

DATED _____ **20[]**

[_____]

and

THE OXFORDSHIRE COUNTY COUNCIL

and

CHERWELL DISTRICT COUNCIL

**DRAFT
LICENCE TO ENTER
ONTO LAND FOR PURPOSES OF**
the construction of Strategic Highway at North West Bicester

Nick Graham
Director of Law & Governance
and Monitoring Officer
Oxfordshire County Council
County Hall
New Road
Oxford OX1 1ND
Ref: JT/49296

[relating to Planning Application ref:17/00455/Hybrid \(Residential Hybrid s106\)](#)

1.1.2 “**Commencement Notice**” means at least 2 months’ notice to the Grantor advising of the date when the Road Developer proposes to commence the exercise of the Construction Rights.

1.1.3 “**Construction Rights**” means the rights set out in Schedule 1

[1.1.4 “Judicial Review Date” means the date five \(5\) Working Days after the expiry of the period of six weeks from the date of grant of Planning Permission \(provided that no Third Party Application is commenced by such date\) and in the event that any Third Party Application is commenced, the next Working Day after the date on which:](#)

[\(a\) the Third Party Application is finally determined; and](#)

[\(b\) the relevant planning permission is finally granted or upheld;](#)

[so that the relevant planning permission is no longer open to challenge in any way by the issue of further Third Party Applications.](#)

[1.1.5](#) ~~4.1.4~~ “**Obligations**” means the obligations set out in Schedule 2

[1.1.6](#) ~~4.1.5~~ “**Plan**” means the David Tucker Associates drawing number [] a copy of which is attached to this licence.

[1.1.7](#) ~~4.1.6~~ “**Planning Permission**” means planning permission reference [14/01968/F] dated *[insert date of appeal decision]* issued by []

[1.1.8](#) ~~4.1.7~~ “**Road Developer**” means the County Council the District Council or as applicable a party approved by the County

Council and the District Council and the Grantor (all parties acting reasonably) and who has delivered to the Grantor a deed of covenant to observe and perform the terms of this Licence PROVIDED THAT it is agreed that A2Dominion Developments Limited (company registration number 05585321) are approved by the parties as an acceptable Road Developer.

1.1.9 ~~4.1.8~~ **“Site”** means the land shown edged red on the Plan being Land Registry title number ON 271407.

1.1.10 ~~4.1.9~~ **“Strategic Road Land”** the part of the Site shown shaded pink on the Plan.

1.1.11 ~~4.1.10~~ **“Strategic Road Works”** means works for the construction of the Strategic Highway (as defined in the Unilateral Undertaking) to adoptable standards.

1.1.12 **“Third Party Application”** means an application for judicial review of a decision by the district council to grant Planning Permission including an application to a higher court appealing against a judgment in respect of a judicial review application given in a lower court.

1.1.13 ~~4.1.11~~ **“Trigger Date”**: the date on which all of the following have occurred:

(a) the Judicial Review Date or if earlier the date on which any of the planning permissions granted in connection with any of the s106 Agreements is implemented;

(b) ~~(a)~~ the Strategic Road Works are fully funded;

(c) ~~(b)~~ the Road Developer has all requisite consents necessary for completion of the Strategic Road Works and has rights to access or ownership of all land necessary to implement the Strategic Road Works;

(d) ~~(e)~~ an unconditional completed and dated building contract has been entered in to by the Road Developer for the construction of the Strategic Road Works which provides for commencement of such works within a reasonable period of time after the date of such contract and then completion of those works within a reasonable timeframe; and

(e) either:

(i) ~~(d)~~ the Planning Permission permits:

A. ~~(i)~~ the development of at least 17,437 square metres of floorspace for B8 use and 7,473 square metres of floorspace for B1c/B2 use on the part of the Site shown edged [] on the Plan; and

B. ~~(ii)~~ residential development on 4.5ha of the Site for the construction of up to 150 dwellings primarily on the part of the Site shown edged [] on the Plan;

whether following approval of reserved matters pursuant to that Planning Permission or otherwise without the need for the Strategic Road Works to have been undertaken; or

(ii) [planning permission reference 17/01090/OUT granted pursuant to the Employment Outline s106 is implemented by the Grantor.](#)

1.2 Any reference to an enactment includes any amendments to or modifications of it and the version of it for the time being in force shall apply

- 1.3 Headings in this Licence are for convenience only and shall not be taken into account in its construction and interpretation
- 1.4 References to clauses sub-clauses and schedules are references to clauses sub-clauses and schedules in this Licence
- 1.5 Where the context so requires:-
 - 1.5.1 the singular includes the plural and vice versa
 - 1.5.2 the masculine includes the feminine and vice versa
 - 1.5.3 persons includes bodies corporate associations and partnerships and vice versa
- 1.6 Where a party comprises more than one person the obligations and liabilities of that party shall be joint and several obligations and liabilities of those persons
- 1.7 Where more than one party enters into any obligation or liability those parties are jointly and severally liable
- 1.8 Words denoting an obligation on a party to do any act matter or thing include an obligation to procure that it is done and words placing a party under a restriction include an obligation not to cause permit or allow infringement of this restriction
- 1.9 The Grantor includes its successors in title to the Strategic Road Land
- [1.10 This licence is agreed by the parties hereto as constituting an approved amended version of the Licence pursuant to Schedule 7 of the Employment Outline s106 and Schedule 9 of the Residential Hybrid s106 in addition to being the Licence pursuant to Schedule 27 of the Unilateral Undertaking and entry in to this Licence satisfies the obligations in paragraph 3.1 of Schedule 7 of the Employment Outline s106 and paragraph 3.1 of Schedule 9 of the Residential Hybrid s106](#)

2. Surveys

The Grantor hereby agrees that the District Council the County Council or any person authorised by either of them may enter on the Strategic Road Land for the purpose of undertaking surveys and investigations subject to the person exercising such right:

- 2.1 obtaining the prior written approval of the Grantor (such approval not to be unreasonably withheld or delayed) to the date and period of access;
- 2.2 obtaining the prior written approval of the Grantor (such approval not to be unreasonably withheld or delayed) to a method statement for any intrusive survey or investigation works including full details of the method of making good;
- 2.3 ensuring they cause as little obstruction or disturbance as reasonably possible to the Grantor including to any works that may be being undertaken on the Site at the time of access and complying with the reasonable requirements of the Grantor or any contractor on the Site in this regard;
- 2.4 completing any survey works as quickly as reasonably practicable; and
- 2.5 making good all damage caused to the Site in accordance with the method statement approved pursuant to this clause

PROVIDED THAT if the Grantor has commenced construction works on the Strategic Road Land then this right shall be further modified by the parties (acting reasonably) so as to minimise interference with such construction works and to temporarily suspend such rights if access would materially interfere with the Grantor's construction works including if it would put the Grantor at material risk of any claim from a contractor undertaking works for an extension of time or compensation for increased costs or fees.

3. Grant of Rights

- 3.1 The Grantor hereby grants the Construction Rights on condition that they may be exercised by any Road Developer only after the occurrence of the Trigger Date and service of the Commencement Notice.
- 3.2 If the Grantor has commenced construction works on the Strategic Road Land the right specified in clause 3.1 shall be further modified so as to allow the Grantor to complete such works as soon as reasonably practicable prior to the exercise of the Construction Rights in respect of any part of the Strategic Road Land on which the Grantor is undertaking construction.
- 3.3 The Road Developer shall keep the Grantor regularly informed of progress made towards achieving the Trigger Date and once the Road Developer believes that that the Trigger Date has occurred or will occur subject to entering into an unconditional building contract as provided in clause ~~1.1.11~~[\(e\)1.1.13\(d\)](#) it shall deliver to the Grantor evidence of this fact together with details of the proposed building contract and the Grantor shall within 28 days of receipt of the evidence confirm whether or not it agrees that the Trigger Date has occurred or as applicable will occur on the Road Developer entering into an unconditional building contract as supplied to the Grantor and any dispute as to whether the Trigger Date has occurred or will occur may be referred to determination by the expert in accordance with clause 9.
- 3.4 The County Council and the District Council agree that the Grantor may apply to the District Council and the County Council for the discharge or modification of the right granted by clause 3.1 on the grounds set out in section 106A(6)(b) or (c) of the Town and Country Planning Act 1990 as if this licence was a planning obligation further to Section 106 of the Town and Country Planning Act 1990 and the District Council and County Council shall consider and deal with such application

as they would if it were an application under s106A of the Town and Country Planning Act 1990 and in the event that the application is refused or if there is any dispute over the extent of the modification sought the matter may be determined in accordance with the dispute resolution procedure at clause 9 of this licence.

3.5 The rights of the Grantor (or any party authorised thereby) as referred to in ~~[paragraph 2.1.2 of Schedule 27] of the Unilateral Undertaking~~:

[3.5.1 \[paragraph 2.1.2 of Schedule 27\] of the Unilateral Undertaking](#);

[3.5.2 paragraph 2.2 of Schedule 7 of the Employment Outline s106; and](#)

[3.5.3 paragraph 2.2 of Schedule 9 of the Residential Hybrid s106](#);

~~3.5~~ are hereby acknowledged.

3.6 Unless the Trigger Date has occurred this Licence shall terminate on the date 10 years after the date ~~on which the Planning Permission is implemented~~ of this Licence.

4. No Proprietary Interest

This licence is not intended to confer any right or interest in the nature of a tenancy and gives no proprietary interest or right of exclusive possession in the Site.

5. Performance of the Obligations

The Road Developer who has given the Commencement Notice shall in

exercise of the Construction Rights observe and perform the Obligations.

6. Notices

6.1 Any notice given under this licence must be in writing and signed by or on behalf of the party giving it

6.2 Any notice under this licence must be given by delivering it personally or sending it by pre-paid first class post or recorded delivery to the address and for the attention of the relevant party as follows :-

6.2.1 to the Grantor at its registered office address marked for the attention of the Company Secretary or to such other address or for the attention of such other person as was last notified in writing by the Grantor to the Council; and

6.2.2 to the District Council at Bodicote House Bodicote Banbury Oxfordshire OX15 4AA marked for the attention of the Head of Development Management or to such other address or for the attention of such other person as was last notified in writing by the District Council to the Grantor

6.2.3 to the County Council at County Hall New Road Oxford OX1 1ND marked for the attention of the Director for Planning and Place or to such other address or for the attention of such other person as was last notified in writing by the County Council to the Grantor

6.2.4 to any other Road Developer at the address specified in the deed of covenant supplied by the Road Developer

6.3 Any such notice will be deemed to have been received :-

6.3.1 at the time of delivery if delivered personally; and

- 6.3.2 on the second day after posting in the case of pre-paid first class post or recorded delivery
- 6.4 In proving service it will be sufficient to prove that delivery was made or that the envelope containing the notice was properly addressed and posted as a prepaid first class or recorded delivery letter as the case may be
- 6.5 A notice given under this licence will not be validly given if sent by e-mail or fax

7. Land Registry and Legal Powers

- 7.1 The Grantor hereby consents to the noting of this licence on Title number ON27147
- 7.2 Section 33 Local Government (Miscellaneous Provisions) Act 1982 applies to the grant of rights as provided in clause 3
- 7.3 On termination of this Licence the County Council and District Council shall do all things necessary to remove reference to this Licence from Title Number ON27147.

8. ~~8~~—Contracts (Rights of Third Parties) Act 1999

For the purposes of the Contracts (Rights of Third Parties) Act 1999 this licence is not intended to and does not give any person who is not a party to it any right to enforce any of its provisions save for a Road Developer

9. ~~9~~—Dispute Resolution

In the event of a dispute further to clause ~~3.3~~3.3 or clause 3.4 a party to the dispute may at its discretion by notice (having given 14 days prior notice of intention to do so) refer the matter in dispute to be determined under this Clause ~~0-9~~9 by an independent expert. The expert

shall be agreed between the parties or (in default of the agreement within 10 working days) appointed by the President or next most senior available officer of the Royal Institution of Chartered Surveyors for a dispute further to clause 3.3 and of the Royal Town Planning Institute for a dispute further to clause 3.4 and:

9.1 ~~9.1~~ Each party may within 10 working days of the appointment of the expert make written representations to him which are to be copied to the other party to the dispute;

9.2 ~~9.2~~ Each party will be given a further 5 working days to give the expert written comments on those representations which are to be copied to the other party to the dispute;

9.3 ~~9.3~~ The expert will be at liberty to call for such written evidence from the parties and to seek such legal or other expert assistance as he may reasonably require;

9.4 ~~9.4~~ The expert will not take oral representations from a party without allowing the other party to the dispute the opportunity to be present and to give evidence and to cross examine each other;

9.5 ~~9.5~~ The expert will have regard to all representations and evidence upon making his decision which will be in writing and he will be required to give reasons for his decision;

9.6 ~~9.6~~ The expert will use reasonable endeavours to publish his decision within 4 weeks of his appointment;

9.7 ~~9.7~~ The expert shall have the power to award the costs of the determination in favour of a party to the dispute at the expense of the other but in the absence of such award each party will bear its own costs and the charges for the expert will be borne equally by the parties;

9.8 ~~9.8~~ The expert's decision shall be final and binding on the parties.

9.9 This clause 9 shall not apply to any dispute in relation to matters of law~~:-~~

10. ~~10~~ **Governing law and jurisdiction**

This licence and any dispute or claim relating to or arising from it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales and the parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any such dispute or claim

This licence has been entered into on the date stated at the beginning of it

SCHEDULE 1
The Construction Rights

To enter upon the Strategic Road Land with or without vehicles tools plant equipment and apparatus as necessary solely for the purpose of executing the Strategic Road Works including use as compound area(s) for the parking of vehicles and ~~for~~ for the storage of tools plant equipment apparatus materials and a welfare facility and including the making of connections to service media and their use for all purposes necessary to construct the Strategic Road Works

SCHEDULE 2
The Obligations

1. Without prejudice to [] of [this Agreement] [the ~~Unilateral Undertakings~~ [106 Agreements](#)] to enter upon the Strategic Road Land as licensee only
2. To be responsible for and to pay all and any assessments charges duties fees rates taxes and outgoings chargeable in connection with the exercise of the Construction Rights
3. In exercising the Construction Rights not to cause any nuisance to the Grantor or to the occupiers of any neighbouring land or premises PROVIDED THAT the exercise of the Construction Rights and the construction of the Strategic Road Works are deemed not to be a nuisance
4. To indemnify the Grantor (and its successors in title) in respect of against all actions, claims and demands (including all liabilities, costs, expenses, damages and losses) made or brought by any third party arising out of or in connection with:
 - 4.1 loss of or damage to property to the extent caused by negligence, breach of contract or other default by the Road

Developer or the Road Developer's contractor in the exercise of the Construction Rights

4.2 bodily injury or death of any person to the extent caused by negligence, breach of contract or other default by the Road Developer or its contractor in the exercise of the Construction Rights

5. To maintain or to procure that its contractor maintains a policy of third party and public liability insurance to a sum of not less than £10,000,000.00 in connection with the exercise of the Construction Rights

6. To use all reasonable endeavours to complete the Strategic Road Works as soon as reasonably practicable and to complete such of those works as are to be constructed on the Site (save for any finishing works the absence of which would not prevent the reasonable use of the land and any services under it as a roadway and services for access to and from and to serve the remainder of the Site) within 9 months of such works being commenced on the Site or such longer period as the parties may agree (acting reasonably) .

7. In undertaking the Strategic Road Works at the Site to procure that the Strategic Road Works are constructed in a manner consistent with ~~the Planning Permission~~ any planning permission implemented in relation to the rest of the Site and provide full and proper access to the part of the Site that is not accessed from Middleton Stoney Road.

8. ~~7.~~To comply with all requisite consents relating to the construction of the Strategic Road Works whether pursuant to the planning permission granted for the Strategic Road Works, ~~the Planning Permission~~ any other planning permission granted in relation to the Site or otherwise.

[Grantor's execution clause]

EXECUTED AS A DEED)
by affixing **THE COMMON SEAL** of)
THE OXFORDSHIRE COUNTY COUNCIL)
in the presence of :-)

EXECUTED AS A DEED)
by affixing **THE COMMON SEAL** of)
CHERWELL DISTRICT COUNCIL)
in the presence)