

M54 to M6 Link Road

TR010054

Volume 3

**8.29 Draft Planning Obligation relating
to Whitgreave's Wood**

Regulation 5(2)(q)

Planning Act 2008

Infrastructure Planning (Applications: Prescribed
Forms and Procedure) Regulations 2009

April 2021

Infrastructure Planning

Planning Act 2008

**The Infrastructure Planning
(Applications: Prescribed Forms
and Procedure) Regulations 2009**

**M54 to M6 Link Road
Development Consent Order 20[]**

8.29 Draft Planning Obligation relating to Whitgreave's Wood

Regulation Number	Regulation 5(2)(q)
Planning Inspectorate Scheme Reference	TR010054
Application Document Reference	8.29
Author	M54 to M6 Link Road Project Team and Highways England

Version	Date	Status of Version
1	7 April 2021	Draft submitted at Deadline 8

DATED

2021

UNILATERAL UNDERTAKING

GIVEN BY

**THE NATIONAL TRUST FOR PLACES OF
HISTORIC INTEREST OR NATURAL BEAUTY** (1)

AND

HIGHWAYS ENGLAND COMPANY LIMITED (2)

TO

SOUTH STAFFORDSHIRE DISTRICT COUNCIL (3)

DEVELOPMENT CONSENT OBLIGATION

**made under section 106 of the Town and Country
Planning Act 1990 relating to The M54 to M6 Link
Road Development Consent Order and land at
Whitgreave's Wood**

THIS DEED is made on

2021

BY:

- (1) **THE NATIONAL TRUST FOR PLACES OF HISTORIC INTEREST OR NATURAL BEAUTY** (Charity Registration Number 205846) whose principal office is at Heelis, Kemble Drive, Swindon, Wiltshire, SN2 2NA (the "**National Trust**"); and
- (2) **HIGHWAYS ENGLAND COMPANY LIMITED** (Company Registration Number 09346363) whose registered offices are c/o Company Secretary, Bridge House, 1 Walnut Tree Close, Guilford, Surrey, GU1 4LZ ("**Highways England**");

TO:

- (3) **SOUTH STAFFORDSHIRE DISTRICT COUNCIL** of Wolverhampton Road, Codsall, South Staffordshire, WV8 1PX (the "**Council**").

WHEREAS:

- (A) Highways England is promoting the Order and has submitted the Application.
- (B) The National Trust is the freehold owner of that part of the Order Land comprising the Property and the charitable body responsible for managing the woodland on the Property as part of its activities to look after places of historic interest or natural beauty permanently for the benefit of the nation across England, Wales and Northern Ireland.
- (C) The Council is the local planning authority for the purposes of the 1990 Act for the administrative area of South Staffordshire within which the Property is located.
- (D) The National Trust and Highways England have entered into the Woodland Agreement which permits the carrying out the Woodland Works to the Property as part of the measures to mitigate the impact of the Development for which the Order is sought.
- (E) The National Trust and Highways England have entered into this Deed in response to a request from the examining authority appointed to assess the Application to ensure that the Woodland Works are maintained by the National Trust during the period before the Property becomes Inalienable which shall be a development consent obligation for the purposes of Section 106 of the 1990 Act.

NOW THIS DEED WITNESSES as follows:

1 Definitions and Interpretation

1.1 In this Deed, including for the avoidance of doubt the recitals above, the following words shall have the following meanings:

"1907 Act"	Means the National Trust Act 1907 (as amended);
"1990 Act"	means the Town and Country Planning Act 1990 (as amended);
"2008 Act"	means the Planning Act 2008 (as amended);
"Application"	means the application for an order granting development consent for the construction, operation and maintenance

of the M54 to M6 Link Road made to the Secretary of State pursuant to section 37 of the Planning Act 2008 and allocated reference TR010054;

"Commencement of Development"	of means beginning to carry out any material operation (as defined in section 56(4) of the 1990 Act) forming part of the Development other than operations consisting of archaeological investigations and mitigation works, ecological surveys, investigations for the purpose of assessing and monitoring ground conditions and levels, remedial work in respect of any contamination or other adverse ground conditions, erection of any temporary means of enclosure, receipt and erection of construction plant and equipment, diversion and laying of underground apparatus and site clearance, and the temporary display of site notices or advertisements;
"Development"	means the development authorised by the Order;
"Inalienable"	means the date when in accordance with the 1907 Act the Property is determined to be held inalienably pursuant to a resolution of the board of trustees of the National Trust and "Inalienably" shall be construed accordingly;
"Order"	means the M54 to M6 Link Road Development Consent Order proposed to be made by the Secretary of State pursuant to the Application;
"Order Land"	means the land shown edged red and shaded pink, blue and green on the Land Plans;
"Land Plans"	means application document reference 2.2 to be certified as the land plans as part of the Order;
"Property"	means the woodland known as Whitgreave's Wood shown as plots 3/7a, b and c and 4/2 on the Land Plans;
"Secretary of State"	means the Secretary of State for Transport responsible for determining the Application or such successor or replacement as may be appointed from time to time;
"Woodland Agreement"	means the agreement between the National Trust and Highways England dated 14 September 2020 which secures the Woodland Works;
"Woodland Works"	means works to improve the woodland on the Property and may include matters such as selective thinning and associated activities.

- 1.2 The headings appearing in this Deed are for ease of reference only and shall not affect the construction of this Deed.
- 1.3 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.
- 1.4 Words in this Deed importing the singular meaning shall where the context so admits include the plural meaning and vice-versa.

- 1.5 Where any approval, consent, agreement or the like is required to be given pursuant to the terms of this Deed it shall be in writing and no party shall unreasonably withhold or delay any such approval, consent, agreement or the like provided that nothing herein shall fetter the statutory rights, powers or duties of Highways England, the National Trust, the Council or the Secretary of State to the extent the law does not allow.
- 1.6 Any obligations of the parties to this Deed contained in this Deed which are or may be deemed to be obligations of one or more persons shall be joint and several obligations on the part of those persons unless the context otherwise requires provided that nothing herein shall impose any liability upon either of the parties for the actions of the other.
- 1.7 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.
- 1.8 If any provision in this Deed shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be deemed thereby to be affected, impaired or called into question.
- 1.9 In this Deed the expression "Highways England" shall include its agents and contractors and any statutory successor in function.
- 1.10 In this Deed the expression "the National Trust" shall include its successors in title to the Property.
- 1.11 In this Deed the expression "the Council" shall include its statutory successor in respect of the functions to which this Deed relates.

2 Statutory Powers, Enforcement and Liability

- 2.1 This Deed is made pursuant to Section 106 of the 1990 Act as amended by Section 174 of the 2008 Act and the obligations in clause 4 of this Deed constitute development consent obligations for the purposes of Section 106(9) of the 1990 Act and insofar as may be necessary planning obligations pursuant to Section 106(9) of the 1990 Act and are enforceable as provided in clause 2.2.
- 2.2 The obligations set out in clause 4 are enforceable by both the Council and the Secretary of State. The obligation in clause 4.1 is also enforceable by the National Trust. The obligation in clause 4.2 is also enforceable by Highways England.
- 2.3 It is hereby declared that the National Trust as the owner of the Property enters into this Deed with the effect of binding the Property for itself and its successors in title and Highways England enters into this Deed for the purposes of completing the Woodland Works on the Property.

3 Conditionality

- 3.1 Save for clauses 5, 9 and 10 which shall have immediate effect, this Deed shall not have effect unless and until:
- (a) the Secretary of State requires this Deed as part of his determination of the Application;
 - (b) the Secretary of State grants the Order and any challenge to the granting of the Order is dismissed; and
 - (c) the Commencement of Development has occurred.

3.2 If the Order is not granted or is granted but then subsequently quashed then this Deed shall forthwith determine but without prejudice to any rights any party may have against the other in respect of any antecedent breaches of this Deed.

3.3 This Deed shall cease to have effect and determine absolutely on the date that the Property becomes Inalienable.

4 Covenants of the parties

4.1 Highways England covenants to undertake the Woodland Works in accordance with the Woodland Agreement.

4.2 Upon completion of the Woodland Works in accordance with the Woodland Agreement, the National Trust covenants to thereafter maintain the woodland on the Property until such time as the Property is held Inalienably.

5 Further Planning Permissions and Development Consents

Nothing in this Deed shall prohibit or limit or affect in any way the right to develop any part of the Property in accordance with a planning permission issued pursuant to the 1990 Act or a development consent order or any other statutory authority other than the Order granted or issued (whether or not on appeal or by any other means) either before or after the date of this Deed.

6 Liability upon disposal

No party shall be liable for any breach of the obligations contained herein after it shall have parted with its entire interest in the Property or the relevant part thereof but without prejudice to any rights of the Council or the Secretary of State in respect of any antecedent breach.

7 Dispute Resolution

7.1 In the event of a dispute between the parties as to the nature or extent of the Woodland Works it shall, in the first instance, be referred to a representative of each party of appropriate seniority with authority to resolve the nature of the dispute. Those representatives shall meet as soon as possible and shall endeavour in good faith to resolve any dispute or difference amicably.

7.2 In the event that a meeting of the senior representatives of each party has not resolved the dispute pursuant to clause 7.1 the matter shall be escalated to the Chief Executive Officer or a senior management representative nominated by them who shall meet within 14 days of a written request from one party to the others and shall endeavour in good faith to resolve any dispute or difference amicably.

7.3 Any dispute which has not been resolved after the completion of the procedure identified in clauses 7.1 and 7.2 may be determined on application by any party to an independent arboriculture expert ('Expert') (acting as an expert and not as an arbitrator) such Expert to be nominated in the absence of agreement by or on behalf of the President for the time being of the Arboricultural Association on the application of any party to the dispute and in such event:-

(a) the Expert shall afford the parties an opportunity to make representations (written and otherwise) to him/her;

- (b) the Expert is to reach a decision within 28 days of the expiry of the period set by the Expert for making representations to him/her or within such longer period (if any) as may be agreed by the parties;
- (c) if the Expert nominated pursuant to this sub clause shall die delay or become unwilling unfit or incapable of acting or if for any reason the President for the time being of the Arboricultural Association or a person acting on his/her behalf shall in his/her absolute discretion think fit, he/she may on the application of any party by writing discharge the Expert and appoint another in his/her place;
- (d) the fees and expenses of the Expert including the cost of his/her nomination shall be borne by the parties equally; and
- (e) the parties agree that the decision of the Expert shall be final and binding on the parties.

8 Verification and Enforcement

The National Trust shall permit the Council and the Secretary of State and their authorised employees and agents upon reasonable notice to enter the Property at all reasonable times and for the purpose of verifying whether or not any obligation arising hereunder has been performed or observed.

9 Rights of Third Parties

No party other than Highways England, the National Trust, the Council and the Secretary of State shall be entitled to enforce the provisions of this Deed by virtue of the Contracts (Rights of Third Parties) Act 1999.

10 Governing Law and Jurisdiction

This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (other than one to be resolved in accordance with clause 7 above) shall be governed by and construed in accordance with the laws of England and the courts of England shall retain exclusive jurisdiction.

11 Local Land Charges

This Deed shall be capable of being registered as a Local Land Charge by the Council until such time as the conditionality in clause 3.3 is satisfied.

IN WITNESS of which Highways England and the National Trust have executed this unilateral undertaking as a Deed on the date first written above

Signed as a Deed on behalf of _____)

THE NATIONAL TRUST FOR)
PLACES OF HISTORIC INTEREST)
OR NATURAL BEAUTY acting by two)
of their number, under an authority)
conferred pursuant to section 333 of the)
Charities Act 2011, in the presence of:)

Authorised signatory

.....

Authorised signatory

.....

Witness (signature)

Name (block capitals).....

Address

.....

Occupation

The **COMMON SEAL** of **HIGHWAYS**)

ENGLAND COMPANY LIMITED)

was hereunto affixed in the presence of:)

Authorised signatory

.....