defined. Any attached plan must be signed by the transferor and by or on behalf of the transferee.)



The Property is defined: (place "X" in the box that applies and complete the statement)

☒ on the attached plan and shown (state reference eg "edged red") edged red

☐ on the Transferor's filed plan and shown (state reference eg "edged and numbered 1 in blue")

5. Date

18th September 2003

6. Transferor (give full names and Company's Registered Number if any)

East of England Development Agency

7. Transferee for entry on the register (Give full names and Company's Registered Number if any: for Scottish Co Reg Nos, use an SC prefix. For foreign companies give territory in which incorporated.)

PFK Ling Limited (company registration number 00710435)

Unless otherwise arranged with Land Registry headquarters, a certified copy of the transferee's constitution (in English or Welsh) will be required if it is a body corporate but is not a company registered in England and Wales or Scotland under the Companies Acts.



SK245554



SEQ231



P. QUALITY

cksw758dcjho

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8. Transferee's intended address(es) for service in the UK (including postcode) for entry on the register

Redenhall Road, Harleston, Norfolk IP20 9ER

9. The Transferor transfers the Property to the Transferee

10. Consideration (Place "X" in the box that applies. State clearly the currency unit if other than sterling. If none of the boxes applies, insert an appropriate memorandum in the additional provisions panel.)

☒ The Transferor has received from the Transferee for the Property the sum of (in words and figures)
Three hundred and twenty thousand pounds (£320,000) plus Value Added Tax in the sum of Fifty six thousand pounds (£56,000)

☐ (insert other receipt as appropriate)

☐ The transfer is not for money or anything which has a monetary value

11. The Transferor transfers with (place "X" in the box which applies and add any modifications)

☒ full title guarantee ☐ limited title guarantee

As varied by clause 4.10 of an Agreement dated 8 September 2003 made between the Transferor (1) and the Transferee (2)

12. Declaration of trust Where there is more than one transferee, place "X" in the appropriate box.

☐ The Transferees are to hold the Property on trust for themselves as joint tenants

☐ The Transferees are to hold the Property on trust for themselves as tenants in common in equal shares

☐ The Transferees are to hold the Property (complete as necessary)

13 Additional Provisions

1. Use this panel for:

- definitions of terms not defined above
- rights granted or reserved
- restrictive covenants
- other covenants
- agreements and declarations
- other agreed provisions
- required or permitted statements, certificates or applications

2. The prescribed subheadings may be added to, amended, repositioned or omitted.

13.1 Definitions and interpretation

(a) In this section:

“Conduits” means ducts shafts cisterns tanks radiators pipes wires cables sewers drains soakaways watercourses gutters gullies conduits laser optic fibres electronic data or impulse communication transmission or reception systems and other conducting media or ancillary equipment (excluding those which belong to the public utility companies or the local authority) for the passage or transmission of soil gas electricity water air light or electronic information;

“Deed of Covenant” means a deed of covenant given or to be given by a successor-in-title of the Transferee in favour of the Transferor (for the benefit of the Transferor and the Transferor’s successors-in-title) the owners from time to time of the Retained Land and each and every part of the Retained Land to perform the positive covenants (mutatis mutandis) set out in the sections of these Additional Provisions headed “Personal covenants by the Transferee” and “Added development value”;

“the Estate” means the Transferor’s Riverside Business Park at Riverside Road Lowestoft Suffolk (including any variation thereto within the Perpetuity Period) and each and every part thereof;

“Incumbrances” means the rights covenants and stipulations mentioned in entries numbers 1, 5, 6, 8, 9 and 10 on the charges register of the registered title;

“Perpetuity Period” means the period of eighty years beginning on the date of this transfer;

“Plan” means the plan attached to this transfer;

“Property” means the property transferred by this transfer;

“Retained Land” means the freehold property more particularly delineated and shown edged green on the Plan;

“Rights Granted” means the rights set out in the section of these Additional Provisions headed “Rights Granted”;

“Rights Reserved” means the rights set out in the section of these Additional Provisions headed “Rights Reserved”;

“Road” means Riverside Road

“Road E1” means the access road more particularly delineated and shown coloured brown on the Plan;

“Value Added Tax” includes any tax charged in addition to or in substitution for it.

- (b) References in this Additional Provisions section of this transfer to "Transferor" include any assigns of or successors to the Transferor (or any of the parties comprising the Transferor) other than the Buyer and references to "Transferee" include the Transferee's successors-in-title to the Property or any part of it.
- (c) In this Additional Provisions section of this transfer where the expression "Transferee" refers to more than one person or company:
 - (i) any covenant given by the Transferee is given jointly and severally by all persons or companies comprising the Transferee;
 - (ii) the liability of the Transferee is the joint and several liability of all persons or companies comprising the Transferee.
- (d) Any covenant by the Transferee not to do something includes (so far as it is within the control of the Transferee) an obligation not to allow that thing to be done by another person.
- (e) Headings in this section are for ease of reference only and are not to be taken into account when construing this section.
- (f) Where the context admits the singular includes the plural and vice versa any gender includes all genders and references to persons include firms companies and corporations and vice versa.
- (g) Any rights granted or reserved by this section will vest (if at all) within the Perpetuity Period.

13.2 Incumbrances

The Property is transferred subject to the Incumbrances.

13.3 Rights Granted

The Transferor grants to the Transferee (in common with other persons also entitled) for the benefit of the Transferee (and those expressly or impliedly authorised by the Transferee) and for the benefit of the Property and each and every part of it:

- (a) the right at all times and for all purposes connected with the lawful use of the Property with or without vehicles to pass over and along the Road subject to:
 - (i) such reasonable regulations as the Transferor may make from time to time concerning the weight speed volume and direction of traffic using the Road;

- (ii) the Transferee and the Transferee's successors in title paying a fair proportion of the cost of maintaining repairing and (when necessary) renewing or replacing the Road until adoption;
- (b) the right to the free and uninterrupted running of soil gas electricity water and electronic information to and from the Property through the Conduits under Road E1 serving the Property subject to the Transferee and the Transferee's successors-in-title paying a fair proportion (according to user) of the cost of maintaining repairing and (when necessary) renewing or replacing those Conduits.

13.4 Rights Reserved

The Transferor excepts and reserves from the Property in fee simple to the Transferor (and those expressly or impliedly authorised by the Transferor) for the benefit of the Retained Land and each and every part of the Retained Land:

- (a) the right to the free and uninterrupted running of soil gas electricity water and electronic information to and from the Retained Land through the Conduits on the Property serving or capable of serving the Retained Land (whether now on the Property or constructed within the Perpetuity Period);
- (b) the right to erect or alter or add to or use any building now on the Retained Land or erected within the Perpetuity Period in such manner as the Transferor shall see fit even if the access of light and air (or either of them) to the Property is affected;
- (c) the right for any existing eaves gutters rainwater pipes and other structures to continue to overhang the Property and for any existing footings and ancillary structures to remain under the Property;
- (d) the right to enter the Property:
 - (i) to connect to any Conduits now or within the Perpetuity Period on the Property and capable of serving the Retained Land or the Estate;
 - (ii) to lay within the Perpetuity Period new Conduits capable of serving the Retained Land or the Estate;

- (iii) to maintain repair and (if necessary) renew and replace any Conduits on the Property serving the Retained Land or the Estate;
- (iv) to maintain repair and (if necessary) renew and replace any existing eaves gutters rainwater pipes and other structures overhanging the Property and any existing footings and ancillary structures under the Property and any such eaves gutters rainwater pipes other structures footings and ancillary structures erected or constructed within the Perpetuity Period;
- (v) to maintain repair and (if necessary) renew and replace any building or structure now or constructed within the Perpetuity Period on the Retained Land or the Estate not otherwise reasonably accessible

the person exercising the right making good any damage caused to the Property occasioned by the exercise of the right;

- (e) the right of support and shelter for buildings now or constructed within the Perpetuity Period on the Retained Land or the Estate enjoyed or capable of enjoyment from the buildings on the Property or the surface of the Property;
- (f) the rights of light and air to the Retained Land from and over the Property as enjoyed at the date of this transfer;
- (g) the right to oversail the airspace of the Property with cranes situated on the Retained Land subject to the person exercising this right indemnifying the Transferee and the Transferee's successors-in-title against death or injury to persons and damage to property which may result from that oversailing;
- (h) all quasi-easements and other rights in the nature of easements now used or enjoyed over the Property which would be implied by statute or by reason of severance and take effect as easements in favour of a purchaser of the Retained Land had the Retained Land been sold to that purchaser and the Property been retained by the Transferor.
- (i) the right at all times and for all purposes with or without vehicles to pass and re-pass over and along Road E1 subject to the Transferor and the Transferor's successors in title paying 51.5% of the cost of maintaining repairing and (where necessary) renewing or replacing Road E1 until adoption.

13.5 Restrictive covenants

The Transferee covenants with the Transferor so as to benefit the Retained Land and/or the Estate or any part or parts of it and so as to bind the Property and each and every part of it:

- (a) not to use the Property or any part of it for any purpose other than sales and repairs of cars motorcycles and marine equipment and ancillary items or for any other use falling within Classes B1 or B8 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as originally enacted) subsequently approved in writing by the Transferor;
- (b) not to construct or alter materially any building or structure on the Property without first:
 - (i) submitting to the Transferor detailed plans and specifications giving all material details (including full design details) of the proposed construction or alteration; and
 - (ii) (at the Transferee's expense) obtaining the written approval of the Transferor to the proposed design construction or alteration (such approval not to be unreasonably withheld)

and then not to carry out the proposed construction or alteration other than in accordance with the approved plans specifications and design;

- (c) not to use the Property or any part of it for any noxious or offensive activity or for any purpose which is or might be a nuisance or annoyance to the Transferor or to the tenants and occupiers of the Estate or the owners and occupiers of any neighbouring or adjoining property;
- (d) not at any time to obstruct or impede in any way the surface water drainage from the Retained Land through the Property (whether through any existing drains under or across the Property or through any drains that are substituted for them within the Perpetuity Period);
- (e) not to permit any dangerous or offensive effluent to be discharged into any drains or sewers whose upkeep is the responsibility of the Transferor;
- (f) not to erect any external overhead services without the prior written consent of the Transferor;
- (g) not to erect any sign hoarding or advertisement on the Property without the prior written consent of the Transferor which shall not be unreasonably withheld in the case of notices showing only the name and business of the occupiers;
- (h) not to discharge quantities of water and soil into the drains and sewers of the Estate greater than those from time to time specified by the Transferor.

13.6 Personal covenants by the Transferee

The Transferee covenants with the Transferor:

- (a) to permit the Transferor and those expressly or impliedly authorised by the Transferor to exercise the Reserved Rights without hindrance or obstruction;
- (b) within one month after the date of this transfer to erect (to the satisfaction of the Transferor) and after that to maintain (to the satisfaction of the Transferor) a good quality 6 foot high chain link and concrete post fence or such alternative fencing as may be approved by the Transferor (such approval not to be unreasonably withheld or delayed) along the entire perimeter of the Property (which for the avoidance of doubt shall exclude Road E1) where the boundaries of the Property abut the Retained Land;
- (c) to pay on demand to the Transferor or the Transferor's successors in title (as appropriate) a sum equivalent to the fair proportion or the relevant percentage specified in this Transfer (as appropriate) of the cost of maintaining repairing and (where necessary) renewing or replacing the Road and/or Road E1 and any services which the Transferee and the Transferee's successors in title are entitled to use by virtue of the Rights Granted
- (d) to maintain any buildings and structures at any time on the Property in good and substantial repair and external decoration;
- (e) not to transfer the Property or any part of it without procuring that the Transferee delivers a Deed of Covenant to the person so entitled.

13.7 Agreements and declarations

The Transferor and the Transferee agree and declare that:

- (a) the Contracts (Rights of Third Parties) Act 1999 is excluded from applying to this transfer and nothing in this transfer confers or purports to confer on any third party any benefit or any right to enforce any term of this transfer;
- (b) the Transferee in respect of the Property enjoys no rights of light or air from the Retained Land and nothing in this transfer will hinder the right of the Transferor to develop the Retained Land in any manner the Transferor thinks fit;
- (c) the Transferee is not and the Transferee's successors-in-title are not and neither will become entitled to any easement or quasi-easement over any part of the Retained Land for the benefit of the Property other than the Rights Granted;
- (d) Section 62 of Law and Property Act 1925 and the rule in *Wheeldon v Burrows* shall not apply

- (e) the exercise by the Transferee of those of the Rights Granted over the Road and through the Conduits is conditional upon payment by the Transferee of the contributions referred to in clause 6.3 under the section of these Additional Provisions headed "Personal covenants by the Transferee".

13.8 Indemnity covenants

- (a) The Transferee covenants with the Transferor that the Transferee will at all times observe and perform those of the Incumbrances breach of which would expose the Transferor to liability and will indemnify the Transferor and the Transferor's undertaking against all costs claims liabilities and expenses arising from any breach or non-observance of any of those Incumbrances;

13.9 Application to register restriction

- (a) The Transferor and the Transferee apply to H M Chief Land Registrar to enter the following restriction against the title number to be allotted to the Property:

"Except under an order of the Registrar or the court no transfer of the property or any part of the property is to be registered unless there is produced to the Registrar a certificate signed by a solicitor that the provisions of a transfer (Additional Provisions, Personal covenants by the Transferee, clause 13.6(e)) dated [] made between East of England Development Agency (1) and P F K Ling Limited (2) have been complied with."

- (b) The Transferor agrees that consent will be given for a transfer of the Property or part of it upon receipt of a Deed of Covenant and payment of the Transferor's legal costs relating to the Deed of Covenant

13.10 Added development value

- (a) In this clause the following expressions shall where the context so admits bear the following meanings:

"the Transferor's percentage" shall mean 50 per cent

a **"chargeable event"** shall mean either of the following:

- (i) the disposition within the relevant period of the Property or part thereof or interest therein by the Transferee or persons deriving title through or under the Transferee with the benefit of planning permission or

- (ii) the commencement of implementation by the Transferee or persons deriving title through or under the Transferee in relation to the Property or the relevant part thereof of planning permission

“disposal” shall bear the meaning assigned to the same under section 205(1) Law of Property Act 1925 and **“disposition”** shall be interpreted accordingly

“further payment” shall mean such a payment as is mentioned in clause 10.2(c) and 10.2(d)

“planning permission” means permission granted after the date hereof under the Town and Country Planning Act 1990 or any re-enactment or modification thereof for the time being in force (whether or not such permission also relates to other land) and permitting development of the Property for any use other than a use falling within classes B1 B2 or B8 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 as originally enacted

“the relevant period” shall mean the period of 21 years

- (b) The Transferee with the intent to bind so far as legally may be itself and its successors in title owners and occupiers for the time being of the Property or any part thereof covenants with the Transferor as follows:

- (i) Forthwith to notify the Transferor in writing upon the happening of a chargeable event (and referring specifically to this Transfer)
- (ii) In the case of a chargeable event arising by virtue of a disposition to inform the Transferor forthwith of the full terms of the disposition including any consideration receivable
- (iii) Upon the happening of each and every chargeable event to pay to the Transferor such sum as is provided by clauses 10.3 and 10.5 hereof together with Value Added Tax (if applicable) within ten Working Days of the chargeable event
- (iv) To pay to the Transferor its reasonable costs of and in connection with all notifications applications and consents arising by virtue of the provisions of this clause and in relation to any covenant under seal required hereunder

- (c) The sum so payable shall (subject to clause 10.5 hereof) be:

- (i) In the case of a chargeable event under clause 10.1(a) hereof the Transferor's percentage of the difference between the capital value of the consideration receivable in respect of the chargeable event and the capital value of the consideration which would have been receivable without the benefit of any planning permission or any prospect that it may be obtained (the latter value to be ascertained on the basis of an open market disposition free from incumbrances to which this assurance is subject and which still subsists but taking no account of the provisions of this clause)
- (ii) In the case of a chargeable event under clause 10.1(b) hereof the Transferor's percentage of the difference between the open market value of the Property or the relevant part thereof or interest therein as at the date of the chargeable event valued as though to be sold free from incumbrances (except for such incumbrances to which this Transfer is subject and which then still subsists but taking no account of the provisions of this clause)
 - (A) with the benefit of any planning permission (and having regard to any value which the Property or the relevant part thereof may have in conjunction with any other land to which the planning permission relates) and
 - (B) without the benefit of the planning permission or any prospect that it may be obtained
- (d) If a chargeable event shall occur in relation to the Property or part thereof or interest therein and there shall already have been made a further payment in respect of a previous chargeable event relating to the Property or the same part thereof or interest therein (as the case may be) then the current prospective further payment shall be reduced by the amount of the last previous further payment
- (e) There shall be added to the sum payable under clause 10.3 hereof interest at the rate of five per centum above the base lending rate of Barclays Bank Plc from time to time applicable for the period while the sum payable hereunder remains unpaid commencing on the date when such sum becomes payable up to and including the date of payment so that if the base lending rate of Barclays Bank Plc shall at any time cease to exist or be ascertainable then there may be substituted for it the base lending rate of such one of the London Clearing Banks as the Transferor shall prescribe or (if this shall be impractical) such other rate or rates as the Transferor shall prescribe as reasonably equivalent thereto
- (f) The Transferee hereby charges the Property with full title guarantee by way of equitable security with the payment to the Transferor of all such sums as shall become payable in accordance with the provisions of clause 10.3 hereof

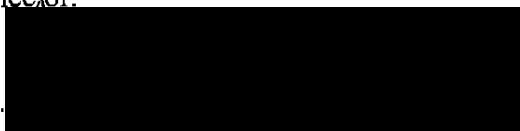
- (g) Upon receipt of a further payment the Transferor will at the request and cost of the Transferee give a good and sufficient discharge and receipt for such sum PROVIDED ALWAYS that this shall be without prejudice the continued operation of (and the unfettered ability of) the parties to negotiate in respect of any subsequent release of the provisions of this clause in relation to any other chargeable events which may arise
- (h) Any dispute or difference as to the ascertainment of the future payment shall be determined by the arbitration of a single arbitrator appointed by the Transferor and the Transferee or their successors or (failing agreement as to appointment) by the President for the time being of the Royal Institution of Chartered Surveyors on the application of either of them
- (i) The Transferee undertakes with the Transferor that it shall not dispose of the Property or any part thereof or interest therein within the relevant period without procuring from the disponee at its own cost and delivering to the Transferor a covenant under seal with the Transferor in a form reasonably acceptable to the Transferor to observe and perform the obligations of the Transferee under this clause (including this present paragraph) unless the Transferor shall consent in writing to the omission of such a covenant
- (j) The Transferor and the Transferee request and direct the Chief Land Registrar to register title to the Property subject to a restriction in relation to the Property to the following effect:

“Except under an Order of the Registrar no disposition or dealing within 21 years of the date hereof is to be registered without the consent of East of England Development Agency whose principal office is at The Business Centre Station Road Histon Cambridge CB4 9LQ”

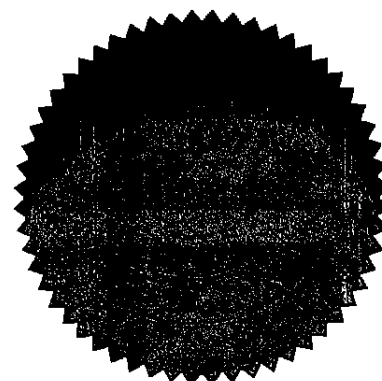
- (k) The Transferor will consent to a registration under the terms of the said restriction (but not a cancellation of the restriction) where upon a disposition or dealing it is demonstrated to the Transferor that there is no breach of the terms of this condition and that the undertaking in clause 10.9 hereof has been complied with in relation thereto
- (l) The Transferor will upon request release the charge by way of equitable security where upon the expiration of the relevant period it is demonstrated to the Transferor that there is no breach of the terms of this condition and no further payment outstanding
- (m) The Transferor’s rights to further payments under the provisions of this clause shall not be annexed to nor run with the Transferor’s Retained Land so that no successor in title to any part of the Transferor’s Retained Land shall be entitled to receive any further payments due under this clause 10
- (n) The Transferor may deal with its entitlement to further payments under this clause 10 by way of express assignment

14. The Transferors and all other necessary parties (including the proprietors of all the titles listed in panel 3) should execute this transfer as a deed using the space below and sign the plan. Forms of execution are given in Schedule 3 to the Land Registration Rules 1925. If the transfer contains transferees' covenants or declarations or contains an application by them (eg for restriction), it must also be executed by the Transferees.

The common seal of **EAST OF ENGLAND**)
DEVELOPMENT AGENCY was affixed in)
the presence of:



.....
Authorised Signatory

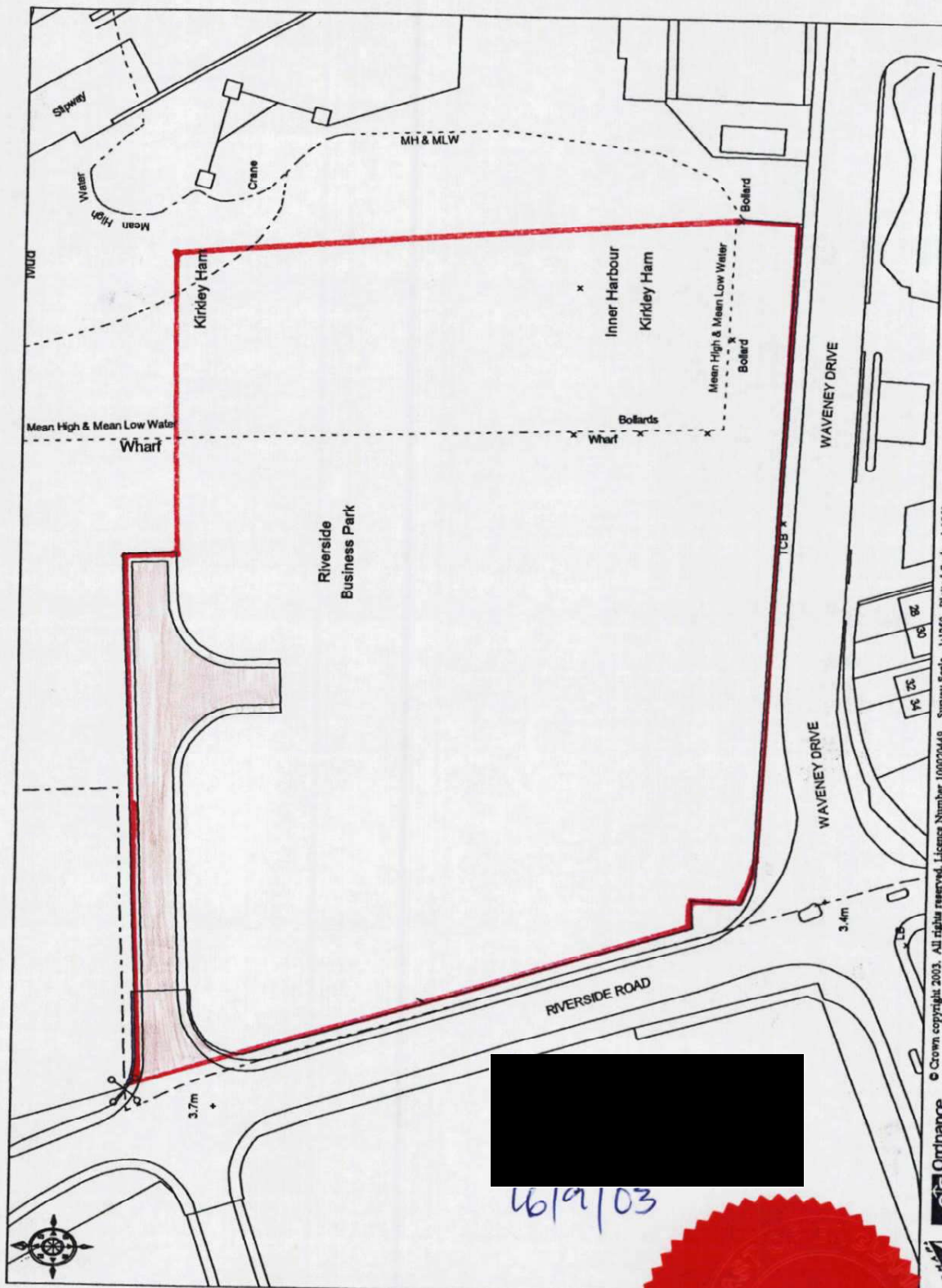


The common seal of **PFK LING LIMITED**)
was affixed in the presence of:)

.....
Director

.....
Secretary

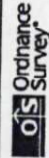
Riverside Business Park, Lowestoft.



46/9/03



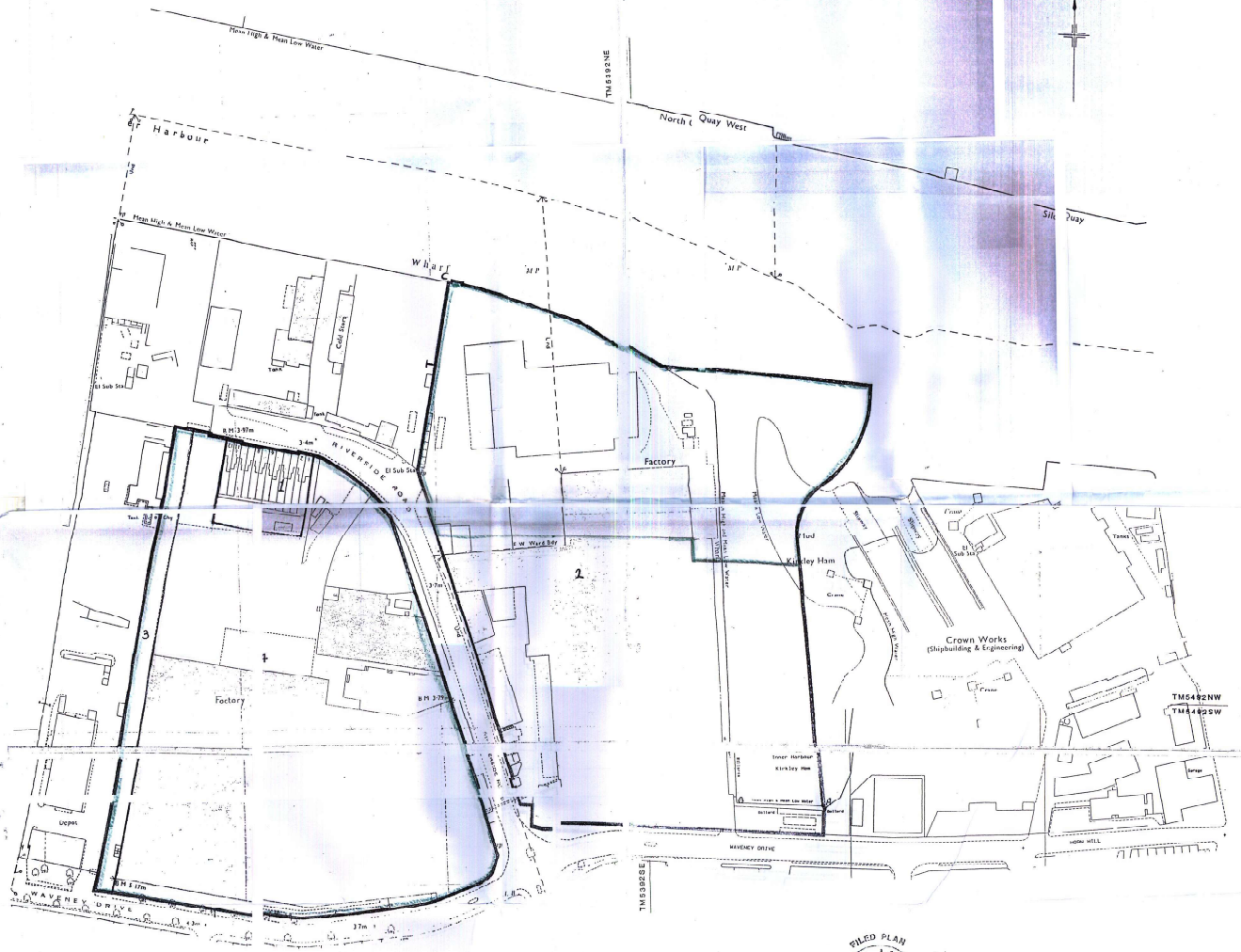
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PLAN

This office copy shows the state of the title plan on 14 MAR 2003. It may be subject to minor distortions in scale. Under s.113 of the Land Registration Act 1925, this copy is admissible in evidence to the same extent as the original.
Issued on 14 MAR 2003
This title is dealt with by the KINGSTON UPON HULL DISTRICT LAND REGISTRY
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H.M. LAND REGISTRY		TITLE NUMBER SK.140578	
ORDNANCE SURVEY FLAT REFERENCE	TM5392NE TM5392SE TM5492NW TM5492SW	Scale 1:1250	
COUNTY SUFFOLK	DISTRICT WARRING	© Crown copyright	



J. Muggie

Appendix B

These are the notes referred to on the following official copy

The electronic official copy of the title plan follows this message.

Please note that this is the only official copy we will issue. We will not issue a paper official copy.

This official copy was delivered electronically and when printed will not be to scale. You can obtain a paper official copy by ordering one from HM Land Registry.

This official copy is issued on 06 September 2018 shows the state of this title plan on 06 September 2018 at 12:06:45. It is admissible in evidence to the same extent as the original (s.67 Land Registration Act 2002). This title plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground.

This title is dealt with by the HM Land Registry, Kingston Upon Hull Office .

HM Land Registry

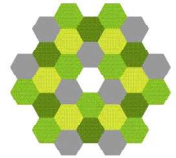
Official copy of title plan

Title number **SK245554**

Ordnance Survey map reference **TM5392NE**

Scale **1:1250**

Administrative area **Suffolk : Waveney**



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