

UNILATERAL UNDERTAKING
PURSUANT TO SECTION 106 OF THE TOWN AND
COUNTRY PLANNING ACT 1990 (AS AMENDED)

This DEED is made the 25th day of January 2019

And given by:

- (1) D J Huxley Farms Ltd whose registered office is Bank Farm, Bronington, Whitchurch, Shropshire, SY13 2JN (the "Company");

to
- (2) Wrexham County Borough Council, 16 Lord Street, Wrexham, LL11 1LG (the "Council").

WHEREAS

- (1) Landowner is the owner in fee simple in possession of the Site with title absolute registered at HM Land Registry under title number CYM685614.
- (2) The Council is the Local Planning Authority for the area in which the Site is situated.
- (3) The Landowner and the Council consider that certain obligations should be entered into as of the date of this Undertaking subject to the conditions set out in this Undertaking in respect of the Site in order to mitigate the impact of the Development.

THIS DEED is made in pursuance of Section 106 of the Act and contains planning obligations and is a planning obligation for the purposes of that section and WITNESSES as follows

1. Definitions

- 1.1 "The Act" means the Town and Country Planning Act 1990 (as amended) or any re-enactment or modification thereof for the time being in force.
- 1.2 "The Great Crested Newt mitigation area" means the area described established and maintained under the provisions of Schedule 2 and shown on Plan 1 and Plan 2 edged in yellow.
- 1.3 "The Site" means all the land at Muslford Lane, Musford, Sarn as referred to in Schedule 1 and shown on Plan 3, land edged in blue.
- 1.4 "D J Huxley Farms Ltd" means the Landowner's site at Mulsford Lane, Mulsford, Sarn as referred to in Schedule 1.

- 1.5 "The Development" means the development within the Site to which the Planning Application relates as referred to on Plan 3, land edged in red.
- 1.6 "Implementation" means in the case of implementation of the Planning Permission the carrying out of any of the material operations listed in Section 56 of the Act pursuant to the Planning Permission provided that for the purposes of determining whether or not a material operation has been carried out there shall be disregarded site clearance, demolition, site surveys and investigations and **Implement** and **Implemented** shall be construed accordingly.
- 1.7 "The Obligation" means the obligation specified in Schedule 2 hereto.
- 1.8 "The Planning Application" means the application given the reference number: P/2017/0799 by the Council.
- 1.9 "The Planning Permission" means Appeal decision (Appeal reference: APP/H6955/A/18/3208119).
- 1.10 "The Site Commissioning Date" means the date at which the whole of the Site becomes fully operational.

2. Interpretations

- 2.1 Words importing one gender shall be construed as importing any other gender.
- 2.2 Words importing the singular shall be construed as importing the plural and vice versa.
- 2.3 The clause and paragraph headings in this Undertaking and the Schedules do not form part of the Undertaking and shall not be taken into account in its construction or interpretation.
- 2.4 References to any party to this Undertaking include its successors-in-title and permitted assignees and in the case of any local authority shall also include any successor in function.
- 2.5 All payments in accordance with the terms of this Undertaking shall be exclusive of any VAT payable in respect thereof.

3. Legal Effect

- 3.1 In this Undertaking unless the context otherwise requires words defined in Clause 1 have meanings given to them by that clause and this Undertaking shall be interpreted in accordance with the provisions of Clause 1.
- 3.2 This Undertaking is a voluntary Unilateral Undertaking to the intent that subject to clauses 3.8, 3.9, 3.10 and 5.1 it shall bind the Landowner and their successors in title to each and every part of the Site and their assignees each to the extent of their interests in the Site.

- 3.3 Nothing in this Undertaking constitutes any commitment by the Council to grant the Planning Permission or approval, nor shall anything in this Undertaking act as any fetter or constraint on the exercise by the Council of any of its powers arising by statute or otherwise.
- 3.4 This Undertaking is a deed.
- 3.5 This Undertaking is a local land charge and shall be registered as such.
- 3.6 The covenants and obligations within this Undertaking are planning obligations for the purposes of Section 106 of the Act and are enforceable by the Council as Local Planning Authority.
- 3.7 No person shall be liable for breach of a covenant contained in this Undertaking after he shall have parted with all interest in the Site, or in the part of it in respect of which such breach occurs but without prejudice to liability for any subsisting breach of covenants prior to parting with such interest.
- 3.8 The provisions of this Undertaking shall come into effect immediately upon its completion. Save for clause 7 which shall only have effect on the later of the following:
- 3.8.1 the date six (6) weeks after the grant of the Planning Permission in circumstances in which no legal proceedings shall have been issued by any person to challenge the validity of the Planning Permission; and
- 3.8.2 the date on which the Company shall begin the Development by an Implementation of the Planning Permission.
- 3.9 If before the expiry of six (6) weeks after the grant of the Planning Permission any person shall issue legal proceedings to challenge the validity of the Planning Permission then the period of six (6) weeks referred to in clause 3.8 shall be extended until a date seven days after the final determination of such legal proceedings (including for the avoidance of doubt the expiry of the period allowed for any appeal) and any necessary determination or re-determination by the Council as appropriate (when the preceding provision shall apply again).
- 3.10 If on the expiry of the period referred to in clause 3.9 the Planning Permission is not extant then this Unilateral Undertaking shall absolutely determine and become null and void.

4. Termination

- 4.1 If the Planning Permission to be granted by the Planning Inspectorate or the Planning Application is quashed as a result of legal proceedings, is revoked or expires by effluxion of time or is modified without the consent of the Landowner then this Undertaking shall cease to have effect

providing always that at the time of the said revocation no development has begun within the meaning of Section 56 of the Act.

- 4.2 If at any stage after Implementation all of the structures comprised in the Development are removed from the Site this Undertaking shall determine with immediate effect and the Landowner's obligations shall cease.

5. Undertakings and declarations

- 5.1 Nothing in this Undertaking shall be construed as prohibiting or limiting the development of the whole or any part of the Site in accordance with any planning permission other than the Planning Permission granted by the Council.
- 5.2 If any provision of this Undertaking shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions hereof shall not in any way be deemed to be thereby affected or impaired.
- 5.3 Once all the obligations of the Landowner under this Undertaking have been performed or otherwise discharged all entries made in the register of local land charges in respect of this Undertaking will be forthwith marked accordingly.

6. Governing Law, Jurisdiction and Dispute Resolution

- 6.1 Any dispute arising from the terms of this Undertaking shall be referred to a single arbitrator (acting as an expert and not as an arbitrator) under the terms of the Arbitration Act 1996; such arbitrator shall be appointed by agreement between the parties within one month of either party first communicating in writing the need for an arbitrator to the other or in default of agreement by the President for the time being of the Royal Institute of Chartered Surveyors.
- 6.2 This Agreement and all matters (including, without limitation, any contractual or non-contractual obligation) arising from or connected with it shall be governed by and construed in accordance with English law.
- 6.3 The parties hereto hereby submit to the exclusive jurisdiction of the English courts.

7. Covenants

The Landowner undertakes to the Council as follows:

- 7.1 To discharge the Obligations set out in Schedule 2 of this Undertaking.
- 7.2 Not to part with its proposed interest in the Site unless the requirements of this Undertaking have been implemented in full or these requirements have been legally transferred to another party.

8. Third Parties

- 8.1 This Undertaking is not intended nor shall it purport to confer on any third party any right, entitlement, claim or benefit to enforce any term of this Undertaking for the purposes of the Contracts (Rights of Third Parties) Act 1999.

SCHEDULE 1

The Land at Mulsford Lane Site

All that piece or parcel of land situated at Land at Mulsford Lane, Mulsford, Sarn which is edged blue and annotated as "Land at Mulsford Lane" on Plan 3.

The Site

All that piece or parcel of land situated at Land at Mulsford Lane, Mulsford, Sarn and which is coloured blue on Plan 3.

SCHEDULE 2

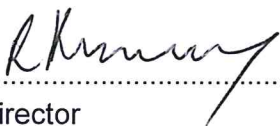
Great Crested Newt Mitigation Area

The Company covenants as follows:

- 1.1 A scheme for a 1.5ha area of mitigation land for Great Crested Newts. The land lies within the Company's ownership but outside of the red line application boundary, in accordance with an Ecological Management and Monitoring plan that shall be submitted to and approved in writing prior to commencement of development. The land is to be retained and managed in perpetuity as a Great Crested Newt mitigation area (as shown on Plan 1 and Plan 2, edged yellow).

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

Signed as a deed by D J Huxley
Farms Ltd, a Director, in the
presence of:


.....
Director

In the presence of:

Witness Signature


.....

Witness Name

ROSINA BLOOR.

Address:

THE ESTATES OFFICE
20 SALOP ROAD
OSWESTRY

Occupation:

SHROPSHIRE SY11 2NU
CHARTERED SURVEYOR.

APPENDIX 1:

PLAN 1 – Mitigation Area

PLAN 2 – Mitigation Area

PLAN 3 – The Site

... Overleaf

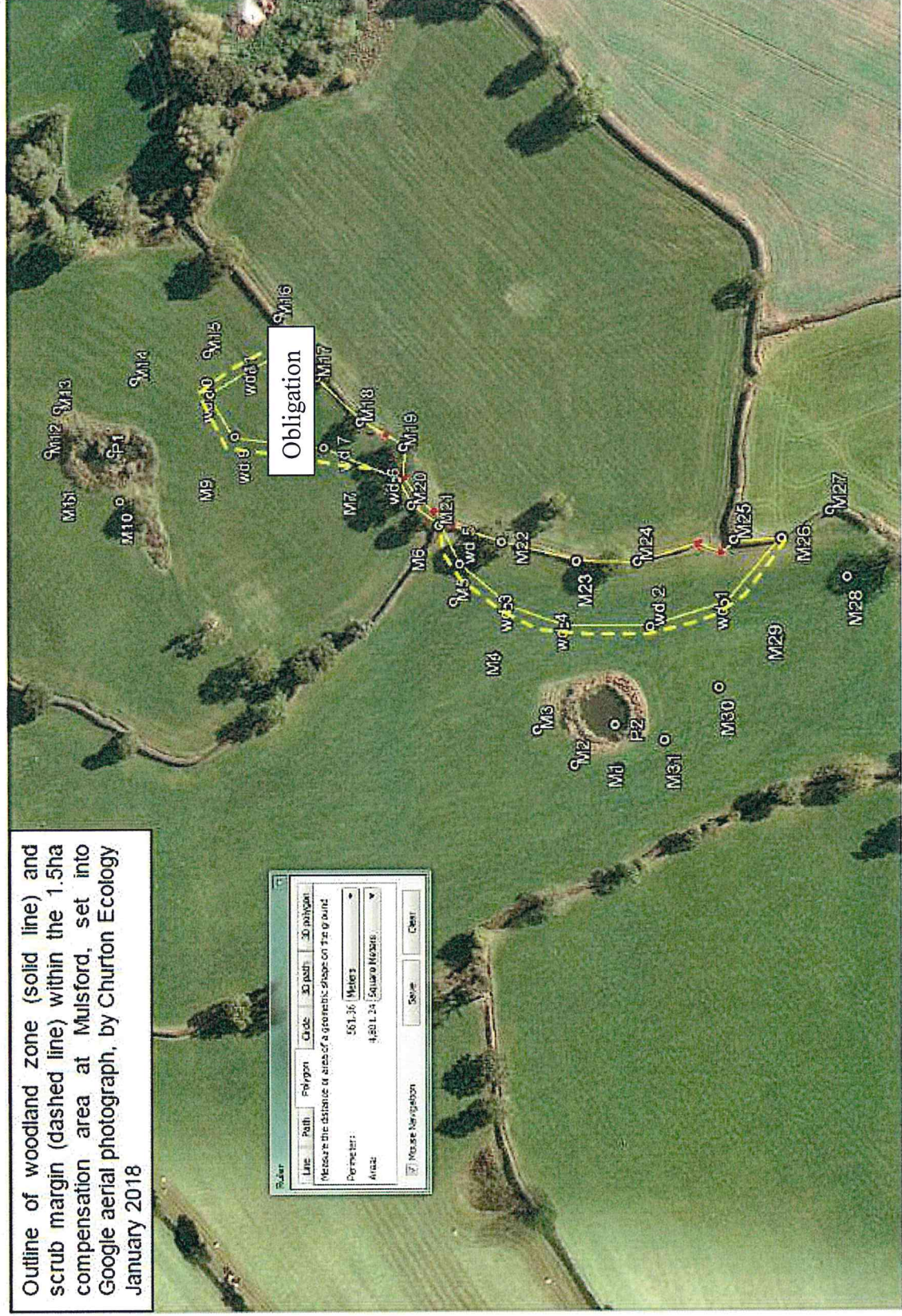
Plan 1

Outline of 1.5ha compensation area at Mulsford, set into Google aerial photograph, by Churton Ecology January 2018



Plan 2

Outline of woodland zone (solid line) and scrub margin (dashed line) within the 1.5ha compensation area at Mulsford, set into Google aerial photograph, by Churton Ecology January 2018



[illegible]

Land subject to planning permission

Scale: 1:10000

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