

**Planning Obligation by Deed of Agreement
under Section 106 of the Town and Country
Planning Act 1990**

Relating to the development of Land on the east
side of Meriden Road, Fillongley, Warwickshire

Dated :

19th November

2024

- (1) NORTH WARWICKSHIRE BOROUGH COUNCIL
- (2) WARWICKSHIRE COUNTY COUNCIL
- (3) ROBERT COOPER AND DEBORAH COOPER
- (4) ARMITAGE 18 SOLAR LIMITED

THIS AGREEMENT is made on

19th November

2024

BETWEEN:-

- (1) **NORTH WARWICKSHIRE BOROUGH COUNCIL** of The Council House, South Street, Atherstone, Warwickshire, CV9 1DE (the "**Council**");
 - (2) **WARWICKSHIRE COUNTY COUNCIL** of Shire Hall, Warwick, Warwickshire CV34 4RL (the "**County Council**");
 - (3) **ROBERT COOPER AND DEBORAH COOPER** of Nailcote Farm, Berkswell, Coventry CV7 7DE (the "**Owner**"); and
 - (4) **ARMITAGE 18 SOLAR LIMITED** (Company Number 13359440) whose registered office is at 15 Diddenham Court, Lambwood Hill, Grazeley, Reading, Berkshire, RG7 1JQ (the "**Developer**"),
- each a "**Party**" and together the "**Parties**".

WHEREAS:-

- (A) The Council and the County Council are the local planning authorities for the purposes of the Act for the areas within which the Application Site is situated.
- (B) The Owner is the freehold owner of the Application Site described in Schedule 1.
- (C) The Developer made the Application and is proposing to carry out the Development.
- (D) The Developer intends to develop the Application Site pursuant to the Planning Permission and has entered into an option agreement dated 1 February 2023 with the Owner which interest is registered at HM Land Registry against title number WK392446.
- (E) By a decision notice dated 10 July 2024 the Council refused the Application.
- (F) The Developer has appealed the refusal under section 78 of the Act and the appeal is due to be heard by a Planning Inspector at a Public Inquiry commencing on 10 December 2024. The appeal is under PINS reference APP/R3705/W/24/3349391 (the "Appeal").
- (G) The obligations contained in this Deed are planning obligations for the purposes of section 106 of the Act .
- (H) The Owner and the Developer request that the Planning Inspector has regard to the planning obligations in this Deed as considerations material to his determination of the Appeal.

IT IS AGREED as follows:-

1. INTERPRETATION

1.1 For the purposes of this Deed the following expressions shall have the following meanings:-

- | | |
|--------------------|--|
| "Act" | means the Town and Country Planning Act 1990 as amended |
| "Application Site" | means the site described in Schedule 1 which is the subject matter of the Application and against which this Deed may be enforced |
| "Application" | means the application for a planning permission for the Development validated by the Council on 24 February 2023 and allocated reference number PAP/2023/0071. |

"Commencement of Development"	means, for the purposes of this Deed save in relation to Schedule 2, the date on which any material operation (as defined in section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed, save for Schedule 2 and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services and service medium, site and ecological investigations, testing or surveys together with any works pursuant to licensing obtained from Natural England or other successor body in title or function in relation to ecological habitat creation improvement or otherwise or species relocation or otherwise, clearance of vegetation, excavation, deposition, compaction, levelling of materials to new contours and works connected with infilling, erection of any temporary means of enclosure, the erection of a site office, the creation of a site compound and the erection of security cameras, the creation of means of access and "Commence" "Commenced" and "Commence Development" shall be construed accordingly
"Contributions"	means the Skylark Mitigation Contribution and reference to "Contribution" shall be construed accordingly
"Development"	means the construction of a temporary solar farm, to include the installation of ground-mounted solar panels together with associated works, equipment and necessary infrastructure.
"Expert"	means an independent person of at least 10 years standing in the area of expertise relevant to the dispute to be agreed between the Parties or, failing agreement, to be nominated at the request and option of any of them, at their joint expense, by or on behalf of the President for the time being of the Law Society
"Interest"	means interest at the rate of 4% above the base lending rate of the Bank of England from time to time
"Plan"	means the plan attached to this Deed and numbered P.NailcoteFarm_04_Option Plan Rev. B.
"Planning Permission"	Means planning permission for the Development subject to conditions to be granted by the Council pursuant to the Application
"Relevant Index"	means as defined in Schedule 4
"Skylark Mitigation Contribution"	means the sum of £79,200 subject to the Relevant Index to be applied towards enhancing and securing long term habitat management for skylarks within the county of Warwickshire and which shall be paid to the County Council in accordance with Schedule 2.
"Working Days"	means any day excluding a Saturday a Sunday or a bank holiday in England.

2. CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise.
- 2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
- 2.6 References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council and County Council the successors to their respective statutory functions save where specifically provided to the contrary by this Deed.

3. LEGAL BASIS

- 3.1 This Deed is made pursuant to section 106 of the Act and in so far as any provision of this Deed is not within the powers of section 106 of the Act, section 111, 120 and 139 of the Local Government Act 1972 and section 1 of the Localism Act 2011 and section 9 of the Open Spaces Act 1906
- 3.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to section 106 of the Act and are enforceable by the Council, the County Council as local planning authorities against the Owner, and their successors in title and any persons claiming through or under the Owner an interest or estate in the Application Site or any part thereof.

4. CONDITIONALITY

- 4.1 This Deed is conditional upon:-
 - 4.1.1 the grant of the Planning Permission; and
 - 4.1.2 the Commencement of Development,save for the provisions of Clauses 8.1, 8.2, 16, 17 and 18 (legal costs, dispute resolution, jurisdiction and delivery clauses) which shall come into effect immediately upon completion of this Deed.
- 4.2 For the avoidance of doubt this Deed is entered into on the understanding that in the event of the Planning Permission being quashed as a result of any legal proceedings or pursuant to section 97 of the Act or expires before the Commencement of Development then this Deed shall absolutely determine and shall become null and void.

5. THE OWNER COVENANTS

- 5.1 The Owner covenants with the County Council to observe and perform the covenants as set out in Schedule 2.

6. THE COUNCIL AND THE COUNTY COUNCIL COVENANTS

- 6.1 The Council covenants with the Owner to observe and perform the covenants as set out in Part 1 of Schedule 3.
- 6.2 The County Council covenants with the Owner to observe and perform the covenants as set out in Part 2 of Schedule 3.

7. CONFIRMATION OF INTEREST

The Owner hereby warrants and confirms that apart from the parties hereto there are no other persons with a legal and/or equitable interest in the Application Site or any part thereof.

8. MISCELLANEOUS

- 8.1 The Developer shall pay to the Council on completion of this Deed the reasonable and proper legal costs of the Council incurred in the negotiation, preparation and execution of this Deed.
- 8.2 The Developer shall pay to the County Council on completion of this Deed:
 - 8.2.1 The sum of £ TBA in respect of the reasonable fees of the County Council incurred in the negotiation, preparation and execution of this Deed; and
 - 8.2.2 The sum of £300.00 in respect of the County Council's administration costs incurred in the preparation and monitoring of this Deed.
- 8.3 It is hereby agreed and declared that unless specifically agreed no provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 8.4 This Deed shall be registered as a local land charge by the Council.
- 8.5 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Council or the County Council under the terms of this Deed or the Owner is required to serve notice upon the Council or the County Council:-
 - 8.5.1 such agreement, approval or consent or expression of satisfaction shall be given in writing and shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction; and
 - 8.5.2 shall be given on behalf of the Council by the Head of Development Services and on behalf of the County Council by the Strategic Director of Communities or their nominee.
- 8.6 Following the performance and satisfaction of all the planning obligations contained in this Deed the Council shall upon written request from the Owner procure the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.
- 8.7 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.
- 8.8 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or expires prior to the Commencement of Development.
- 8.9 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Application Site nor for any such breach in relation to any part or parts of the Application Site after it shall have parted with such part or parts but without prejudice to liability for any subsisting breach arising prior to parting with such interest or part or parts.

8.10 Nothing in this Deed shall prohibit or limit the right to develop any part of the Application Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.

8.11 Nothing contained or implied in this Deed shall prejudice or otherwise affect the rights powers duties and obligations of the Council in the exercise of its functions either as Local Planning Authority or in any other capacity and that all rights powers duties and obligations under any public and private statutes byelaws and regulations may be as fully and effectually exercised as if the Council was not a party to this Deed.

9. COMMENCEMENT OF DEVELOPMENT

9.1 The Owner hereby agrees to notify the Council of the Commencement of Development within 7 days of the occurrence of the same provided that default in giving notice or confirming the date by exchange of correspondence shall not prevent the Commencement of Development or the operation of this Deed.

9.2 The Owner hereby agrees to notify the County Council (by the County Council's Infrastructure Planning Lead at Communities, Warwickshire County Council, Shire Hall Post Room, rear of Shire Hall, Northgate Street, Warwick, CV34 4RL) of the Commencement of Development within 7 days of occurrence of the same provided that default in giving notice or confirming the date by exchange of correspondence shall not prevent the Commencement of Development or the operation of this Deed.

10. NOTICES

10.1 Any notice consent or approval required to be given under this Deed shall be in writing and shall be delivered personally or sent by prepaid first class post or Recorded Delivery post.

10.2 The address for service of any such notice consent or approval as aforesaid shall be on the Council the County Council and the Owner at the addresses aforesaid or such other address for service as shall have been previously notified in writing by the Council the County Council and the Owner to all the other parties to this Deed save that payments of any monies to the Council shall be addressed specifically for the attention of the Head of Development Services and detailing the obligations to which the payment relates.

10.3 The address for service of any such notice consent or approval as aforesaid shall be on the Developer addressed to the Chief Legal Officer, Armitage 18 Solar Limited, 15 Diddenham Court, Lambwood Hill, Grazeley, Reading, Berkshire, RG7 1JQ.

10.4 The address for service of any such notice consent or approval as aforesaid shall be on the County Council addressed to the Infrastructure Planning Lead at Communities, Warwickshire County Council, Shire Hall Post Room, rear of Shire Hall, Northgate Street, Warwick, CV34 4RL

10.5 A notice consent or approval under this Deed shall be deemed to have been served as follows:-

10.5.1 if personally delivered at the time of delivery; and

10.5.2 at the expiration of 48 hours after the envelope containing the same was delivered into the custody of the postal authority within the United Kingdom.

10.6 In proving such service it shall be sufficient to prove that personal delivery was made or that the envelope containing such notice consent or approval was properly addressed and delivered into the custody of the postal authority in a prepaid first class or Recorded Delivery envelope (if appropriate) as the case may be.

11. WAIVER

No waiver (whether expressed or implied) by the Council 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 Council or County Council from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

12. CHANGE IN OWNERSHIP

Save for any disposal to a statutory undertaker/utility company the Owner agrees with the Council and the County Council to give the Council and the County Council written notice as soon as is reasonably practicable of any change in ownership of any of their interests in the Application Site occurring before all the planning obligations under this Deed have been completed and / or satisfied 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 Application Site or unit of occupation purchased by reference to a plan

13. INDEXATION

Unless otherwise specifically provided elsewhere in this Deed any Contribution referred to in this Deed shall be increased or decreased by an amount equivalent to the increase or the decrease in the Relevant Index in accordance with the provisions of Schedule 4.

14. INTEREST

If any payment due under Schedule 2 or Schedule 3 is paid late, Interest will be payable from the date payment is due to the date of payment.

15. VAT

All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.

16. **DISPUTE RESOLUTION**

16.1 If a dispute between the Parties persists beyond 40 Working Days and relates to any matter contained in this Deed (excluding any matter of law), the dispute may be referred to an Expert by any Party. The Expert will act as an expert and not as an arbitrator. His decision shall be final and binding on the Parties.

16.2 Each Party will bear its own costs and the Expert's costs will be paid as determined by him.

16.3 The Expert will be appointed subject to an express requirement that he must reach his decision and communicate it to the Parties within the minimum practical timescale allowing for the nature and complexity of the dispute, and in any event not more than 40 Working Days from the date of his appointment to act. His decision will be given in writing with reasons and in the absence of manifest error will be binding on the Parties.

16.4 The Expert will be required to give notice to each of the Parties, inviting each of them to submit to him within 10 Working Days written submissions and supporting material and will afford to the Parties an opportunity to make counter submissions within a further five Working Days in respect of any such submission and material.

16.5 The provisions of this Clause 16 will not affect the ability of any Party to apply for and be granted any of the following: declaratory relief, injunction, specific performance, payment of any sum, damages, any other means of enforcing this Deed and consequential and interim orders and relief.

17. **JURISDICTION**

This Deed is governed by and interpreted in accordance with the law of England.

18. **DELIVERY**

The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

19. **SECTION 73 VARIATION**

In the event that the Council shall at any time hereafter grant a planning permission pursuant to an application made under section 73 of the Act in respect of the conditions relating to the Planning Permission (and for no other purpose whatsoever) references in this Deed to the Application and the Development shall be deemed to include any such subsequent planning applications and planning permissions granted as aforesaid and this Deed shall henceforth take effect and be read and construed accordingly.

20. **EXECUTION**

This Deed may be executed in any number of counterparts each of which when executed and delivered shall be an original and all the counterparts together shall constitute one and the same instrument.

21. **HEALTH AND SAFETY**

The Owner covenants and undertakes to permit the Council's and the County Council's duly authorised representatives access to the Application Site following reasonable notice during the carrying out of the Development to inspect whether the provisions of this Deed are being observed and performed in accordance with this Deed provided that the access to enter the Application Site as provided for by this clause shall only be permitted on the basis that if reasonably requested by the Owner, the Council's and the County Council's duly authorised representatives shall undertake appropriate health and safety training to ensure compliance with relevant statutory requirements whilst on the Application Site and will undertake appropriate induction training as may be directed by the Owner before entering the Application Site.

SCHEDULE 1

All that freehold land registered at HM Land Registry with Title Number WYK392446 and which is known as land on the east side of Meriden Road, Fillongley, Warwickshire, as shown edged red on the Plan.

SCHEDULE 2

SKYLARK MITIGATION CONTRIBUTION

1. DEFINITIONS

"Commencement" means unless otherwise agreed in writing by the County Council, means the date on which any material operation (as defined in section 56(4) of the Act) forming part of the Development begins to be carried out other than operations consisting of site clearance, archaeological investigations, investigations for the purpose of assessing ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the erection of a site office, the creation of a site compound and the creation of temporary means of access and **"Commence"** **"Commenced"** and **"Commence Development"** shall be construed accordingly.

2. SKYLARK MITIGATION CONTRIBUTION

- 2.1 Prior to Commencement of the Development, pay to the County Council the Skylark Mitigation Contribution.
- 2.2 The County Council shall use the Skylark Mitigation Contribution to enhance and secure long term habitat management for skylarks within the county of Warwickshire.

SCHEDULE 3

COUNCIL'S, COUNTY COUNCIL'S COVENANTS

PART 1

COUNCIL'S COVENANTS

The Council covenants with the Owner as follows:-

1. DISCHARGE OF OBLIGATIONS

At the written request of the Owner the Council shall provide written confirmation of the discharge of the obligations contained in this Deed when satisfied that such obligations have been performed.

PART 2

COUNTY COUNCIL'S COVENANTS

The County Council covenants with the Owner as follows:-

1. REPAYMENT OF CONTRIBUTIONS

1.1 The County Council hereby covenants with the Owner to use the Skylark Mitigation Contribution received from the Owner under the terms of this Deed for the purposes specified in this Deed for which it is to be paid.

1.2 Subject to paragraphs 1.4 of this Schedule 3, Part 2, the County Council covenants with the Owner that it will pay to the Owner such amount of the Skylark Mitigation Contribution made by the Owner to the County Council under this Deed which has not been expended or committed to spending in accordance with the provisions of this Deed within ten years of the date of receipt by the County Council of such payment.

1.3 At the written request of the Owner, the County Council shall provide to the Owner such evidence, as the Owner shall reasonably require in order to confirm that the Skylark Mitigation Contribution paid by the Owner has been expended or committed in accordance with this Deed provided that such request shall be made in writing to the County Council's Infrastructure Delivery Manager, Communities, Shire Hall Post Room, rear of Shire Hall, Northgate Street, Warwick CV34 4RL.

1.4 For the purposes of paragraph 1.2 of this Schedule 3, Part 2, "the Owner" means the person or persons who were the original payer at the time that the Skylark Mitigation Contribution was made (or where a Skylark Mitigation Contribution is paid in instalments the person or persons who were the original payer at the time of payment of the relevant instalment) so that any refunds due under those paragraphs are made to the original payer.

2. DISCHARGE OF OBLIGATIONS

At the written request of the Owner the County Council shall provide written confirmation of the discharge of the obligations contained in this Deed when satisfied that such obligations have been performed.

SCHEDULE 4

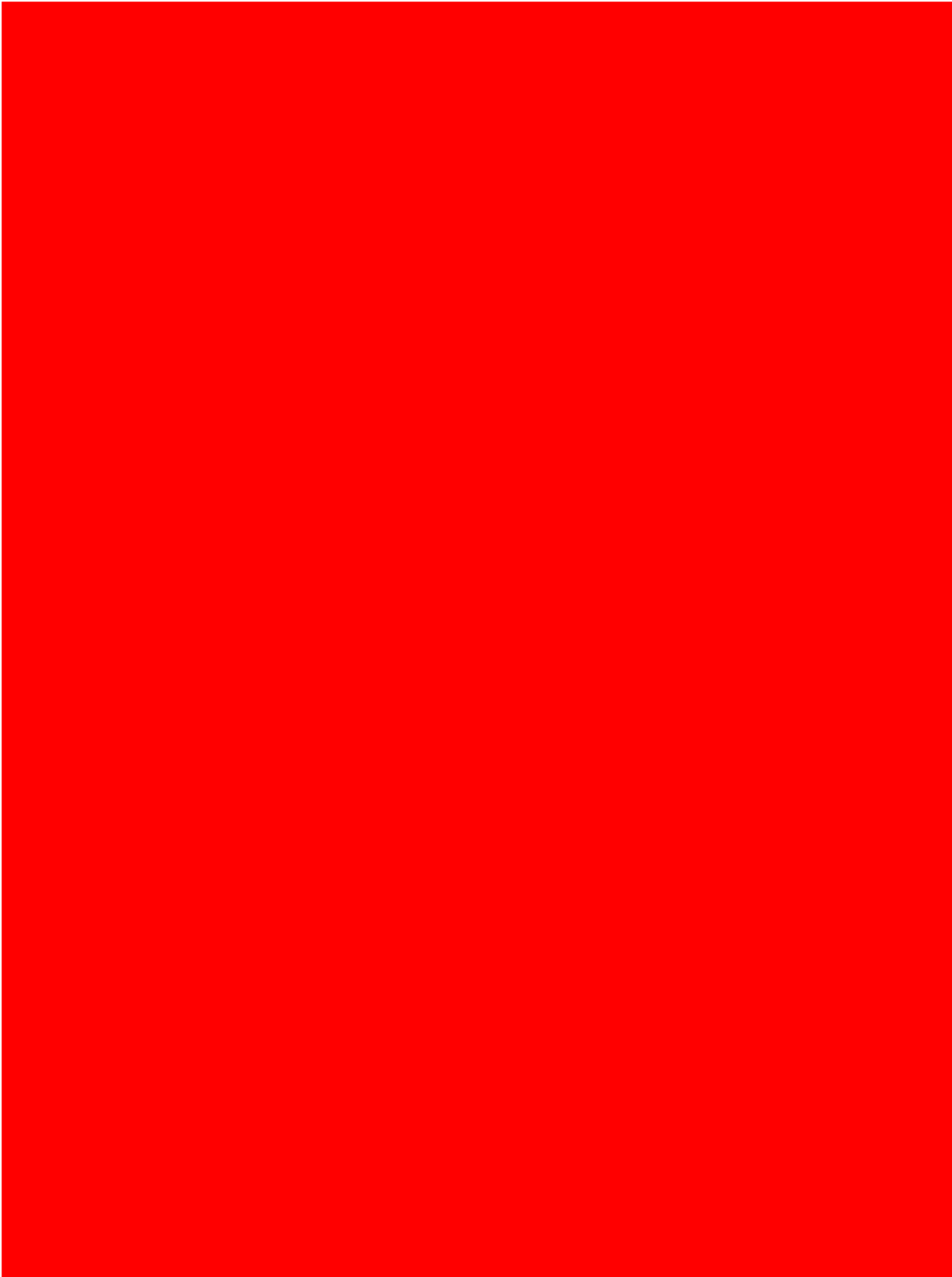
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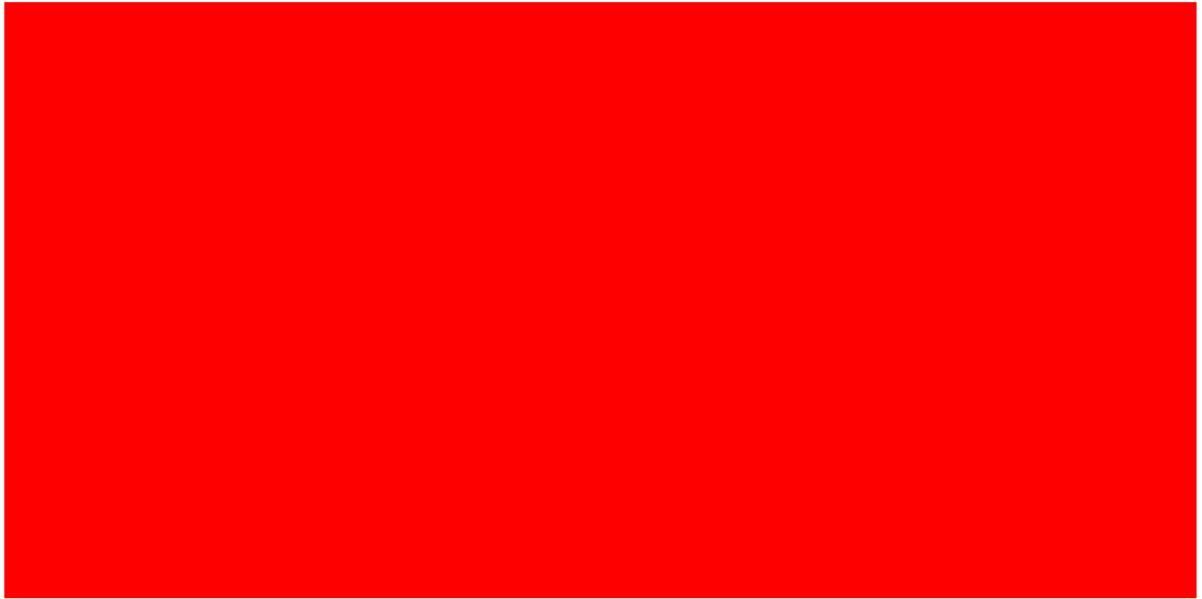
1. In this Schedule:-
 - 1.1 "**Relevant Index**" means the Department of Transport Local Government and the Regions Monthly Bulletin of Indices-Civil Engineering Formula 1990 Series to be weighed in the proportions Labour and Supervision 25% Plant and Road Vehicles 25% Aggregate 20% and Coated Macadam and Bitumen Products 20%;
 - 1.2 "**Base Index Date**" means the date of the grant of Planning Permission;
 - 1.3 "**Base Index Figure**" means the figure published in respect of the Relevant Index immediately prior to the Base Index Date.
 - 1.4 "**Final Index Date**" means the respective dates upon which the Skylark Mitigation Contribution is due or if earlier then the date they are paid.
 - 1.5 "**Final Index Figure**" means the figure published or otherwise agreed or determined in respect of the Relevant Index immediately prior to the Final Index Date.
2. The Skylark Mitigation Contribution shall be increased or decreased to such sum in pounds sterling as shall be equal to the sum calculated according to the following formula:-

Indexed Sum = $\frac{A \times C}{B}$

Where "A" equals the Contribution
"B" equals the Base Index Figure
"C" equals the Final Index Figure
3. If after the Base Index Date there should be any change in the Base Index Figure by reference to which changes in the Relevant Index are calculated, the figure taken to be shown in the Relevant Index after such change shall be the figure which would have been shown in the Relevant Index if the said Base Index Figure had been retained and the appropriate reconciliation shall be made.

IN WITNESS WHEREOF the parties hereto have executed this Deed on the day and year first before written





APPENDIX 1
S106 SITE EXTENT

