

DATED

2025

(1) WOLFDALÉ LEISURE LIMITED

TO

(2) HINCKLEY AND BOSWORTH BOROUGH COUNCIL

PLANNING OBLIGATION

BY WAY OF A UNILATERAL UNDERTAKING

Pursuant to Section 106 of the

Town and Country Planning Act 1990 (as amended)

relating to Ratby Cricket Club, Desford Lane, Ratby, Leicester, Leicestershire, LE6 0LE

Planning reference: 24/00980/FUL

THIS UNDERTAKING is given on the

day of

2025

FROM

- (1) **WOLFDALÉ LEISURE LIMITED** incorporated and registered in England and Wales (Company Registration Number 12998336) whose registered office is at 35-33 Leicester Road, Anstey, Leicester, LE7 7AT (**“the Owner”**)

TO

- (2) **HINCKLEY AND BOSWORTH BOROUGH COUNCIL** of Hinckley Hub, Rugby Road, Hinckley, Leicestershire, LE10 0FR (**“the Council”**)

BACKGROUND

- (A) For the purpose of the 1990 Act, the Council is the local planning authority for the area in which the Site is situated.
- (B) The Owner is the freehold owner of the Site with title absolute and registered at the Land Registry under title number LT359076.
- (C) The Owner submitted the Application to the Council for planning permission to carry out the Development in the manner set out in the plans, specifications and particulars forming part of the Application.
- (D) The Council having regard to the provisions of the Local Plan and to all other material considerations are minded that Planning Permission should be granted for the Development subject to the prior completion of this Undertaking.
- (E) The Owner has agreed to enter into this Undertaking with the intention that the Site shall be subject to the covenants and obligations entered into by it and with the intention that the obligations contained in this Undertaking shall create planning obligations and may be enforced by the Council against the Owner and their successors in title.
- (F) The Council is satisfied that the provisions of this Undertaking and the planning obligations contained herein comply with their policies in relation to Section 106 of the 1990 Act are:
- (i) necessary to make the Development acceptable in planning terms;

- (ii) directly related to the Development; and
- (iii) fairly and reasonably related in scale and kind to the Development

IT IS HEREBY AGREED as follows:

OPERATIVE PART

1. INTERPRETATION AND DEFINITIONS

- 1.1. In this Undertaking the following expressions shall unless the context otherwise requires have the following meanings:

1990 Act means the Town and Country Planning Act 1990 as amended;

Application means the application for planning permission for the Development which was validated by the Council on 1 November 2024 and allocated reference 24/00980/FUL for the change of use of existing north sports pavilion (F2 Local community) to educational facility (F1 Learning and non-residential institutions) including the external alterations, the addition of block paved hardstanding and a new access gate to the north sports pavilion and the addition of an external staircase and a lift to the south sports pavilion at the Site;

Approved Drawings means the following technical and working drawings appended to this Undertaking at Appendix 1 in respect of the Southern Pavilion Works approved by the Council:

- 9096-HSP-XX-DR-1300 Rev PL02
- 9096-HSP-ZZ-DR-1003 Rev PL02
- 9096-HSP-FF-DR-1001 Rev PL02
- 9096-HSP-GF-DR-1000 Rev PL02

and any amendments and revisions agreed thereto

between the Owner and the Council from time to time;

Commencement of Development	means the date on which any material operation (as defined by Section 56(4) of the 1990 Act) forming part of the Development begins to be carried out other than (for the purpose of this Undertaking and for no other purpose) operations consisting of site clearance, demolition work, archaeological or ecological investigations, investigations for the purpose of assessing ground conditions and contamination, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and the words “ Commence ” “ Commenced ” and “ Commencement ” shall be construed accordingly;
Development	means the development of the Site as set out in the Application and authorised by the Planning Permission;
Monitoring Fee	means the sum of £419.00 (FOUR HUNDRED AND NINETEEN POUNDS) to be paid by the Owner to the Council to cover the Council’s costs in monitoring compliance with this Undertaking;
Plan	means the plan attached to this Undertaking;
Planning Permission	means the planning permission for the Development pursuant to the Application;
Site	means the land known as Ratby Cricket Club, Desford Lane, Ratby, Leicester, Leicestershire, LE6 0LE which forms the land registered at HM Land Registry under title number LT359076 and is shown for identification purposes only edged red on the Plan;

Southern Pavilion means the sports pavilion situated in the south of the Site shown for identification purposes only edged green on the Plan;

Southern Pavilion Works means the works to the Southern Pavilion detailed at paragraph 1.a.i.2 of the Schedule necessitated by the Development of the Site and as shown on the Approved Drawings;

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

- 1.2. Clause and schedule headings shall not affect the interpretation of this Undertaking.
- 1.3. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4. A reference to a company shall include any company, corporation or other body corporate, whether and however incorporated or established.
- 1.5. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7. 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.
- 1.8. References to clauses and Schedules are the clauses and Schedules of this Undertaking.
- 1.9. 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.
- 1.10. References to the Council and the Owner shall include the successors in title and assigns of each party including any local authority successor.
- 1.11. Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

2. LEGAL BASIS

- 2.1. This Undertaking is made pursuant to section 106 of the 1990 Act, section 1 of the Localism Act 2011, section 111 of the Local Government Act 1972 and all other enabling powers.
- 2.2. The obligations contained in this Undertaking are planning obligations for the purposes of section 106 of the 1990 Act and are entered into by the Owner with the intention that they bind the interests held by the Owner in the Site and their respective successors and assigns.
- 2.3. The obligations contained in this Undertaking are enforceable by the Council in accordance with section 106 of the 1990 Act.
- 2.4. This Undertaking creates planning obligations for the purposes of Section 106 of the 1990 Act and such obligations and covenants hereinafter contained shall be enforceable by the Council acting under the powers contained in Section 106 of the 1990 Act. To the extent that any of the obligations and covenants contained in this Undertaking are not planning obligations for the purposes of Section 106 of the 1990 Act they are entered into and are enforceable pursuant to Section 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011 and all other enabling powers.

3. CONDITIONALITY

- 3.1. This Undertaking takes effect immediately apart from the planning obligations in the Schedule to this Undertaking which shall not become effective until the Planning Permission has been granted.
- 3.2. This Undertaking shall cease to have effect (insofar only as it has not already been complied with) if:
 - 3.2.1. the Planning Permission shall be quashed, revoked or otherwise withdrawn (without the consent of the Owner); or
 - 3.2.2. it is modified by any statutory procedure or expires prior to the Commencement of the Development.
- 3.3. Insofar as any clause or clauses of this Undertaking are held (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 Undertaking.

4. COVENANTS TO THE COUNCIL

The Owner covenants with the Council to observe and perform the covenants, restrictions and obligations contained in this Undertaking including the Schedule hereto.

5. RELEASE

- 5.1. No person shall be bound by any obligations, rights and duties contained in this Undertaking and/or be liable for any breach of a covenant and/or obligation contained in this Undertaking after parting with all of its interest in the Site or the part in respect of which such obligation relates or such breach occurs except in respect of any breach subsisting prior to parting with such interest.
- 5.2. The obligations, rights and duties contained in this Undertaking shall not be binding on any statutory undertaker which has acquired part of the Site for purposes connected to their statutory functions necessary for the Development provided always that such statutory undertaker shall not themselves carry out any part of the Development.
- 5.3. The obligations in this Undertaking shall not be enforceable against or by:
 - (a) statutory undertakers whose only interest in the Site consists of apparatus owned pursuant to their statutory undertaking;
 - (b) a tenant or other provider of photovoltaic panels;
 - (c) any person company or authority which acquires rights over or becomes proprietor of any land on the Site for the purposes of providing services or facilities in connection with the Development and their successors in title.

6. LOCAL LAND CHARGE

- 6.1. This Undertaking is a local land charge and will be registered as such by the Council

- 6.2. If this Undertaking determines and ceases to have effect pursuant to clause 3.2, the Owner may request that the Council shall promptly upon written demand procure that any entry referring to this Undertaking in the Register of Local Land Charges shall be removed forthwith.
- 6.3. Following the performance and satisfaction of all the obligations contained in this Undertaking to the Council's satisfaction, the Council will upon the written request of the Owner forthwith effect the cancellation of all entries made in the register of Local Land Charges in respect of this Undertaking.

7. OWNERSHIP

- 7.1. The Owner warrants that no person other than the Owner has any legal or equitable interest in the Site other than that which has been detailed in this Undertaking.
- 7.2. The Owner agrees to give the Council written notice within twenty one (21) days of any change in ownership of any of its interests in the Site occurring before all the obligations under this Undertaking have been discharged, such notice to give details of the transferee's full name and registered office (if a company, or usual address if not) together with (unless the purchase relates to the entirety of the Site) the area of the Site purchased by reference to a plan.

8. NO FETTER OF DISCRETION

Nothing (contained or implied) in this Undertaking shall fetter or restrict the Council's statutory rights, powers, discretions and responsibilities.

9. WAIVER

No failure or delay by the Council to exercise any right or remedy provided under this Undertaking or by law shall constitute a waiver of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

10. AGREEMENTS AND DECLARATIONS

The parties agree that:

- 10.1. nothing in this Undertaking constitutes a planning permission or an obligation to grant planning permission.
- 10.2. subject to the provision to this clause, in the event that any new planning permission(s) are granted by the Council after the date of this Undertaking in relation to an application to remove and/or vary condition(s) attached to the Planning Permission pursuant to Section 73 of the 1990 Act ("Section 73 Consent"):
 - 10.2.1. the obligations in this Undertaking (including the Schedule(s) hereto) shall relate to and bind any subsequent Section 73 Consent and the Site without the automatic need to enter into any subsequent deed of variation/supplemental deed to this Undertaking or new obligation pursuant to Section 106 of the 1990 Act; and
 - 10.2.2. the definitions of Application, Planning Permission and Development in this Undertaking shall be construed to include reference to (respectively) any application(s) under Section 73 of the 1990 Act, any Section 73 Consent granted thereunder, and any development permitted by such subsequent Section 73 Consent;
 - 10.2.3. any Section 73 Consent shall include a condition/informative substantially in the following form:

"The obligations under the planning obligation by way of a Unilateral Undertaking dated [] pursuant to the previous application 24/00980/FUL will be equally applied to and satisfy the requirements necessitated under this application []"; and
 - 10.2.4. it is hereby agreed and declared by the parties hereto that nothing in this clause shall fetter the discretion of the Council in determining any applications under Section 73 of the 1990 Act and the appropriate planning obligations required in connection with the determination of the same but in the event that the Council is satisfied that no revised planning obligations are required as a result of such amendment references to Planning Permission in this Undertaking shall be to the new planning permission granted pursuant to Section 73 of the 1990 Act and this Undertaking shall apply to and remain in full force in respect of that new planning permission

without the need for a further agreement to be entered into pursuant to Section 106 of the 1990 Act.

11. NOTICES

11.1. Any notice required by this Undertaking shall be in writing and addressed to the parties hereto as follows:

11.1.1. in the case of the Council, to the address of the Council given herein marked for the attention of [the Planning Department] of the Council;

11.1.2. in the case of the Owner, to the address identified herein

or to such other addresses from time to time as shall be notified to the parties.

11.2. Any notice may be given by one of the following means and shall be deemed to be served as described unless the actual time of receipt is proved:

- (a) by first class post deemed served two Working Days after posting;
- (b) by hand deemed served on signature of a delivery receipt provided that if delivery occurs before 9.00am on a Working Day, the notice will be deemed to have been received at 9.00am on that day, and if delivery occurs after 5.00pm on a Working Day, or on a day which is not a Working Day, the notice will be deemed to have been received at 9.00am on the next Working Day;
- (c) through a document exchange deemed served on the first Working Day after the day on which it would normally be available for collection by the addressee.

13. THIRD PARTY RIGHTS

Save as provided in respect of the successors in title to the Site or any successor to the relevant statutory functions of the Council, it is agreed that nothing in this Undertaking shall be construed as expressly providing a right for any third party within the meaning of the Contract (Rights of Third Parties) Act 1999 and nothing in this Undertaking is intended to confer on any third party (whether referred to herein by name class description or otherwise) any benefit or any right to enforce any provision of this Undertaking.

14. DISPUTES

- 14.1. If in connection with this Undertaking there shall arise a claim or dispute or difference (including unreasonable delay in providing approval, authority, consent or direction or some other decision or payment required by this Undertaking) the relevant parties shall first attempt to negotiate a solution.
- 14.2. If matters remain unsolved (as evidenced by the service of a written notice by one party on the other(s)) the parties shall refer the matter as follows:
- 14.2.1. where the difference or dispute relates to the construction or interpretation of this Undertaking, be referred to the determination (as an expert and not as an arbitrator) of an independent leading planning counsel agreed upon by the parties in dispute but in default of such agreement appointed by the President of the Law Society of England and Wales on the application of any of the parties in dispute;
- 14.2.2. where the difference or dispute relates to the carrying out of works or construction be referred to the determination (as expert and not as an arbitrator) of an independent Chartered Surveyor or Civil Engineer as appropriate but in default of that agreement appointed by the President of the Royal Institution of Chartered Surveyors or the Institution of Civil Engineers as appropriate on the application of any of the parties in dispute PROVIDED that where a contract for the relevant works has been let and provides that the dispute or difference under it shall be referred to arbitration or the court any such dispute or difference which may arise between the parties in connection with those works shall be determined likewise.
- 14.3. If the parties in dispute shall fail to agree on the nature of the difference or dispute between them then any of them may apply to the President of the Law Society to appoint an independent solicitor to decide (as expert and not as arbitrator) in relation to any such matter which of Clauses 14.2.1 or 14.2.2 hereto is applicable.
- 14.4. Except as aforesaid any expert appointed pursuant to Clauses 14.2.1 or 14.2.2 or any other person shall:
- (a) on their appointment serve written notice thereof on the parties in dispute;

- (b) consider any written representations by or on behalf of those parties which are received by them within twenty Working Days of such service and immediately forward a copy of the written representation of one party to the other party;
- (c) allow both parties to the dispute an opportunity of commenting in writing on the other party's representations within twenty Working Days of receipt by the other party thereof;
- (d) have an unfettered discretion to determine the reference to them;
- (e) serve notice of their determination as soon as they have made it;
- (f) give full and clear reasons for their decision;
- (g) be paid their proper fee and expenses in connection with such reference by the parties in dispute in equal shares or in such shares as they may determine and their determination shall be final and binding on the parties in dispute (save in the case of manifest error) PROVIDED THAT if any such expert shall die become insolvent or of unsound mind or if either of the parties in dispute shall serve on them written notice in their opinion they have unreasonably delayed making their determination they shall be ipso facto discharged and be entitled only to their reasonable expenses prior to such discharge and another person shall be appointed in their place as such expert.

14.5. The provisions of this clause shall not affect the ability of the Council 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 Undertaking and consequential and interim orders and relief.

15. DELIVERY

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

16. GOVERNING LAW

This Undertaking shall be governed by and interpreted in accordance with the law of England.

SCHEDULE
COVENANTS BY THE OWNER TO THE COUNCIL

1. The Owner covenants with the Council that it shall complete each of the Southern Pavilion Works detailed at paragraph 2 of this Schedule within four months of the date of this Undertaking.
2. The Southern Pavilion Works to be completed are as follows:
 - Toilets
 - Flooring
 - Showers
 - Painting
 - Heating/air-conditioning
 - Emergency fire escape
 - Lift

IN WITNESS whereof the parties hereto have duly executed this Undertaking as a deed on the day and year first before written.

EXECUTED as a **DEED** by)

WOLFDALÉ LEISURE LIMITED)

acting by a director:)

.....
Director

In the presence of:

Signature of witness:

Name (in BLOCK CAPITALS):

Address:

.....

APPENDIX 1
APPROVED DRAWINGS