

**PLANNING OBLIGATION BY WAY OF  
UNILATERAL UNDERTAKING UNDER  
SECTION 106 OF THE TOWN AND  
COUNTRY PLANNING ACT 1990  
Relating to Land at Cottage Farm,  
Camberley**

**Cottage Farm Holding Limited**

**to**

**Hampshire County Council**

**DRAFT**

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**BY**

- (1) **Cottage Farm Holding Limited** incorporated and registered in Guernsey with company number OE012817 whose registered office is at Main House, Island Of Jethou, St Peter Port, Guernsey, GY1 4AB (“**CFHL**”).

**1 BACKGROUND**

- (A) The Council is a local planning authority for the purposes of the TCPA 1990 and the commons registration authority for the area in which the Replacement Land is situated.
- (B) Propco is the freehold owner of the Release Land and CFHL is the freehold owner of the Replacement Land.
- (C) The Applicant has applied for the deregistration of the Release Land, to be replaced by the Replacement Land.
- (D) The Promoter is the leaseholder of land at Blackbushe Airport and intends to develop the Release Land, once it has been de-registered as common land, in accordance with its existing use as an aerodrome.
- (E) The Environmental Management Plan (EMP) forms part of the Application and describes measures to be implemented following Approval of the Application to establish the Replacement Land and then develop, maintain and monitor the ecological and landscape interest in the area, taking into account registered common rights and the need to maintain access to the Replacement Land. This deed secures the implementation of the EMP and binds CFHL and its successors in title to carry out the actions set out therein.

**2 AGREED TERMS**

2.1 Interpretation

The following definitions and rules of interpretation apply in this deed.

2.2 Definitions:

**2006 Act:** the Commons Act 2006.

**Application:** the application by the Applicant to the Planning Inspectorate under Section 16 of the 2006 Act to deregister the Release Land as common land, to be replaced by the Replacement Land.

**Applicant:** the joint applicants for the Application being CFHL and Propco.

**Approval:** an order under section 17 of the 2006 Act that part (or parts) of the Replacement Land is (or are) to be removed from the register of Common Land and that another part (or parts) of the Replacement Land is (or are) to be added to the register, in accordance with the Application.

**Approval Date:** the date being the later of:

- a) the date falling 3 months after Approval PROVIDED THAT no judicial review proceedings have been brought in respect of the Application; or
- b) if applicable, the date upon which any and all judicial review proceedings have been exhausted leaving the Approval extant.

**Council:** Hampshire County Council of The Castle, Winchester, Hampshire SO23 8UJ and any successor body in name or statutory function as the relevant planning authority.

**EMP:** the Environmental Management Plan annexed to this deed and which forms part of the Application and which describes the measures that will be implemented following Approval during the EMP Period to establish the Replacement Land and then develop, maintain and monitor the ecological and landscape interest in the area.

**EMP Period:** the period of 15 years commencing on the Approval Date.

**Plan 1:** the first plan attached to this deed.

**Plan 2:** the second plan attached to this deed.

**Promoter:** the operator of Blackbushe Airport and lessee of the Release Land, being Blackbushe Airport Limited incorporated and registered in England and Wales with company number 01642908 whose registered office address is Terminal Buildings Blackbushe Airport, Blackwater, Camberley, Surrey, GU17 9LQ.

**Propco:** the freehold owner of the Release Land, being Falcon Propco4 Limited incorporated and registered in England and Wales with company number 06195210 whose registered office address is Terminal Buildings Blackbushe Airport, Blackwater, Camberley, Surrey, GU17 9LQ.

**Release Land:** approximately 35.3 acres of land at Blackbushe Airport, Yateley forming part of Yateley Common (Common Land Unit 24) and shown edged red on Plan 1.

**Replacement Land:** approximately 35.3 acres of land at Cottage Farm, Camberley shown edged green on the Plan 2 and forming part of the property registered at HM Land Registry with absolute title under title number HP595417.

**TCPA 1990:** the Town and Country Planning Act 1990.

**Working Day:** any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England.

- 2.3 Clause headings shall not affect the interpretation of this deed.
- 2.4 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 2.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 2.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 2.7 A reference to any party shall include that party's personal representatives, successors and permitted assigns.
- 2.8 A reference to the Council shall include the successors to its respective statutory functions.
- 2.9 Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 2.10 Unless the context otherwise requires, a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 2.11 A reference to **writing** or **written** excludes faxes and e-mail.
- 2.12 A reference to **this deed** or to any other deed or document referred to in this deed is a reference to this deed or such other deed or document as varied or novated (in each case, other than in breach of the provisions of this deed) from time to time.
- 2.13 References to clauses are to the clauses of this deed.
- 2.14 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 2.15 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.

### **3 STATUTORY PROVISIONS**

- 3.1 This deed is made pursuant to section 106 of the TCPA 1990, section 1 of the Localism Act 2011, section 111 of the Local Government Act 1972 and any other enabling powers which may be relevant for the purposes of giving validity hereto.
- 3.2 The obligations contained in clause 4 of this deed are entered into by the CFHL with the intention that they bind the interests held by those persons in the Replacement Land and their respective successors and assigns.
- 3.3 This deed shall come into effect on the Approval Date.
- 3.4 The obligations contained in clause 4 of this deed are enforceable by the Council in accordance with section 106 of the TCPA 1990.
- 3.5 To the extent that any covenants contained in clause 4 of this deed is not a planning obligation within the terms of section 106 of the Act such covenant is entered into and enforceable pursuant to the provisions of section 111 Local Government Act 1972, section 1 of the Localism Act 2011 and all other enabling powers.

### **4 COVENANTS TO THE COUNCIL**

- 4.1 Upon the Approval of the Application, CFHL covenants with the Council to comply with its obligations as expressed within the EMP throughout the EMP Period.
- 4.2 For the avoidance of doubt, CFHL's obligations within the EMP may be carried out by CFHL or on behalf of CFHL by a suitably qualified agent or contractor.

### **5 RELEASE**

No person shall be liable for any breach of an obligation, restriction or covenant contained in this deed after parting with all of its interest in the Replacement Land, except in respect of any breach subsisting prior to parting with such interest.

### **6 DETERMINATION OF DEED**

This deed shall be determined and have no further effect if the Application:

- (A) does not receive Approval; or
- (B) is quashed following a successful legal challenge.

### **7 LOCAL LAND CHARGE**

This deed is a local land charge and shall be registered as such by the Council.

## **8 NOTICES**

8.1 A notice to be given under or in connection with this deed must be in writing and must be:

- (A) delivered by hand; or
- (B) sent by pre-paid first-class post or other next working day delivery service.

8.2 Any notice to be given under this deed must be sent to the relevant party as follows:

- (A) to the Council at: The Castle, Winchester, Hampshire SO23 8UJ
- (B) to CFHL, care of the Promoter at: Terminal Buildings Blackbushe Airport, Blackwater, Camberley, Surrey, GU17 9LQ; and
- (C) to the Promoter at: Terminal Buildings Blackbushe Airport, Blackwater, Camberley, Surrey, GU17 9LQ.

or as otherwise specified by the relevant person by notice in writing to each other person.

8.3 Any notice given in accordance with clause 8.1 and clause 8.2 will be deemed to have been received:

- (A) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the address provided that if delivery occurs before 9.00 am on a Working Day, the notice will be deemed to have been received at 9.00 am on that day, and if delivery occurs after 5.00 pm on a Working Day, or on a day which is not a Working Day, the notice will be deemed to have been received at 9.00 am on the next Working Day;
- (B) if sent by pre-paid first class post or other next working day delivery service at 9.00 am on the second Working Day after posting.

8.4 A notice given under this deed shall not be validly given if sent by e-mail.

8.5 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## **9 THIRD PARTY RIGHTS**

Subject to clauses 3.4 and 3.5 of this deed, a person who is not a party to this deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this deed.

**10 GOVERNING LAW**

This deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

**11 COUNTERPART DOCUMENTS**

This deed may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute one agreement.

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

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**EXECUTED** as a **DEED** by

**COTTAGE FARM**

**HOLDING LIMITED**

a company incorporated in Guernsey

acting by **SIR PETER JAMES OGDEN**

who, in accordance with the

laws of that territory, is acting under

the authority of the company:

Signature in the name of the company:

**COTTAGE FARM HOLDING LIMITED**

Signature of **SIR PETER JAMES OGDEN**

Authorised signatory

**DRAFT**