

DATED

30th June

1998

(1) TONBRIDGE & MALLING BOROUGH COUNCIL

and

(2) KENT COUNTY COUNCIL

and

(3) ROUSE KENT LIMITED

---

**PLANNING AGREEMENT**

made pursuant to Section 106

of the Town and Country Planning Act 1990

Relating to development comprising an

additional 1,300 residential dwellings, a community hall  
and ancillary works at Kings Hill, West Malling, Kent.

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**Herbert Smith**

Exchange House

Primrose Street

London EC2A 2HS

Tel: 0171-374 8000

Fax: 0171-496 0043

Ref: 129/P463/30503516

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THIS DEED is made the 30th day of June 1998

**BETWEEN:**

- (1) **TONBRIDGE & MALLING BOROUGH COUNCIL** of Park Building, Gibson Drive, Kings Hill, West Malling, Kent ME19 4LZ (the "**Council**"); and
- (2) **THE KENT COUNTY COUNCIL** of County Hall, Maidstone, Kent ME14 1XQ (the "**Owner**"); and
- (3) **ROUSE KENT LIMITED** (a company incorporated under the laws of the State of Delaware USA) (Co. Regn. No. FC14779) whose address in England for the purposes of this Agreement is 200 Gibson Drive, Kings Hill, West Malling, Kent ME19 4AF (the "**Developer**").

**WHEREAS:**

- (A) On 12th June 1990, the Kent County Council as County Planning Authority, granted outline planning permission (Ref. No. TM/89/1655) for the comprehensive development of land at West Malling Airfield and adjoining land (the site now known as Kings Hill). This permission, which was subject to 41 conditions, approved a mixed use development including business, residential, hotel/conference centre, retail, services, leisure, recreation, open space and other facilities. The land to which the permission relates comprises approximately 262 hectares.
- (B) Also on 12th June 1990 a Planning Agreement under Section 52 of the Town and Country Planning Act 1971 and related legislation was entered into between (1) the Kent County Council (2) Tonbridge & Malling Borough Council and (3) Rouse Kent Limited, making comprehensive provision for a number of features of the development envisaged by the outline planning permission also dated 12th June 1990; and subsequent Planning Agreements under Section 106 of the Town and Country Planning Act 1990 and related legislation have been entered into between the same parties.
- (C) The outline planning permission granted in June 1990 has subsequently been:-
  - (i) varied in a number of respects by permissions granted by Tonbridge & Malling Borough Council under Refs. Nos. TM/93/0672OA, 0673OA, 0674OA, and 0676OA and TM/93/065OA, TM/93/0732/OA, TM/93/0335/FL, TM/96/01156/FL, the combined effect of which subsequent permissions is that a number of conditions attached to the original consent have been removed and/or varied; and
  - (ii) supplemented by detailed consents and/or approvals of reserved matters leading to the construction and sale of various parts of the original development site.
- (D) Parts of the comprehensive development of the Kings Hill site have been implemented in accordance with an evolving Master Plan and Development Brief, reflecting changes in the framework of development envisaged for Kings Hill which corresponds with the third review of the County Structure Plan for Kent and the emerging draft Local Plan for Tonbridge & Malling Borough; and on 11th July 1997

the Developer submitted a further outline planning application (Ref. No. TM/97/01183/OA) seeking permission to construct 1,300 additional residential units and community hall, together with ancillary formal playing fields, open spaces, landscaping and roadworks which forms the subject matter of the planning obligations contained in this deed for which the Council has resolved to grant planning permission subject to the completion of the deed.

- (E) The Council is the Local Planning Authority for the purposes of the 1990 Act for the area within which the Development Site is situated and is the Local Planning Authority by whom the planning obligations contained in this deed are enforceable with the exception of those obligations at clause 4.6 relating to the provisions of a site for the school which are enforceable by the Owner.
- (F) The Owner is the owner of an estate in fee simple of part of the Property and intends to transfer the Development Site to the Developer pursuant to an Agreement dated 18th January 1989 to enable the Development to take place.

**NOW THIS DEED WITNESSES** as follows:

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this deed where the context so admits the following expressions shall have the following meanings:

**"Application"** means the application for planning permission relating to the Development Site dated 11th July 1997 submitted to the Council and registered under Ref. No. TM/97/01183/OA relating to the Development;

**"Area 4"** means the area shown edged in green on Plan S106/98/01 attached to this deed at Appendix 1;

**"Central Area"** means area shown edged in red on Plan S106/98/01 attached to this deed at Appendix 1;

**"Development"** means the development described in Schedule 2;

**"Development Site"** means the land described in Part II of Schedule 1;

**"Estate Management Agreement"** means the agreement dated 1st March 1993 between Rouse Kent Limited and Kings Hill Estate Management Company Limited;

**"Implementation"** means implementation of the Permission by the carrying out of a material operation as defined in Section 56(4) of the 1990 Act comprised in the Development and exclusively referable to the Permission save for the following matters which shall not constitute a material operation and consequently shall not individually or together constitute Implementation:

enabling works demolition site clearance the provision of infrastructure exploratory boreholes operations permitted by the Town and Country Planning General Permitted Development Order 1995 or any amendment or replacement thereof provision of underground drainage and sewers construction of

temporary construction accesses archaeological investigations and digs works matters and operations to enable any of the foregoing to take place;

**"Light Rail System"** means a transport system using modern trams between the Medway Gap, Maidstone and the Property;

**"Permission"** means a planning permission to be issued by the Council pursuant to the Application in the form of the draft permission annexed to this deed at Appendix 15;

**"Property"** means the land described in Part I of Schedule 1;

**"Specification"** means the specification for the community hall which is to be constructed pursuant to this deed, a copy of which is appended to this deed at Appendix 2;

**"1990 Act"** means the Town and Country Planning Act 1990 (as amended by Section 12 of the Planning and Compensation Act 1991);

**"1990 Planning Agreement"** means the Planning Agreement made under Section 52 of the Town and Country Planning Act 1971 and related legislation dated 12th June 1990 referred to in Recital (B) (as subsequently amended as hereinbefore recited).

## 1.2 Interpretation

1.2.1 The expressions "Council" "Owner" and "Developer" shall include their successors in title and assigns.

1.2.2 Titles and headings to the clauses and paragraphs in this deed and its schedules are for convenience only and shall not be construed in or affect the interpretation of this deed.

1.2.3 Any references to a particular statute include any statutory extension, modification, amendment or re-enactment of such statute and also include any regulations or orders made in pursuance of it.

1.2.4 Where by this deed any action approval consent direction authority or agreement is required to be taken over or reached by any party hereto any such action approval consent direction authority or agreement shall not be unreasonable or unreasonably withheld or delayed.

## 2. STATUTORY POWERS

2.1 This deed is made pursuant to Section 106 of the 1990 Act and constitutes a planning obligation for the purposes of the 1990 Act enforceable by the Council and the Owner.

2.2 Nothing in this deed will prejudice or affect the rights, powers, duties and obligations of the Council or the Owner in the exercise of their statutory functions.

## 3. COMMENCEMENT

The entry into force of the provisions of this deed (other than this clause 3 which has effect immediately upon delivery of the deed) is conditional upon:

- 3.1 the Permission being duly granted;
- 3.2 a period of ten weeks having elapsed following such grant Provided always that if before the expiry of ten weeks after the grant of the Permission any persons shall commence legal proceedings to challenge the validity of the Permission then the said ten weeks period shall be extended until after the final determination of such legal proceedings which shall for the avoidance of doubt include the expiry of the period allowed for any appeal and any appeal hearing and where applicable for any necessary re-determination by the Council (whereupon the foregoing provisions shall apply again) and shall expire upon the date seven days after the final determination of such legal proceedings in circumstances in which the Permission shall be extant; and
- 3.3 Implementation by or on behalf of the Developer.

4. **COVENANTS BY THE OWNER AND THE DEVELOPER**

The Owner and the Developer hereby jointly and severally covenant with the Council to carry out and comply with the following obligations:

4.1 **Provision of affordable housing**

4.1.1 The Developer has agreed provisions relating to affordable housing in the context of the Kent Structure Plan 1996, the emerging draft Local Plan for Tonbridge & Malling Borough and Government advice contained in Circular 06/98: "Planning and Affordable Housing" in its current form.

4.1.2 Subject to clause 4.1.3 below the Developer agrees with the Council that, in formulating its detailed proposals relating to affordable housing and in implementing such proposals, the Developer will at all times consult with the Council with a view to settling detailed provisions which are consistent with the framework of the development brief applying to the Development Site that meet the Council's affordable housing requirements (as determined by the Council's Housing Strategy Statement 1997 - 2000 as amended from time to time).

4.1.3 The Developer and the Council agree that the Developer's commitment pursuant to this clause 4.1 shall be limited to the provision of the lesser of 100 units of Affordable Housing or 10% of the total number of residential units on the Development Site (excluding Area 4).

4.1.4 In this clause 4.1 the following words and phrases shall have the following meanings:

**"Affordable Housing"** means residential accommodation available to people who cannot afford to occupy houses generally available on the open market to be occupied by tenants of or part owners with an Approved Organisation or to be purchased from an Approved Organisation or the Developer at a reduced market value taking account of costs incurred in the provision of specialist need facilities where appropriate:

**"Affordable Serviced Land"** means land within the Development Site for use for no other purpose than as dwellings for Affordable Housing as

contemplated by this clause 4.1 including where appropriate garages and outbuildings ancillary to the dwellings with associated public and private open space roads and footpaths with mains services of gas electricity water and foul drainage and with roads access and such other services as the Developer may in its sole discretion decide in each case up to a convenient point on the boundary of the land;

**"Approved Organisation"** means a Registered Social Landlord as defined in the Housing Act 1996 who is registered with the Housing Corporation and which is selected by the Developer in consultation with the Council;

4.1.5 The Developer agrees that it will reserve Affordable Serviced Land sufficient for the construction of the number of Affordable Housing units described in clause 4.1.3 above at one or more sites the location of which shall be approved by the Council.

4.1.6

(A) For the purposes of this clause 4.1 "y" equals the aggregate number of residential units constructed or to be constructed at any one time at the Development Site pursuant to:

- (1) any further detailed planning permission; or
- (2) any consent further to a submission of details made in respect of matters reserved by the Permission,

in respect of residential development within the Development Site which may be granted from time to time.

(B) The Developer and the Council agree that the obligation to provide Affordable Housing pursuant to this clause 4.1 shall not arise until 150 residential units on the Development Site (excluding residential units within Area 4) have been occupied but that thereafter either:

- (1) Affordable Serviced Land (reserved pursuant to clause 4.1.5 above) sufficient for the construction of (10% of y) Affordable Housing units shall have been sold or leased to an Approved Organisation upon such terms as may be agreed between the Developer and the Approved Organisation; or
- (2) the Developer shall have entered into an agreement with an Approved Organisation for that Approved Organisation to construct and provide (10% of y) Affordable Housing units upon such terms as may be agreed between the Developer and the Approved Organisation; or
- (3) the Developer shall have commenced construction of (10% of y) Affordable Housing units

**PROVIDED THAT** the total number of Affordable Housing units constructed pursuant to this sub-clause (B) shall be subject to the maximum figure specified in clause 4.1.3 above.

- 4.1.7 The construction of any Affordable Housing unit pursuant to clause 4.1.6 above is to be in accordance with the Permission and the location type and number of Affordable Housing units is to be in accordance with any phasing details and reserved matters and consents to be agreed between the Developer and the Council or in accordance with any decision of the Secretary of State for the Environment and Transport made pursuant to the 1990 Act.
- 4.1.8 In the event that pursuant to clause 4.1.6(B)(1) above an Approved Organisation has not commenced construction of the relevant Affordable Housing within 2 years from the date of the sale or lease of the Affordable Serviced Land to the Approved Organisation then the Affordable Serviced Land will be conveyed back to the Developer for nominal consideration each party bearing its own costs free of restrictions other than those subsisting prior to the transfer to the Approved Organisation **PROVIDED THAT** the Affordable Serviced Land shall be reserved for development in accordance with this clause 4.1 by the Developer or by an alternative Approved Organisation which is selected by the Developer.
- 4.1.9 If pursuant to clause 4.1.6(B) above an Approved Organisation is to let or manage the Affordable Housing, then such letting or management may be only by the Approved Organisation in accordance with its constitution and/or their contractually authorised servants or agents such servants or agents acting solely under or by virtue of a written contract between the Approved Organisation and its said servant or agent notice in writing of which such contract having first been given to the Developer and the Council by the Approved Organisation **PROVIDED THAT** this sub-clause 4.1.9 shall cease to apply and thereafter be forever extinguished in the event of the disposal of the Affordable Serviced Land or any part or parts thereof in relation to the part or parts disposed of by any mortgagee of the Affordable Serviced Land disposing under a power of sale contained in a mortgage or legal charge of the Affordable Serviced Land granted by the Approved Organisation or any receiver or manager appointed by any such mortgagee.
- 4.1.10 The mix of housing for rent and housing for sale to be constructed pursuant to this clause 4.1 shall be such as the Developer may propose from time to time pursuant to discussions with any relevant Approved Organisation and the Council taking into account the suitability of the Development Site and the Council's Housing Strategy Statement 1997 - 2000 as amended from time to time.
- 4.1.11 If after a period of three months from the date of occupation of the last residential unit (not including Affordable Housing units) constructed or to be constructed pursuant to the last remaining:
- (A) detailed planning permission: or



- (B) consent further to a submission of details in respect of matters reserved by the Permission,

which can or is to be granted in respect of residential development at the Development Site the Developer has been unable to comply (in whole or in part) with the provisions of clause 4.1.6 above it shall review with the Council further and/or alternative steps to be taken to ensure the provision of the appropriate number of Affordable Housing units at any one time.

#### **4.2 Provision of a community hall and associated facilities**

- 4.2.1 The Developer has agreed provisions relating to the provision of a community hall and associated facilities (the "Community Hall") within the Development Site.
- 4.2.2 The Developer agrees that independently of any submission of detail that is required to be made pursuant to the Permission it will provide to the Council for its approval pursuant to this deed details of the location (within the Central Area) size layout and timing of the proposed Community Hall.
- 4.2.3 The Developer agrees with the Council that, in formulating its detailed proposals relating to the size, dimensions, siting and construction of the Community Hall and to the nature of associated facilities to be provided (such facilities to include the appropriate level of car parking) and in implementing such proposals, the Developer will at all times consult with the relevant parish council(s) and the rural community council with a view to settling detailed provisions which are consistent with the framework of the development brief applying to the Development Site.
- 4.2.4 The Developer agrees to use its reasonable endeavours to procure that on or before the date 3 years from the date of Implementation the Community Hall will be constructed at the site to be agreed between the Developer and the Council to the Specification.

#### **4.3 Nature conservation**

The Developer agrees to provide to the Council within 3 months from the date of this deed a nature conservation strategy to include a timetable for implementation for the areas of land shown marked A, B, C, D, E, F and G on Plan S106/98/04 attached to this deed at Appendix 3 for the Council's approval and further agrees to use its reasonable endeavours to implement the nature conservation strategy once approved.

#### **4.4 Landscaped areas**

The Developer has agreed provisions relating to the landscaping of the Development Site. The Developer agrees with the Council that, in formulating its detailed proposals relating to the landscaping of the Development Site and in implementing such proposals, the Developer will at all times consult with the Council with a view to settling detailed provisions which are within the framework of the development brief applying to the Development Site at any one time.

#### 4.5 Children's play facilities

- 4.5.1 The Developer has agreed to lay out within the Development Site certain areas of land the location of which shall be approved by the Council for use as open spaces and children's play and recreation space in phases and locations to be agreed between the Developer and the Council in accordance with the framework of the development brief applying to the Development Site.
- 4.5.2 The Developer will lay out and equip grass areas of open space and grassed or suitably surfaced children's play and recreation space with children's play equipment for children's casual play with a hectareage of the lesser of 1.56 hectares or 15 square metres per residential unit within the Property (with credit given for the children's play and recreation space already on site being approximately 1.214 hectares) and in the same relevant proportions as provided in the children's play and recreation space currently on site within the village green which it is intended by the parties to retain.
- 4.5.3 The area stipulated in clause 4.5.2 above will include two local areas for play (each an "LAP"), one local equipped area for play (a "LEAP") and one neighbourhood equipped area for play (a "NEAP") generally each as is defined by the National Playing Fields Association's minimum standards for outdoor playing space ("The Six Acre Standard") (1992 edition) the relevant extract of which is attached to this deed at Appendix 4.
- 4.5.4 The children's play and recreation space detailed in clause 4.5.3 above shall be provided in three phases:
- (A) the first LAP shall be provided when 750 residential units within the Development Site have been occupied;
  - (B) the second LAP and the LEAP shall be provided when 1233 residential units within the Development Site have been occupied; and
  - (C) the NEAP shall be provided on the earlier of:
    - (i) the occupation of 1850 residential units within the Development Site; or
    - (ii) the completion of development pursuant to the last detailed planning permission granted for residential development within the Development Site.

#### 4.6 Provision of site for school

- 4.6.1 The Developer has agreed provisions relating to the reservation of land within the Property adjacent to the existing school in the approximate location shown edged in black and identified as "Phase 2" on Plan S106/98/05 attached to this deed at Appendix 5 (the "Reserved Land") for the purpose of expanding the site of the existing school in accordance with the design approved pursuant to planning permission TM/96/282.

4.6.2 The Developer and the Council agree that the Developer will meet the needs of the Owner by keeping the Reserved Land free from future development, other than development for the purpose of providing educational facilities pursuant to this clause 4.6 and, if so required by the Owner upon service of 6 months' written notice, will make the Reserved Land available to the Owner for the purpose referred to in clause 4.6.1 above.

**4.7 Provision of recreational and sports facilities**

4.7.1 The Developer has agreed provisions relating to the provision of Recreational and Sports Facilities (as defined below) within the Property and agrees with the Council that, in formulating its detailed proposals relating to the location, nature and design of such facilities, it will at all times consult with the Council with a view to settling detailed provisions which are consistent with the framework of the development brief applying to the Property from time to time.

4.7.2 In this clause 4.7 "**Recreational and Sports Facilities**" shall mean the provision of not less than the lesser of 5.85 hectares or 45 square metres of land per dwelling within the Development Site (excluding Area 4) for use as privately owned or public playing pitches together with appropriate facilities such as changing rooms and associated parking as are required for the playing of football, cricket or any other sport as may be agreed between the Developer and the Council from time to time

4.7.3 The Developer agrees with the Council that:

(A) within two and a half years from the date of Implementation the Developer will have laid out within the Property not less than:

(1) 2 playing pitches of a size approximately 118 metres in length by 64 metres in width; and

(2) 2 playing pitches of a size approximately 82 metres in length by 46 metres in width; and

(3) a cricket square the outfield of which may be located on the pitches referred to in (1) and (2) above,

together with ancillary changing facilities to accommodate 116 players and officials and appropriate car and coach parking; and

(B) within 6 months from the occupation of 1850 residential units the Developer will have made further provision for outdoor sport in accordance with a specification to be agreed with the Council.

4.7.4 The Recreational and Sports Facilities to be provided by the Developer pursuant to this clause 4.7 shall be laid or constructed (as the case may be) to a specification approved by the Council.

#### 4.8 Control tower

- 4.8.1 The Developer has agreed provisions relating to the maintenance and management of the control tower shown marked "Control Tower" on Plan S106/98/01 attached to this deed at Appendix 1 (the "Control Tower") whereby the Developer shall ensure that the Control Tower is maintained in no worse architectural and structural condition than at the date of this Agreement and as detailed in the report by Jeremy Bailey appended hereto at Appendix 6 until such time as proposals to be formulated by the Developer pursuant to clause 4.8.2 below for the long term retention and use of the Control Tower are implemented.
- 4.8.2 The Developer agrees with the Council that, in formulating its proposals for the long term retention, use and management of the Control Tower, the Developer will at all times consult with the Council with a view to settling detailed provisions which are consistent with the development brief applying to the Development Site from time to time.

#### 4.9 Provision of retail site

- 4.9.1 The Developer has agreed provisions relating to the reservation of land within the Central Area (the "Retail Site") for the purposes of retail development within the Property.
- 4.9.2 The Developer agrees with the Council that, in formulating its detailed proposals relating to the location of the Retail Site the Developer will at all times consult with the Council with a view to settling detailed provisions which are consistent with the framework of the development brief applying to the Development Site at any one time.
- 4.9.3 The Developer and the Council agree that after the earlier of 2 years from the date of Implementation or the occupation of 800 residential units the Developer shall develop or shall procure the development at the Retail Site for the purposes of retail development a neighbourhood general store of not more than 5,000 square feet or 464.5 metres.

#### 4.10 Equestrian Routes

- 4.10.1 Subject to clause 4.10.3 below the Developer will provide an equestrian route or routes (the "Route") along the southern and eastern boundaries of the Development Site.
- 4.10.2 The Route along the southern boundary will:
- (A) either:
- (1) commence at point A and cross the golf course to point B (approximately along the route shown for indicative purposes only on Plan S106/98/06 appended to this deed at Appendix 7 by a blue line or along any other route proposed by the Developer and approved in writing by the Council). The Developer agrees to use its reasonable endeavours to complete

the Route from point B to point E via points C and D, the precise route thereof to be agreed between the Developer and the Council **PROVIDED THAT** the Developer will be under no obligation to continue the Route beyond point E; or

- (2) commence as in paragraph (1) above at point A and follow existing paths from point B to point F, where it will terminate and the parties hereby agree that the Developer will be under no obligation to continue the Route beyond point F; **OR**
- (B) commence at point A and continue to point L via point K and then to point E via point D **PROVIDED THAT** between point A and point L the Route will follow the route marked P, Q and R on Plan S106/98/10 attached to this deed at Appendix 8, the precise position of the Route between points R and L and between points L and D to be agreed between the Developer and the Council.

in each case where points A, B, C, D, E, F, K and L are marked on Plan S106/98/06 attached to this deed at Appendix 7. For the purpose of paragraph (B) above, Plans S106/98/06 and S106/98/10 should be read in conjunction.

4.10.3 The parties agree that:

- (A) the Developer's obligations will be limited to negotiating with the relevant land-owners for equestrian access;
- (B) no other equestrian routes will be required to be implemented on or adjacent to the Development Site **PROVIDED THAT** the Developer agrees to use its reasonable endeavours to assist in implementing any routes adjacent to the project **PROVIDED FURTHER** that any such assistance will not extend to payment of any monies; and
- (C) the routes created pursuant to this clause 4.10 (including the Route) will not be required to become public rights of way and will provide permissive access only.

4.10.4 The Developer agrees to ensure that on or before the date 3 years from the date of Implementation the Route will be provided in accordance with this clause 4.10 and to the specification attached to this deed at Appendix 9 **PROVIDED THAT** prior to completion of the Route a maintenance strategy for the Route shall be agreed between the parties to be implemented at the cost of the Council.

4.11 **Movement strategy**

The Developer has agreed provisions for a movement strategy relating to the provision of facilities for pedestrians and cyclists as shown marked on Plan S106/98/07 attached to this deed at Appendix 10.

#### **4.12 Light Rail System**

The Developer has agreed provisions relating to the safeguarding of a route from the A228 to the Central Area to be used by the Light Rail System as shown marked blue on Plan S106/98/08 attached to this deed at Appendix 11 the terminus of which is shown edged in blue on Plan S106/98/09 attached to this deed at Appendix 12.

#### **4.13 Community facilities**

If the provision of community facilities such as medical facilities a place of worship and either a sub-branch library or a mobile library is deemed desirable by established demand the Developer agrees that it will use its reasonable endeavours to make appropriate provision for such community facilities within the Central Area (as shown on Plan S106/98/01 attached to this deed at Appendix 1) pursuant to prior consultation with the Council.

#### **4.14 Recycling facilities**

The Developer agrees with the Council that the Developer will make provision for the siting and provision of recycling facilities at one or more sites within the Central Area (as shown on Plan S106/98/01 attached to this deed at Appendix 1) and agrees with the Council that in formulating its detailed proposals relating to the location and nature of such facilities it will at all times use its reasonable endeavours to consult with the Council.

### **5. COVENANTS BY THE COUNCIL**

The Council hereby covenants with the Developer and separately with the Owner that the Council will carry out and comply with the following obligations:

#### **5.1 Qualification of Right of Entry**

5.1.1 If the Council shall exercise its power of entry to carry out the obligations on the part of the Owner and the Developer under this deed pursuant to S.106(6) of the 1990 Act it shall comply with the reasonable requirements of the Owner and the Developer to the intent that the Council when entering the Development Site may not impede or obstruct the progress of the Development nor issue any instructions to the persons employed on the Development Site or the Owner's and Developer's professional team.

5.1.2 The Council shall make good any avoidable damage caused to the Development Site and the Development by reason of it entering the Development Site pursuant to sub-clause 5.1.1.

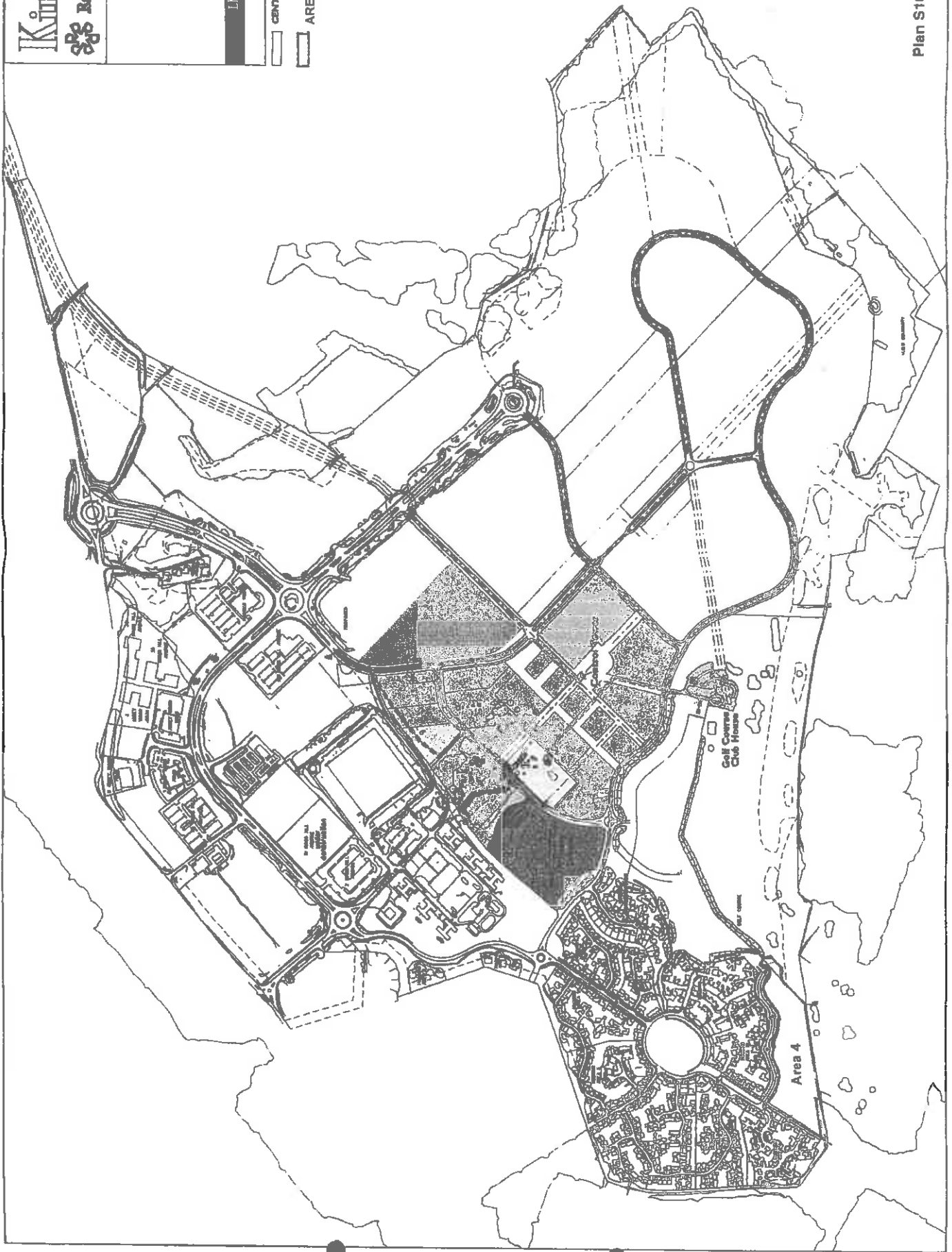
#### **5.2 Compliance**

The Council will upon request and subject to payment of its reasonable and proper professional charges in connection with certification certify compliance or partial compliance as appropriate with the provisions hereof and if required by the Owner and the Developer will execute a deed of release (or partial release) from the relevant provision of this deed and procure that a note thereof shall be entered on the Local Land Charges Register.

Liverija-Donias

CENTRAL AREA

AREA 4



**6. REGISTRATION AS LOCAL LAND CHARGE**

It is hereby agreed and declared between the parties hereto that this deed shall forthwith be registered as a local land charge for the purposes of the Local Land Charges Act 1975 **PROVIDED THAT** the Council shall subject to the provisions of clause 5.2 cancel such registration if the provisions of clause 4 shall have been complied with.

**7. CONTINUED APPLICATION OF 1990 PLANNING AGREEMENT**

Except to the extent that the same is varied by the terms of this deed, the 1990 Planning Agreement will continue to apply in all respects to the Development Site

**8. SUCCESSORS IN TITLE**

8.1 This deed shall be enforceable against the Owner and the Developer and any person for the time being deriving title from either the Owner or the Developer as provided in Section 106(3) of the 1990 Act but in accordance with Section 106(4) of the 1990 Act neither the Owner nor the Developer nor any person deriving title from either of them shall have any further liability under this deed (but without prejudice to the rights of the Council in respect of any antecedent breach) insofar as such liability relates to any part of the Development Site which is disposed of to a successor in title in respect of any period during which either of them (or as the case may be such other person) no longer has an interest in any such part of the Development Site.

8.2 This deed shall not be enforceable against owner-occupiers or tenants of dwellings or commercial premises constructed pursuant to the Permission.

**9. CONSEQUENTIAL VARIATIONS TO CONDITIONS**

9.1 If the Council agrees pursuant to an application under Section 73 of the 1990 Act to any variation or release of any condition contained in the Permission or if any said condition is varied or released following an appeal under Section 78 of the 1990 Act covenants or provisions herein to the like intent as or corresponding to any such condition before such variation or release shall be deemed to be modified to be to the like intent as or to correspond to the condition as varied or shall cease to apply in the case of a condition which is released as the case may be and this deed shall upon the satisfaction of clause 3 in relation to such new permission apply to the new permission.

9.2 Any approval granted by the Council pursuant to any of the conditions attached to the Permission shall be deemed to constitute approval for the purposes of any covenant or provision in this deed which corresponds to any such condition.

**10. REVISION OF THIS AGREEMENT**

10.1 If the Owner or the Developer obtains a new planning permission from the Council for similar development on the Development Site or the Permission is varied by the Council then the parties hereto agree that this deed is amended to accord with the variation of the Permission or the new planning permission.



- 10.2 To the extent that any planning decision is made or given by or on behalf of the Secretary of State for the Environment (or any successor in pursuance of statutory authority) relating to the Development Site the Development the Permission or any of them and the terms of such decision are inconsistent with any provision contained in this deed it is hereby agreed between the parties to this deed that the provisions of this deed shall by virtue of such decision and without further provision constituting an express modification be automatically varied to the extent required to permit such decision to be implemented.
- 10.3 Any approval or consent given by Council acting as competent planning authority in pursuance of the Permission or any other permission or consent shall be deemed for all purposes of this deed to constitute approval (or as the case may be consent) for the purposes of any covenant or provision in this deed which corresponds to the relevant provision to which such approval or consent so given relates.
- 10.4 In the event of the Permission being revoked by the Council or any other authority having powers in relation to the planning matters the obligations of the Owner under this Agreement shall thereupon cease absolutely.

**11. SERVICE OF NOTICES**

For the purposes of this Agreement the addresses for service of notices approvals consents or otherwise are:

- 11.1 the Council shall be the Borough Planning Officer at Park Building, Gibson Drive, Kings Hill, West Malling, Kent ME19 4LZ aforesaid;
- 11.2 the Owner shall be at Springfield, Maidstone, Kent ME14 2LL aforesaid; and
- 11.3 the Developer shall be at 200 Park Drive, Kings Hill, West Malling, Kent ME19 4AF aforesaid,

or such other address in the United Kingdom as may be notified in writing by any of the parties to each of the other parties from time to time.

**12. COSTS OF THIS DEED**

The Council and the Owner and the Developer shall pay their own legal and other professional costs in connection with the preparation and completion of this deed.

**13. JURISDICTION**

The construction validity and performance of this deed shall be governed by English law.

**IN WITNESS** whereof this deed has been executed by the parties hereto and is intended to be and is hereby delivered on the date first above written.

**SCHEDULE 1**

**Part I**

**(The Property)**

The whole of the Kings Hill development site to which the planning permission referred to in Recital (A) applies in the area for the purpose of identification only edged in blue on Plan S106/98/03 attached to this deed at Appendix 13.

**Part II**

**(The Development Site)**

The area shown for the purpose of identification only edged in red on Plan S106/98/02 attached to this deed at Appendix 14 being the site to which the Application relates.

**SCHEDULE 2**

**(The Development)**


Development envisaged by the Application comprising the following uses:

- residential (1,300 dwellings);
- community hall facilities;
- ancillary formal playing areas;
- open spaces and landscaping;
- roadworks,

all as more particularly described in the Application.

SIGNED as a Deed by ROUSE KENT )  
LIMITED acting by its Assistant Secretary )  
and by a Director )

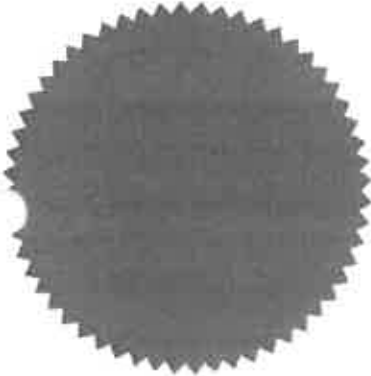
 DJ BASSON-DIRETOR

  
HYL SABINE  
COMPANY SECRETARY



( THE COMMON SEAL of THE KENT  
( COUNTY COUNCIL was hereunto affixed  
( in the presence of:

Authorized Signatory



( THE COMMON SEAL of TONBRIDGE  
( AND MALLING BOROUGH COUNCIL  
( was hereunto affixed in the presence of:

Chief Solicitor

**Appendices:**

- Appendix 1: Plan S106/98/01
- Appendix 2: Community Hall Specification
- Appendix 3: Plan S106/98/04
- Appendix 4: Extract from The National Playing Fields Association's minimum standards for outdoor playing space ("The Six Acre Standard") (1992 edition)
- Appendix 5: Plan S106/98/05
- Appendix 6: Architectural & Structural Survey of Conditions in relation to the Control Tower Building, Kings Hill, West Malling, Kent by Jeremy Bailey (Architect) dated February 1998
- Appendix 7: Plan S106/98/06
- Appendix 8: Plan S106/98/10
- Appendix 9: Equestrian Route Specification
- Appendix 10: Plan S106/98/07
- Appendix 11: Plan S106/98/08
- Appendix 12: Plan S106/98/09
- Appendix 13: Plan S106/98/03
- Appendix 14: Plan S106/98/02
- Appendix 15: The Permission

**APPENDIX 1**

**Plan S106/98/01**

**APPENDIX 2**

**Community Hall Specification**

## COMMUNITY HALL: SCHEDULE OF ACCOMMODATION

	Approximate Areas
Main Hall excluding stage 16.5m x 9m Height to accommodate single badminton court	148.5m <sup>2</sup>
Small Hall (minimum 9m square)	81m <sup>2</sup>
Committee Room	24m <sup>2</sup>
Kitchen and Servery	27m <sup>2</sup>
Ancillary Storage	To suit
Entrance Area including coat storage	To suit
Male and Female WCs	To suit

**APPENDIX 3**

**Plan S106/98/04**



AREAS A, B, C D E F & G  
Gen. Area for further study

