



dated 24<sup>th</sup> September 2019

**Stanborough School**

To

**Hertfordshire County Council**

And

**Welwyn Hatfield Borough Council**

**Unilateral Undertaking under Section 106 of the Town and Country Planning Act 1990**

in relation to Stanborough School, Lemsford Lane, Welwyn Garden City, AL8 6YR

Trowers & Hamlins LLP  
3 Bunhill Row  
London  
EC1Y 8YZ  
t +44 (0)20 7423 8000  
f +44 (0)20 7423 8001  
[www.trowers.com](http://www.trowers.com)

**trowers & hamlins**

**Contents**

**1 Definitions and interpretation .....2**

**2 Legal basis .....4**

**3 Conditionality .....5**

**4 Miscellaneous .....5**

**5 Developer Covenants .....7**

**6 Waiver .....8**

**7 Change in ownership .....8**

**8 Interest .....8**

**9 Indexation – Contributions payable .....8**

**10 Value Added Tax .....8**

**11 Planning consents granted pursuant to Section 73 of the Act .....9**

**12 Jurisdiction .....9**

**13 Delivery .....9**

**Schedule 1 - Plan ..... 10**

**Schedule 2 - Developer and County's Obligations - Financial Contributions ..... 11**

**Appendix 1 (Form of Notice) - Proforma Event Notification and Payment ..... 13**

# Unilateral Undertaking

dated *24 September* 2019

By

- (1) **Stanborough School** (Company Registration Number 07900439) whose registered office is at Stanborough School, Lemsford Lane, Welwyn Garden City, Hertfordshire, AL8 6YR (the **Developer**);

To:

- (2) **Hertfordshire County Council** of County Hall, Pegs Lane, Hertford, Hertfordshire SG13 8DE (the **County**); and
- (3) **Welwyn Hatfield Borough Council** of Council Offices, The Campus, Welwyn Garden City, Hertfordshire AL8 6AE (the **Council**).

## Introduction

- (A) The Council is the local planning authority for the purposes of the Act for the area in which the Application Site is situated.
- (B) The County is the freehold owner of the Application Site being the land registered under title number HD493308 at the Land Registry. The County is also a local planning authority for the purposes of the Act and the highway authority for the purposes of the Highway Act 1980 for the area in which the Application Site is situated.
- (C) The Developer is the leasehold owner of the Application Site. The Lease has not yet been registered due to a charge having been registered on the title in error. Once the aforementioned charge has been removed, the Developer will use all reasonable endeavours to register the Lease promptly.
- (D) The Developer has made the Application to the Council for planning permission for the Development on the Application Site.
- (E) The Council resolved to grant Planning Permission subject amongst other things to the prior completion of this Unilateral Undertaking.
- (F) The Council consider it expedient should planning permission be granted pursuant to such planning application that provision should be made for regulating or facilitating the development or use of the Application Site in the manner hereinafter appearing and the Council considers that entering into this Unilateral Undertaking will be of benefit to the public.

## Agreed terms

- 1 **Definitions and interpretation**
- 1.1 **Definitions**

For the purposes of this Unilateral Undertaking (including the Recitals) the following expressions shall have the following meanings in addition to the definitions set out in the Schedules hereto:

**Act** means the Town and Country Planning Act 1990 (as amended);

**Application** means the application for full planning permission submitted to the Council dated 8 March 2019 for the Development and allocated reference number 6/2019/0585/FULL;

**Application Site** means the land known as Stanborough School, Lemsford Lane, Welwyn Garden City, AL8 6YR registered at the Land Registry under title number HD493308 as shown edged red on the Plan;

**Commencement Date** 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 (for the purposes of this Unilateral Undertaking and for no other purpose) operations consisting of site survey site clearance archaeological investigations for the purpose of assessing ground conditions preparation work remedial or remediation work in respect of any contamination or other adverse ground conditions diversion and laying or removal of services erection of any temporary means of enclosure including fences and hoardings the temporary display of site notices or advertisements and **Commencement** and **Commence** shall mutatis mutandis be construed accordingly;

**Development** means the erection of a new teaching block, replacement tarmac play areas and additional parking on the Application Site;

**Head of Planning** means Head of Planning of the Council and shall include their duly authorised agents and representatives or any successor;

**Highways Transport Contribution** means the sum of thirty six thousand pounds (£36,000) (index linked as provided for in clause 9 of this Unilateral Undertaking). The Highways Transport Contribution shall be payable to the County towards the cost of improving facilities for bus users to include the provision of real time passenger information at stops local to the site, as well as provision of Kassel kerbing to enable access for persons with mobility impairment, on the premise that these works are completed by the County within two years of payment;

**Interest** means interest at 4 per cent above the base lending rate of Barclays Bank Plc from time to time;

**Lease** means the 125 year lease of the Application Site entered into by the Developer with the County on 1 February 2012;

**Notice of Commencement** means the written notice the form of which is contained at Appendix 1 of this Unilateral Undertaking advising of the proposed Commencement Date;

**Plan** means the plan attached to this Unilateral Undertaking at Schedule 1;

**Planning Permission** means the planning permission to be granted by the Council pursuant to the Application;

**Schedules** means Schedules 1 to 2 contained in this Unilateral Undertaking;

**SPONS Index** means the index linked by reference to Price Adjustment Formulae Indices (Civil Engineering) Series 2 known as SPONS; and

**Working Days** means any day from Monday to Friday (inclusive) which is not Christmas Day Good Friday or a statutory Bank Holiday and **Working Day** shall be construed accordingly.

## 1.2 Interpretation

1.2.1 Where in this Unilateral Undertaking 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 Unilateral Undertaking.

1.2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.

1.2.3 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.

1.2.4 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 severally unless there is an express provision otherwise.

1.2.5 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.

1.2.6 References to any party to this Unilateral 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 County the successors to their respective statutory functions.

1.2.7 The headings and contents list are for reference only and shall not affect construction.

1.2.8 The words **including** and **include** shall be deemed to be followed by the words **without limitation**.

1.2.9 References in this Unilateral Undertaking to **development** shall have the meaning given to it by Section 55 of the Act.

## 2 Legal basis

2.1 This Unilateral Undertaking is made by deed pursuant to Section 106 of the Act and to the extent that they fall within the terms of Section 106 of the Act, the obligations contained in this Unilateral Undertaking are planning obligations for the purposes of Section 106 of the

Act and are enforceable by the Council and the County against the Developer in respect of the Application Site.

2.2 To the extent that any of the obligations contained in this Unilateral Undertaking are not planning obligations within the meaning of the Act they are entered into pursuant to the powers contained in Section 111 of the Local Government Act 1972 Section 1 of the Localism Act 2011 and all other enabling powers.

2.3 Subject to clause 4.13 below, the Developer enters into the obligations (for themselves and their successors in title and persons deriving title from the Developer) with the Council and the County with the intent that the obligations contained in this Unilateral Undertaking shall be enforceable not only against the Developer but also against their successors in title any person claiming through or under the Developer an interest or estate in the Application Site or any part thereof.

### 3 **Conditionality**

This Unilateral Undertaking shall come into immediate effect save for the obligations in the Schedules which are conditional upon the grant of the Planning Permission and Commencement of the Development.

### 4 **Miscellaneous**

4.1 Subject to acknowledgement of the charge registered in error as referred to in (C) of the recitals hereto the Developer hereby warrants that they are the owner leasehold interests in the Application Site and that no other party has a material interest in the Application Site, other than the County.

4.2 No provisions of this Unilateral Undertaking shall be enforceable by any third party under the Contracts (Rights of Third Parties) Act 1999 nor does it confer or purport to confer any right to enforce any of the terms and provisions of this Unilateral Undertaking to any person who is not a party or successor in title or statutory successor to a party hereto.

4.3 This Unilateral Undertaking shall be registrable as a Local Land Charge by the Council.

4.4 Any notice to the Council or the County under this Unilateral Undertaking shall be deemed to be sufficiently served if delivered personally or by recorded delivery service to the following officials/persons at the respective addresses hereinafter specified:

#### **In respect of the Developer at:**

School Business Manager  
Stanborough School  
Lemsford Lane  
Welwyn Garden City  
Herts AL8 6YR

#### **In respect of the County at:**

The Chief Legal Officer  
Hertfordshire County Council

County Hall  
Pegs Lane  
Hertford  
Herts SG13 8DE  
Ref: 012339

**In respect of the Council at:**

The Head of Planning  
Welwyn Hatfield Borough Council  
Council Offices  
The Campus  
Welwyn Garden City  
Herts AL8 6AE  
Ref: 6/2019/0585/FULL

- 4.5 Insofar as any clause or clauses of this Unilateral Undertaking 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 Unilateral Undertaking.
- 4.6 This Unilateral Undertaking 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 Date.
- 4.7 No person will be liable for any breach of the terms of this Unilateral Undertaking occurring after the date on which they part with their entire interest in the Application Site save that they will remain liable for any breaches of this Unilateral Undertaking occurring before that date.
- 4.8 Any agreement obligation covenant or undertaking contained herein by the Developer which comprise more than one person or entity shall be joint and several.
- 4.9 No compensation shall be payable by the Council or the County to any party to this Unilateral Undertaking or their successors in title and assigns arising from the terms of this Unilateral Undertaking and unless specified otherwise in this Unilateral Undertaking all works and activities to be executed hereunder (including such as are of a preparatory ancillary or maintenance nature) are (save where expressly provided otherwise) to be at the sole expense of the successors in title to the Developer at no cost to the Council or the County.
- 4.10 Without prejudice to the Council's or the County's statutory rights the Developer grants an irrevocable licence to the Council and the County and/or any person duly authorised or instructed by the Council or the County to enter upon any part of the Application Site at any reasonable time subject to providing written notice to the Developer (and immediately in the event of an emergency) to ascertain whether the terms of this Unilateral Undertaking and/or of the Planning Permission are or have been complied with subject to complying with all health and safety requirements required by the Developer.
- 4.11 Nothing in this Unilateral Undertaking shall be construed as imposing a contractual obligation upon the Council as to the issue of the Planning Permission or as restricting the

exercise by the Council or the County of any statutory powers exercisable by them respectively under the Act or under any other act or authority.

- 4.12 Nothing in this Unilateral Undertaking shall prejudice or affect the rights powers duties and obligations of the Council or the County in the exercise of their functions in any capacity and the rights powers duties and obligations of the Council or the County under private public or subordinate legislation may be effectively exercised and in particular it shall not be precluded from entering into any Unilateral Undertaking under the Act and/or under any other act or authority with any other party.
- 4.13 This Unilateral Undertaking shall not be enforceable by the Council or the County against an individual owner occupier of the Development or their mortgagee or charge or any statutory undertakers of the Development (including any respective successors in title of the aforementioned).
- 4.14 The Developer acknowledge and declare that this Unilateral Undertaking has been entered into by the Developer with the intent that the planning obligations shall be binding on the Application Site and that the security of a mortgage/charge over the same shall take effect subject to this Unilateral Undertaking Provided That any mortgagee shall only be liable for any breach that itself has caused whilst mortgagee in possession and shall not be liable for any pre-existing breach.
- 4.15 Nothing in this Unilateral Undertaking shall prohibit or limit the right to develop the Application Site (or any part of it) in accordance with a planning permission (other than the Planning Permission) granted after the date of this Unilateral Undertaking PROVIDED THAT if any form of development within the Application Site which individually or in combination with any other permission for development would lead to levels of development exceeding those set out in the Application that development may be subject to additional planning obligations.

## 5 **Developer Covenants**

- 5.1 The Developer so as to bind its interest in the Application Site covenants with the Council and the County to:
- 5.1.1 comply with their obligations set out in this Unilateral Undertaking and the Schedules to this Unilateral Undertaking;
- 5.1.2 provide the Notice of Commencement to the Council and the County no later than ten (10) Working Days prior to the Commencement Date using the pro-forma set out in Appendix 1 hereto;
- 5.1.3 give the County (in its capacity as local highway authority) and the Council no less than five (5) Working Days' notice of the payment of the Highways and Transport Contribution such notice to be in writing using the pro-forma set out in Appendix 1 hereto; and
- 5.1.4 pay to the Council and the County on completion of this Unilateral Undertaking their respective reasonable and proper legal costs and disbursements of and incidental to the negotiation preparation and execution of this Unilateral Undertaking.



6 **Waiver**

No waiver (whether expressed or implied) by the Council or the County of any breach or default in performing or observing any of the covenants terms or conditions of this Unilateral Undertaking shall constitute a continuing waiver and no such waiver shall prevent the Council or the County from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

7 **Change in ownership**

Otherwise than in relation to transfers to utility companies, the Developer shall give to the Council and the County within one (1) month of the Developer disposing of any part of the Application Site written notice of the name and address of the person to whom the Application Site or any part has been transferred together with the area of the Application Site purchased by reference to a plan.

8 **Interest**

If any payment by the Developer due under this Unilateral Undertaking is paid late Interest will be payable from the date payment is due to the date of payment.

9 **Indexation – Contributions payable**

9.1 The Highways and Transport Contribution shall each be index-linked by reference to any increase in the SPONS Index figure from the date of this Unilateral Undertaking to the finalised figure applicable to the quarter in which each contribution is paid.

9.2 Where any sum is required to be index- linked by reference to the SPONS Index that sum payable shall be increased in accordance with any increase in the SPONS Index by the application of the formula  $A = B \times (C \div D)$  where:

A is the total amount to be paid;

B is the principal sum calculated in accordance with Schedule 2 of this Unilateral Undertaking;

C is the SPONS Index figure for the date upon which the interim payment described in clause 9.3 below is actually paid;

D is the SPONS Index figure specified in clause 9.1 above; and

$C \div D$  is equal to or greater than 1.

9.3 Where any sum to be paid to the County under the terms of this Unilateral Undertaking is required to be indexed then an interim payment shall initially be made based on the latest available forecast figure (or figures as the case may be) at the date of payment and any payment or payments by way of adjustment shall be made within ten (10) Working Days of written demand by the County once the relevant indices have been finalised.

10 **Value Added Tax**

All contributions paid in accordance with the terms of this Unilateral Undertaking shall be exclusive of any value added tax properly payable.

11 **Planning consents granted pursuant to Section 73 of the Act**

11.1 In the event that any new planning permission(s) are granted by the Council pursuant to Section 73 of the Act and unless otherwise determined by the Council and the County, with effect from the date that any new planning permission is granted pursuant to Section 73 of the Act:

11.1.1 the obligations in this Unilateral Undertaking shall (in addition to continuing to bind the Application Site in respect of the Planning Permission) relate to and bind all subsequent planning permission(s) in respect of the Application Site granted pursuant to Section 73 of the Act and the Application Site itself without the automatic need to enter into any subsequent deed of variation or new Unilateral Undertaking pursuant to Section 106 of the Act;

11.1.2 the definitions of Application, Development and Planning Permission in this Unilateral Undertaking shall be construed to include references to any applications under Section 73 of the Act, the planning permission(s) granted thereunder and the development permitted by such subsequent planning permission(s); and

11.1.3 this Unilateral Undertaking shall be endorsed with the following words in respect of any future Section 73 application:

“The obligations in this Unilateral Undertaking relate to and bind the Application Site in respect of which a new planning permission referenced [ ] has been granted pursuant to Section 73 of the Town and Country Planning Act 1990 (as amended)”.

**provided that** nothing in this clause shall fetter the discretion of the Council in determining any application(s) under Section 73 of the Act or the appropriate nature and/or quantum of Section 106 obligations in so far as they are materially different to those contained in this Unilateral Undertaking and required pursuant to a determination under Section 73 of the Act whether by way of a new deed or supplemental deed pursuant to Section 106 of the Act.

12 **Jurisdiction**

This Unilateral Undertaking is governed by and interpreted in accordance with the law of England and the Developer submits to the non-exclusive jurisdiction of the Courts of England.

13 **Delivery**

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

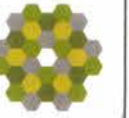
This Unilateral Undertaking has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it

**Schedule 1**

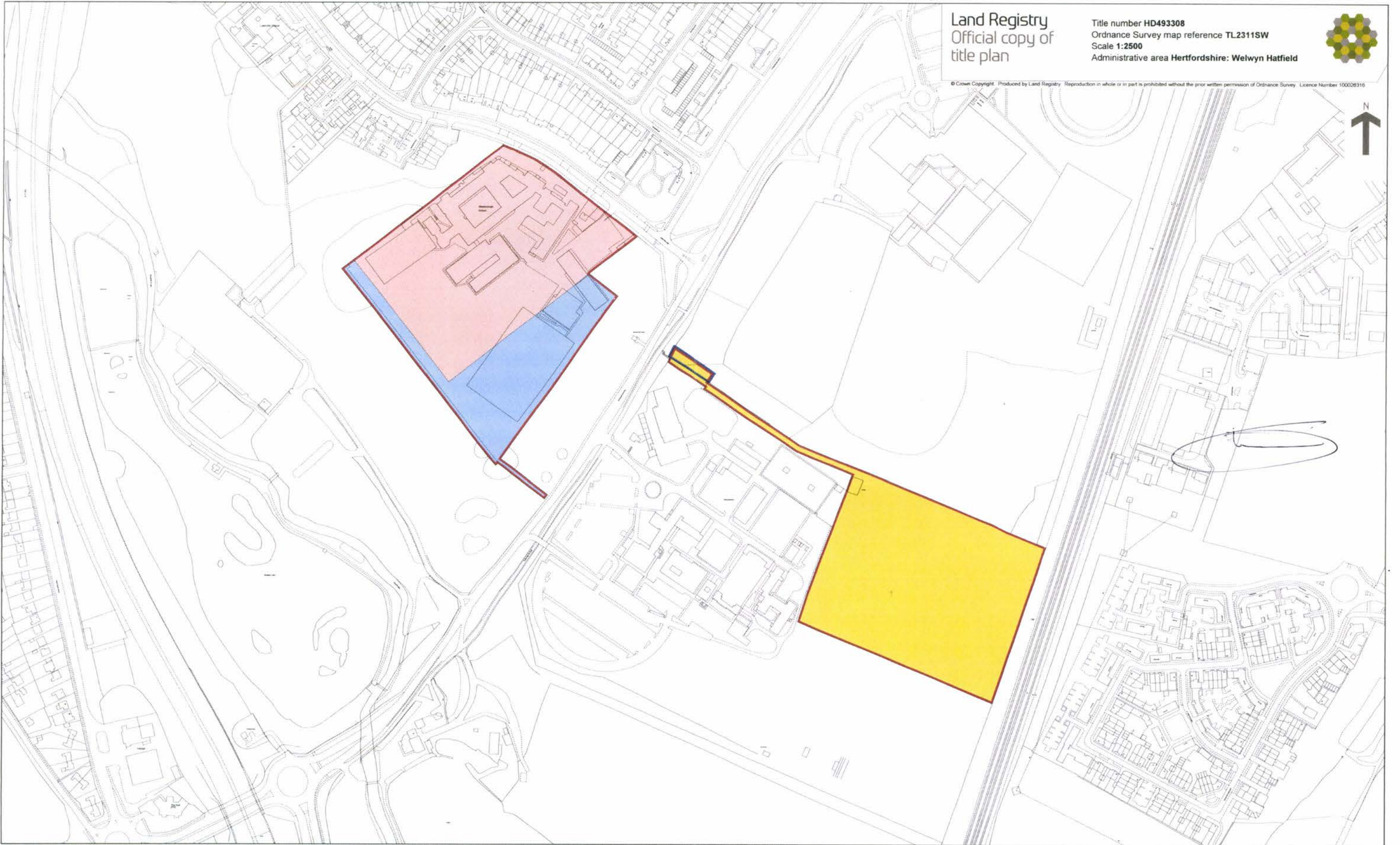
**Plan**

Land Registry  
Official copy of  
title plan

Title number HD493308  
Ordnance Survey map reference TL2311SW  
Scale 1:2500  
Administrative area Hertfordshire: Welwyn Hatfield



© Crown Copyright. Produced by Land Registry. Reproduction in whole or in part is prohibited without the prior written permission of Ordnance Survey. Licence Number 100026316.



This official copy issued on 15 August 2011 shows the state of this title plan on 10 August 2011 at 16:41:30. It is admissible in evidence to the same extent as the original (s.67 Land Registration Act 2002).  
This title plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground. See Land Registry Public Guide 19 - Title Plans and Boundaries.  
This title is dealt with by Land Registry, Leicester Office.

## Schedule 2

### Developer and County's Obligations - Financial Contributions

- 1 To pay the Highways Transport Contribution to the County (in its capacity as local highway authority) prior to Commencement of Development;
- 2 Not to Commence or cause or permit Commencement until the Highways Transport Contribution has been paid in accordance with paragraph 1.1 above.

EXECUTED (but not delivered until the date hereof)  
AS A DEED by **STANBOROUGH SCHOOL** acting  
by a director in the presence of:-

[Redacted Signature]

Director

Witness signature..... [Redacted] .....

Witness name.. [Redacted] .....

Witness address.. STANBOROUGH SCHOOL  
LENSFORD LANE  
WELWYN GARDEN CITY  
AL8 6JR  
.....

Witness occupation SCHOOL BUSINESS  
MANAGER .....

**Appendix 1 (Form of Notice)**

**Proforma Event Notification and Payment**

**Pursuant to Section 106 Agreement/Unilateral Undertaking**

DATED \_\_\_\_\_

MADE BETWEEN \_\_\_\_\_

PLANNING PERMISSION REFERENCES:

WHBC REFERENCE 6/2019/0585/FULL

HCC DU REFERENCE 6/2019/0585/FULL

SITE ADDRESS \_\_\_\_\_

SITE OWNER DETAILS:

Name: \_\_\_\_\_

Contact Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone No: \_\_\_\_\_

Mobile: \_\_\_\_\_

Email: \_\_\_\_\_

EVENTS BEING NOTIFIED

Commencement Date – date:

Completion of Development – date:

First Occupation of Development– date:

**Compliance with Obligation(s)**

Schedule \_\_\_\_\_ Paragraph \_\_\_\_\_

Details of obligation and compliance \_\_\_\_\_

**Payment of S106 Contributions**

Payment Type	Amount	Interim Indexation	Final Indexation	Total	Payable to
Example	X	Y	Z	Y + Z	Herts County Council
Education (primary)	£	£	£	£	

Payment of S106 contributions can be made by BACS, CHAPS or cheque. In any event the form should be completed to ensure the payment is identified correctly and forward to:

- a) The Chief Legal Officer  
Hertfordshire County Council  
County Hall,  
Pegs Lane  
Hertford Hertfordshire  
SG13 8DE  
Ref: 012339
  
- b) The Head of Planning  
Welwyn Hatfield Borough Council  
Council Offices  
The Campus  
Welwyn Garden City  
Herts AL8 6AE  
Ref: 6/2018/2726/MAJ