

DATE: 3 December 2019

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**UNILATERAL UNDERTAKING MADE UNDER SECTION 106 TOWN AND COUNTRY  
PLANNING ACT 1990 RELATING TO LAND ADJACENT TO SOUTH AYLESFORD RETAIL  
PARK AYLESFORD KENT ME20 7TP**

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From

**HER MAJESTY THE QUEEN**

and

**THE CROWN ESTATE COMMISSIONERS**  
(as Commissioners)

To

**TONBRIDGE AND MALLING BOROUGH COUNCIL**  
(as Council)

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IS UNDERTAKING is made the 3 day of December

OM:

**HER MAJESTY THE QUEEN;**

**THE CROWN ESTATE COMMISSIONERS** on behalf of Her Majesty acting in exercise of the powers conferred by The Crown Estate Act 1961 (hereinafter referred to as the "**Commissioners**") which expression shall include the successors in title of the Land hereinafter described or any part thereof) whose address is at 1 St James's Market London SW1Y 4AH.

**TONBRIDGE AND MALLING BOROUGH COUNCIL** (the "**Council**") whose address is at Gibson Building Gibson Drive Kings Hill West Malling Kent ME19 4LZ.

CITALS

The Council is the Local Planning Authority for the purposes of the Planning Act for the area in which the Site is situated.

The Commissioners are the freehold owner of the Land, which forms part of the Site.

The Commissioners submitted the Application to the Council and the Council has resolved to grant the Permission subject to completion of this Undertaking.

The Commissioners have agreed that the Development shall be carried out only in accordance with the obligations set out in this Undertaking.

#### **DEFINITIONS AND INTERPRETATION**

In this Undertaking the following words and phrases shall have the following meanings:

**"Application"** means the application for planning permission for the Development submitted by or on behalf of the Commissioners to the Council to which the Council has allocated reference number TM/19/00979/FL;

**"Commissioners"** this includes any other person who takes over managing the Crown Estate;

**"Deed of Dedication"** means a Deed to be entered into between the Commissioners and the Highways Authority in substantially the same form as that annexed to this Undertaking to dedicate the Land as highway maintainable at public expense pursuant to the Highways Act;

**"Development"** means the development of the Site to allow for the erection of new retail units, a 'pod' building for retail and café restaurant purposes, a new area of public realm along with access, car parking, servicing facilities, landscaping and associated works;

**"First Plan"** means the plan annexed to this Undertaking and marked Plan 1;

**"Highways Act"** means the Highways Act 1980 as amended;

**"Highways Authority"** means Kent County Council for the purposes of the Highways Act;



clearance, works of archaeological or ground investigation or remediation, the erection of fencing or hoardings, the provision of security measures or lighting, the erection of temporary buildings or structures associated with the Development, the laying, removal or diversion of services, the provision of construction compounds, the temporary display of site notices or advertisements or piling works (and 'Implement' and 'Implemented' shall be construed accordingly);

“**Land**” means that part of the land known as South Aylesford Retail Park, Aylesford Kent ME20 7TP, shown edged blue on the First Plan and for which the Commissioners are registered as proprietor with title absolute at the Land Registry under title number K649835;

“**Planning Act**” means the Town and Country Planning Act 1990 as amended;

“**Planning Permission**” means the planning permission to be granted by the Council for the Development;

“**Site**” means the land that is the subject of the Planning Permission and more particularly delineated edged red on the Second Plan.

References to any Party to this Undertaking shall include the successors in title to that Party and to any person deriving title through or under that party and in the case of the Council and the Highways Authority to the body or bodies (as appropriate) having statutory responsibility for the relevant function in replacement for the Council or the Highways Authority.

In the absence of any contrary provision any reference to a statute shall include any statutory extension modification or re-enactment of it and any statutory instrument direction order regulation or byelaw made or issued under the statute or deriving validity from it.

Words importing the masculine gender shall include the feminine gender and vice versa.

Words importing persons include companies and corporations and vice versa.

Unless the context otherwise requires words importing the singular shall include the plural and vice versa.

Headings are for ease of reference only and shall not be construed as part of this Undertaking.

Reference to any recital clause schedule or paragraph (or any part of them) shall (unless the context otherwise requires) be reference to a recital clause schedule or paragraph (or any part of them) in this Undertaking.

Wherever there is more than one person named as a party or where more than one Party undertakes an obligation all their obligations shall be enforceable against all of them jointly and/or against each individually.

Any covenant by a party to this Undertaking not to do an act or thing shall be deemed to include an obligation not to permit or knowingly suffer such act or thing to be done by any other person.

## **STATUTORY PROVISIONS**

This Undertaking is made pursuant to Section 106 of the Planning Act and to all other enabling powers to the intent that this Undertaking shall bind the parties and their heirs and successors assigns and persons claiming under or through them to the Land

### **3. CONDITIONALITY**

3.1 The obligations in this Undertaking are unless otherwise specified conditional upon:

3.1.1 The grant of the Planning Permission by the Council; and

3.1.2 Implementation of the Planning Permission.

### **4. COVENANTS**

#### **4.1 The Commissioners' Covenants**

The Commissioners covenant to use all reasonable endeavours to enter into a Deed of Dedication with the Highways Authority prior to Implementation.

### **5. DECLARATIONS AND AGREEMENTS**

#### **5.1 Liability for Breach**

No person shall be liable for a breach of a covenant contained in this Undertaking after they have irrevocably parted with all their interest in the Land or in the part of the Land in respect of which such breach occurs pursuant to a disposal at open market value to an unconnected third party but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest.

#### **5.2 Revocation or Modification**

This Undertaking shall determine and cease to have any further effect if the Planning Permission is revoked or modified by the Council pursuant to the Planning Act without the written consent of the Commissioners.

#### **5.3 Notices**

Any notice consent or approval to be given under this Undertaking shall be in writing and shall be deemed to be served if delivered personally or sent by pre-paid first class recorded delivery or registered post to the address of the relevant party as described above or such other address as shall have been notified in writing to the party giving the notice consent or approval.

#### **5.4 Approvals**

Where any approval consent directions action or authority is required to be given by any of the Parties hereto such approval consent directions action or authority shall (unless otherwise stated) not be unreasonably delayed or withheld and shall only be effective if given in writing signed by or on behalf of the relevant party and given for the purposes of this Undertaking.

#### **5.5 Severance**

If any provision in this Undertaking shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions of this Undertaking shall not in any way be deemed thereby to be affected or impaired.

#### **5.6 Waiver by the Council or Highways Authority**

No waiver (whether express or implied) by the Council or Highways Authority of any breach or default by another party in performing or observing any of the terms and conditions of this Undertaking shall constitute a continuing waiver and no such waiver shall prevent the Council or Highways Authority from enforcing any of the said terms or conditions which they are



entitled to enforce or from acting upon any subsequent breach or default in respect thereto by that party.

**5.7 Registration as a Local Land Charge**

This Undertaking is a Local Land Charge and shall be registered as such.

**5.8 No Fettering of Discretion**

This Undertaking shall not fetter prejudice or affect the exercise of any statutory or regulatory power duty or discretion of the Council.

**5.9 Variation**

No variation or modification of this Undertaking shall be valid unless made by Undertaking and executed by all the Parties or their respective successors.

**5.10 Contracts (Rights of Third Parties) Act 1999**

This Undertaking does not nor is intended to confer any rights or benefit on a third party pursuant to the Contracts (Rights of Third Parties) Act 1999.

**5.11 Planning Permission**

Nothing in this Undertaking is or amounts to or shall be construed as a planning permission or approval.

**5.12 Governing Law**

This Undertaking 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.

**6. FUTURE GRANT OF PLANNING PERMISSION**

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

**ANNEX 1**  
**DEED OF DEDICATION**

DATED 2019

HER MAJESTY THE QUEEN; (1)  
THE CROWN ESTATE COMMISSIONERS (2)  
and

THE KENT COUNTY COUNCIL (3)

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DEED OF DEDICATION

the landowner for the dedication of land as highway maintainable at the public expense

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**Land adjacent to South Aylesford Retail Park Aylesford Kent ME20 7TP**

: CST/KEN001.095021  
Revision Date: 21.11.19

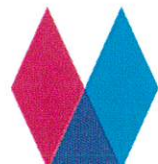
Invicta Law Ltd, Priory Gate  
Union Street, Maidstone, ME14 1PT

133544 Maidstone

3000 416840

info@invicta.law

www.invicta.law





THIS DEED is made the                      day of                      Two thousand and Nineteen

by

- (1) **HER MAJESTY THE QUEEN;**
- (2) **THE CROWN ESTATE COMMISSIONERS** on behalf of Her Majesty acting in exercise of the powers conferred by The Crown Estate Act 1961 of 1 St James's Market, London SW1Y 4AH ("the Commissioners")

to

- (3) **THE KENT COUNTY COUNCIL** of Sessions House County Hall Maidstone Kent ME14 1XQ ("the Highway Authority")

#### WHEREAS

- (1) The Commissioners are the registered proprietor of the Land.
- (2) The Commissioners have agreed to give up and dedicate the Land to the public as highway subject to the Highway Authority agreeing to undertake the maintenance of the Land under section 38(3) and 38(6) of the Highways Act so that on the execution of this Deed the Land will become highway maintainable at public expense under the Highways Act.

#### NOW IT IS STATED as follows:

##### 1. Interpretation

"Commissioners"	this includes any other person who takes over managing The Crown Estate
"Highways Act"	the Highways Act 1980 as amended
"the Land"	That part of the freehold land known as South Aylesford Retail Park, Aylesford Kent registered at the Land Registry with absolute title under Title Number K649835 and shown coloured pink on drawing number [    ]

##### 2. Dedication

- 2.1 The Commissioners hereby give up and dedicate the Land to the public with the intent that from the date of this Deed the Land shall be added to and form part of the public highway.
- 2.2 The Highway Authority and the Commissioners attest that nothing in this Agreement shall be construed as affecting or interfering with the ownership of the sub-soil of the Land (except so much of the sub-soil of the Land as is required to support the highway).

**3. Highway maintainable at public expense**

From the date of completion of this Deed the Highway Authority shall pursuant to sections 38(3) and 38(6) of the Highways Act 1980 undertake the maintenance of the Land as a highway maintainable at the public expense.

**4. Local Land Charge**

This Deed is a local land charge under the Local Land Charges Act 1975 and shall be registered as such by the Highways Authority at Tonbridge and Malling Borough Council Local Land Charges Department.

**IN WITNESS** whereof the parties have executed this instrument as a Deed the day and year first before written

THE OFFICIAL SEAL of )

THE CROWN ESTATE COMMISSIONERS )

placed here was confirmed as authentic by: )

**Signature block (under hand)**

Signed by

.....

[signature]

.....

[print name of signatory]

for and on behalf of The Crown Estate Commissioners

THE COMMON SEAL of THE )

KENT COUNTY COUNCIL )

was hereunto affixed to this )

Deed in the presence of:- )

.....

Authorised Signatory

.....

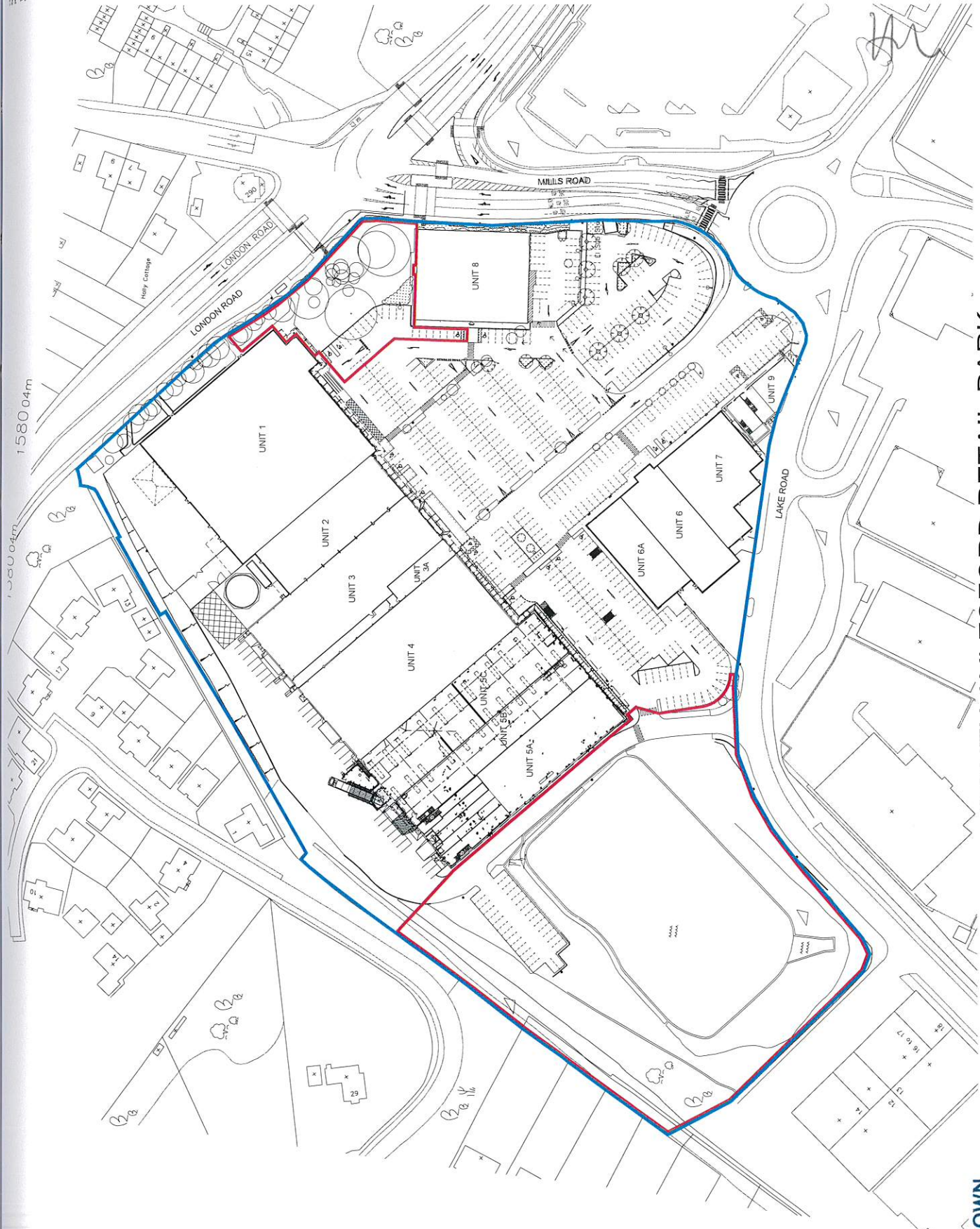
Member of The Kent County Council

**ANNEX 2**  
**PLAN 1**



1:500 04m  
 1:580 04m  
 CHAINAGE SURVEY NO. 8427898  
 DATE: 15/12/19  
 DRAWN BY: ACJ  
 CHECKED BY: JAC  
 APPROVED BY: JAC  
 PROJECT NO: 19/0118

LAND OWNERSHIP BOUNDARY  
 SITE AREA - 5.31 HECTARES  
 APPLICATION SITE AREA  
 AREAS SUBJECT TO INTERNAL SURVEY



MountfordPigott  
 SOUTH AYLESFORD RETAIL PARK  
 EXISTING LOCATION PLAN  
 1:290-X10-D  
 1:625 @ A1, 1:1250 @ A3, 16.11.19

SOUTH AYLESFORD RETAIL PARK

IN WITNESS whereof this Undertaking has been duly executed as a Deed by the parties the day and year first before written

Executed as an UNDERTAKING by )  
THE OFFICIAL SEAL of )  
THE CROWN ESTATE COMMISSIONERS )  
placed here was confirmed as authentic by: )

~~Signature block (under hand)~~

Signed by



[signature]

**HANNAH MILNE**  
Authorised by the Crown Estate Commissioners

.....  
~~[print name of signatory]~~

~~for and on behalf of The Crown Estate Commissioners~~