

# Updated Draft Bird Mitigation Obligation (Tracked)

The West Midlands Rail Freight Interchange Order 201X

July 2019

Eversheds Sutherland (International) LLP



---

**Dated:** 20182019

- (1) STAFFORDSHIRE COUNTY COUNCIL
- (2) ALAN STOBART MONCKTON and PIERS ALASTAIR CARLOS MONCKTON and JOANNA MARY MONCKTON
- (3) BARCLAYS ~~BANK PLC~~SECURITY TRUSTEE LIMITED

---

**DEVELOPMENT CONSENT OBLIGATION**

AGREED DRAFT - June 2019

---

made pursuant to section 106 of the Town and Country Planning Act 1990 (as amended) relating to The West Midlands Rail Freight Interchange at land west of Junction 12 of the M6 in southern Staffordshire

# Contents

---

<b>Clause</b>	<b>Page</b>
1	DEFINITIONS AND INTERPRETATIONS.....1
2	STATUTORY POWERS, ENFORCEMENT AND LIABILITY.....3
3	COMMENCEMENT.....3
4	FURTHER PLANNING PERMISSIONS AND DEVELOPMENT CONSENTS.....3
5	PROVISIONS FOR RELEASE.....3
6	COVENANTS BY THE OWNERS.....3
7	COVENANTS BY THE COUNTY COUNCIL.....3
8	SUCCESSORS IN TITLE.....4
9	CHARGEЕ CONSENT.....4
10	THIRD PARTIES.....4
11	SERVICE OF NOTICES.....4
12	LOCAL LAND CHARGES.....4
13	WAIVER.....4
14	VERIFICATION AND ENFORCEMENT.....4
15	VOID PROVISIONS.....5
16	NO FETTER OF DISCRETION.....5
17	GENERAL REQUIREMENT TO CO-OPERATE.....5
18	DISPUTE RESOLUTION.....5
19	NOTIFICATION OF TRIGGERS.....5
<b>Schedules</b>	
1	COVENANTS WITH THE COUNTY COUNCIL.....6

**THIS AGREEMENT** is made on

~~2018~~2019

**BETWEEN**

- (1) STAFFORDSHIRE COUNTY COUNCIL of 1 Staffordshire Place, Stafford, ST16 2DH (~~the~~ **"County Council"**)
- (2) ALAN STOBART MONCKTON and PIERS ALASTAIR CARLOS MONCKTON and JOANNA MARY MONCKTON all of The Estate Office, Stretton Hall, Stretton, Stafford (~~the~~ **"Owners"**); and
- (3) BARCLAYS ~~BANK PLC (Company Registration Number 1026167)~~SECURITY TRUSTEE LIMITED in its capacity as security trustee and whose registered office is situate at 1 Churchill Place, London, E14 5HP and whose address for service is Business Lending Services PO Box 16276 Birmingham B2 2XE (**"the Chargee"**).

**BACKGROUND**

- (A) Four Ashes Limited submitted the Application to obtain authorisation for the Development in the form of the DCO and the Application was accepted by the Planning Inspectorate under section 55 of the 2008 Act on ~~{~~24 August 2018.
- (B) The Owners are the registered proprietors of the Bird Mitigation Land with title absolute under Title Number SF528125.
- (C) The Owners have entered into this Agreement in order to ensure that the Bird Mitigation Land is secured for the benefit of farmland birds for the duration of the construction of the Development as provided for in the obligations herein contained which obligations are development consent obligations for the purposes of Section 106 of the 1990 Act.
- (D) The Chargee has the benefit of a charge over the Bird Mitigation Land dated 25 February 2010 and has agreed to enter into this Agreement to acknowledge the provisions contained herein.

**OPERATIVE PROVISIONS**

**1. DEFINITIONS AND INTERPRETATIONS**

1.1 For the purposes of this Agreement (including for the avoidance of doubt the recitals above) the following expressions shall have the following meanings:

<b>"1990 Act"</b>	the Town and Country Planning Act 1990 (as amended)
<b>"2008 Act"</b>	the Planning Act 2008 (as amended)
<b>"Application"</b>	the application submitted pursuant to section 37 of the 2008 Act for the DCO to authorise the Development
<b>"Bird Mitigation Land"</b>	the land against which this Agreement may be enforced shown tinted purple on the Plan but more particularly identified as the land comprised in title number SF528125
<b><u>"Commencement of Development"</u></b>	<u>the commencement of the Development by the carrying out of any material operation within the meaning of sections 56(2) and (4) of the 1990 Act provided that the carrying out of demolition of existing buildings and structures, termination or diversion of existing services or temporary diversion of highways, temporary construction, site preparation (including ecological mitigation and translocation of</u>

species), investigation works, archaeological investigations, environmental site investigations, decontamination works, or works and operations to enable any of the foregoing to take place shall not constitute a material operation and consequently shall not individually or together constitute commencement of the development for the purposes of this definition or this Agreement and "Commenced" "Commence" and cognate expressions shall be construed accordingly

**"DCO"**

the development consent order applied for under the 2008 Act pursuant to the Application titled The West Midlands Rail Freight Interchange Order 201X

**"Development"**

the works described in Schedule ~~1~~1 of the DCO

**"Ecological Mitigation and Management Plan"**

~~the plan to be submitted to the County Council by the Owners pursuant to paragraph 1.1 of Schedule 1 such plan to detail enhancement measures and management proposals for the Bird Mitigation Land to include a buffer to Saredon Brook, wider headlands and margins, management including rotation and use of seed mixes intended to be of benefit for farmland birds, provision of skylark plots and planting of new hedgerows in place of or in addition to existing fences and the management thereof for a period of 15 years from the date of Implementation of the Development~~the plan to provide and manage farmland bird mitigation on the Bird Mitigation Land to be submitted to and approved by the County Council pursuant to clause 4

**"Implementation"**

~~the implementation of any of the Development to be carried out on the Protected Zones by the carrying out of any material operation within the meaning of sections 56(2) and (4) of the 1990 Act provided that the carrying out of demolition of existing buildings and structures, termination or diversion of existing services or temporary diversion of highways, temporary construction, site preparation (including ecological mitigation and translocation of species), investigation works, archaeological investigations, environmental site investigations, decontamination works, or works and operations to enable any of the foregoing to take place shall not constitute a material operation and consequently shall not individually or together constitute implementation for the purposes of this definition or this Agreement and~~**"Implemented"** **"Implement"** and cognate expressions shall be construed accordingly

**"Parameters Plans"**

~~the plans titled as such and submitted as part of the Application~~

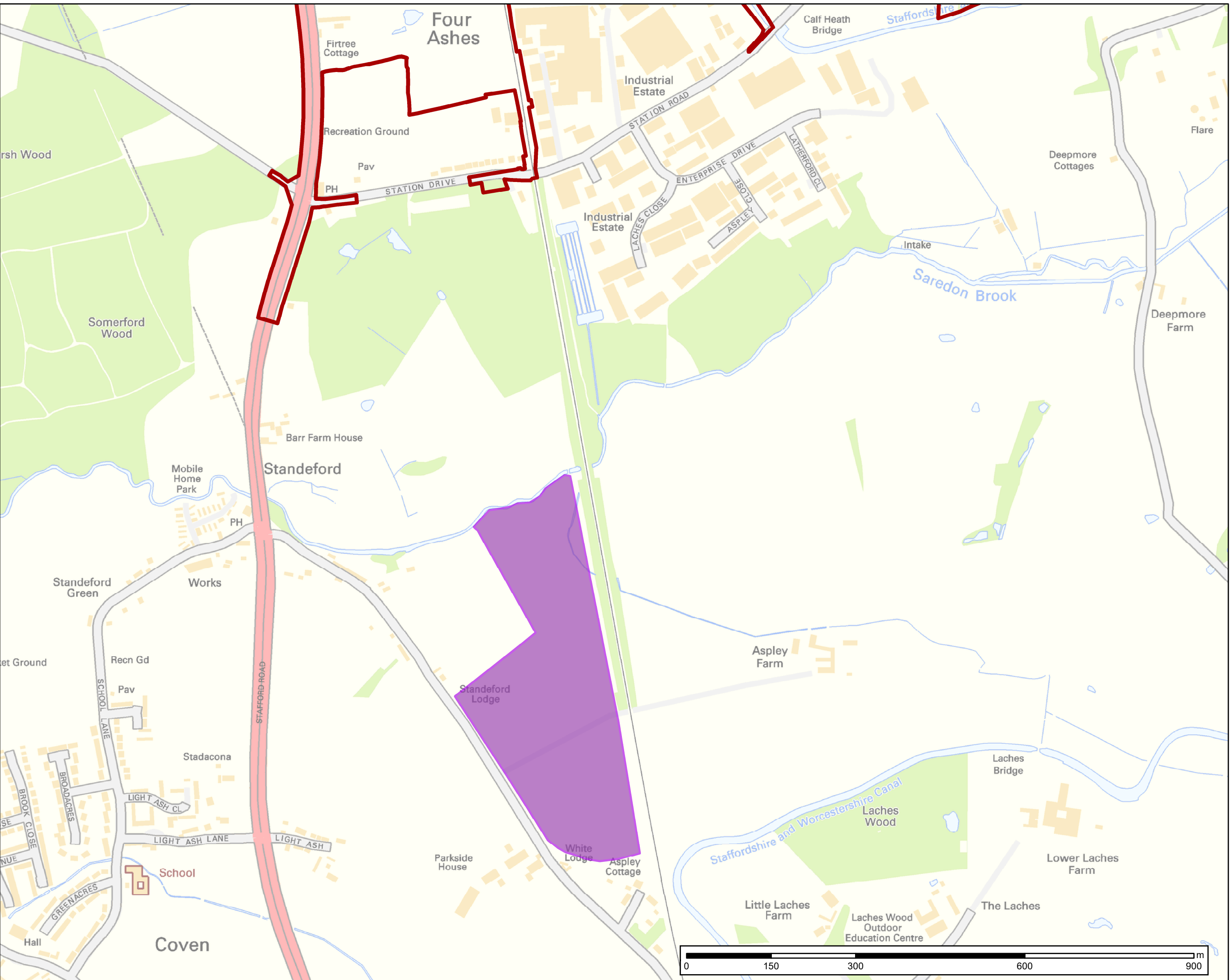
**"Plan"**

the plan attached to this Agreement

**"Protected Zones"**

~~the zones annotated as Zones [ ] on the Parameters Plans~~

1.2 This Agreement shall be interpreted in accordance with the following:



- Legend**
- Site boundary
  - Farmland Bird Mitigation Area

Reproduced from OS map data by permission of the Ordnance Survey. Licence No: 100040631



Client  
**Four Ashes Limited (FAL)**

Project Title  
**West Midlands Interchange (WMI)**

Project Number  
**1620002055**

Figure Title  
**10.004 Farmland Bird Mitigation Area**



Date **06/03/2018**

Scale **1:6,000 @A3**



- 1.2.1 The headings appearing in this Agreement are for reference only and shall not affect the construction of this Agreement;
- 1.2.2 Unless the context requires otherwise reference in this Agreement to clauses, sub-clauses, paragraphs, recitals, sub-paragraphs and schedules and references to those contained in this Agreement and references to plans and drawings are references to plans and drawings annexed to this Agreement;
- 1.2.3 The words "including" shall mean "including without limitation or prejudice to the generality of any description defining term or phrase preceding the word" and the word "include" and its derivatives shall be construed accordingly;
- 1.2.4 References in this Agreement to statutes, bye-laws, regulations, orders and delegated legislation shall include any statute, bye-law, regulation, order or delegated amending, re-enacting or made pursuant to the same;
- 1.2.5 In this Agreement the expressions "the County Council" and "the Owners" shall include their respective statutory successors in respect of the functions to which this Agreement relates and/or successors in title to the Bird Mitigation Land as the case may be;
- 1.2.6 Any obligations of the parties to this Agreement contained in this Agreement 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;
- 1.2.7 Any obligations by the Owners not to do an act or thing shall be deemed to include an obligation to use reasonable endeavours not to permit or suffer such act or thing to be done by another person and any obligation by the Owners to do an act or thing may be deemed to include an obligation to procure that the act or thing is done;
- 1.2.8 If any provision in this Agreement 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;
- 1.2.9 The Interpretation Act 1978 shall apply to this Agreement.

## 2. **STATUTORY POWERS, ENFORCEMENT AND LIABILITY**

- 2.1 This Agreement is made pursuant to Section 106 of the 1990 Act as amended by Section 174 of the 2008 Act and the obligations in this Agreement constitute development consent obligations for the purposes of Section 106 of the 1990 Act and planning obligations pursuant to Section 106(4) of the 1990 Act and shall bind the Bird Mitigation Land and be enforceable by the County Council.

## 3. **COMMENCEMENT**

- 3.1 ~~With the exception of [ ] the obligations contained in clause 4 and Schedule 1 of this~~This Agreement shall not have effect unless and until both:

- 3.1.1 the DCO has been made; and
- 3.1.2 the Development has been ~~Implemented~~Commenced.

## 4. **COVENANTS BY THE OWNERS**

- 4.1 ~~The Owners covenants that they shall carry out:~~



- 4.1.1 ~~To submit the Ecological Mitigation and comply with the obligations contained in Schedule 1-Management Plan to the County Council and obtain approval thereof from the County Council prior to the Commencement of Development such plan to include a detailed programme for implementation; and~~

## ~~5. COVENANTS BY THE COUNTY COUNCIL~~

- ~~5.1 The County Council covenants with the Owners as set out in Schedule 2-~~

- ~~4.1.2 to carry out the measures detailed in the Ecological Mitigation and Management Plan in accordance with the approved programme for a period of 15 years from the Commencement of Development.~~

## ~~6.5. FURTHER PLANNING PERMISSIONS AND DEVELOPMENT CONSENTS~~

- ~~6.15.1~~ Nothing in this Agreement shall prohibit or limit or affect in any way the right to develop any part of the Bird Mitigation Land in accordance with a planning permission issued pursuant to the 1990 Act or a Development Consent Order or any other statutory authority granted or issued (whether or not on appeal or by any other means) either before, on or after the date of this Agreement BUT FOR THE AVOIDANCE OF DOUBT if the DCO as defined herein is granted and the Development is ~~Implemented~~Commenced then the Bird Mitigation Land shall be subject to the obligations contained herein unless and until the obligations are satisfied, discharged or varied ~~or cease in accordance with clause 4.1~~ as the case may be.

## ~~7.6. PROVISIONS FOR RELEASE~~

- ~~7.16.1~~ This Agreement shall cease and determine if the DCO is quashed, cancelled, revoked or expires prior to Implementation except to the extent that any obligation in this Agreement has been performed in whole or in part.

## ~~8.7. SUCCESSORS IN TITLE~~

- ~~8.17.1~~ This Agreement shall be enforceable against the Owners and their successors in title and those deriving title under them in respect of the Bird Mitigation Land.

- ~~8.27.2~~ No party shall be liable for any breach of the obligations contained herein after it shall have parted with its entire interest in the Bird Mitigation Land or the relevant part thereof but without prejudice to any rights of the County Council in respect of any antecedent breach.

## ~~9.8. CHARGEES CONSENT~~

- ~~9.18.1~~ The Chargee consents to this Agreement being entered into with the intention that, notwithstanding section 104 Law of Property Act 1925, its interest in the Bird Mitigation Land will be bound by the terms of this Agreement as if it had been executed and registered as a local land charge before the execution of its registered charge.

- ~~9.28.2~~ Notwithstanding clause 9.1, the Chargee will not incur any liability for any breach of the obligations contained in this Agreement unless and until it becomes a mortgagee in possession of the Bird Mitigation Land.

## ~~10.9. THIRD PARTIES~~

- ~~10.19.1~~ A person who is not a party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1990 to enforce any term of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

## ~~11.10. SERVICE OF NOTICES~~

- ~~11.10.1~~ All notices requests demands or other written communications to be sent or given pursuant to the provisions of this Agreement shall be deemed to have been properly given or made if despatched by first class letter to the party to which such notice request demand or other

written communication is to be given or made under this Agreement and addressed as follows:

~~11.1.1~~10.1.1 if to the County Council to the address set out above and marked for the attention of the [                    ];

~~11.1.2~~10.1.2 if to the Owners to the address set out above;

~~11.1.3~~10.1.3 if to the Chargee to the address set out above.

## ~~12.11.~~ **LOCAL LAND CHARGES**

~~12.11.1~~ This Agreement shall be registered as a Local Land Charge.

## ~~13.~~ **WAIVER**

## ~~12.~~ **WAIVER**

~~13.1~~12.1 No waiver (whether express or implied) by any of the County Council of any breach or default by the Owners in performing or observing any of the covenants undertakings obligations or restrictions contained in this Agreement shall constitute a continuing waiver and no such waiver shall prevent the County Council from enforcing any of the said covenants undertakings obligations or restrictions or from acting upon any subsequent breach or default in respect thereof by the Owners.

## ~~14.13.~~ **VERIFICATION AND ENFORCEMENT**

~~14.13.1~~ The Owners shall permit the County Council and their authorised employees and agents upon reasonable notice to enter the Bird Mitigation Land at all reasonable times and for the purpose of verifying whether or not any obligation arising hereunder has been performed or observed.

## ~~15.14.~~ **VOID PROVISIONS**

~~15.14.1~~ If any individual clause or paragraph in this Agreement is subsequently held to be unenforceable by a court the parties agree that the offending clause or paragraph shall cease to be binding and will be severed from the Agreement and the severing of such clause or paragraph shall not affect the continuing enforceability of the remainder of the Agreement.

## ~~16.15.~~ **NO FETTER OF DISCRETION**

~~16.15.1~~ Nothing herein contained or implied shall prejudice or affect the rights discretions powers duties and obligations of the County Council under all statutes bye-laws statutory instruments orders and regulations in the exercise of their functions as a local authority.

## ~~17.16.~~ **GENERAL REQUIREMENT TO CO-OPERATE**

~~17.16.1~~ The parties hereto shall act in good faith and shall each cooperate with each other to facilitate the discharge and performance of the obligations of the other contained within this Agreement within the timescale specified.

## ~~18.17.~~ **DISPUTE RESOLUTION**

~~18.17.1~~ In the event of any dispute or difference arising between the parties hereto touching or concerning any matter or thing arising out of this Agreement (other than a dispute or difference touching or concerning the meaning or construction of this Agreement) 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 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.

~~18.2~~17.2 In the absence of agreement between the parties to the dispute or difference as to the professional qualifications of the person to be appointed pursuant to clause 17.1 or as to the appropriate professional body within fourteen days after any party has given to the other parties to the disputes or difference a written request to concur in the professional qualifications of the person to be appointed pursuant to clause 17.1 then the question of the appropriate qualification 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 or difference and his cost shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination and shall be borne by the parties to the dispute or difference in equal shares.

~~19.18.~~ **NOTIFICATION OF TRIGGERS**

~~19.1~~18.1 The Owners shall notify the County Council of the date of ~~Implementation~~Commencement of the Development.

DRAFT

**~~1~~ ~~SCHEDULE 1~~**

**~~COVENANTS WITH THE COUNTY COUNCIL~~**

~~20. The Owners hereby covenant with the County Council as follows:~~

~~20.1 To submit the Ecological Mitigation and Management Plan to the County Council and not to implement the Development prior to obtaining approval thereof from the County Council;~~

~~20.2 To carry out the measures detailed in the Ecological Mitigation and Management Plan approved pursuant to paragraph 1.1 above or any variation thereto approved by the County Council such measures to be maintained for a period of 15 years from the date of implementation.~~

**~~SCHEDULE 0~~**

**~~COUNTY COUNCIL COVENANTS WITH THE OWNERS~~**

~~21. The County Council hereby agrees with the Owners to respond expeditiously to the submission of the Ecological Mitigation and Management Plan for approval and in any event to respond to the submission with 21 days of receiving it either approving it or identifying in detail any deficiencies it believes should be rectified to enable approval.~~

AGREED DRAFT

Executed as a deed by affixing )  
the common seal of )  
**STAFFORDSHIRE COUNTY COUNCIL** )  
in the presence of: )

Authorised Signatory

Signed as a deed by )  
**ALAN STOBART MONCKTON** )  
in the presence of )

Witness signature

Witness name

Witness address

Witness occupation

Signed as a deed by )  
**PIERS ALASTAIR CARLOS MONCKTON** )  
in the presence of )

Witness signature

Witness name

Witness address

Witness occupation

Signed as a deed by )  
**JOANNA MARY MONCKTON** )  
in the presence of )

Witness signature

Witness name

Witness address

Witness occupation

Executed as a DEED by )  
**BARCLAYS BANK PLC SECURITY TRUSTEE** )  
**LIMITED** )  
acting by:

Authorised Signatory

AGREED DRAFT