

Draft 2:

27 May 2010

DATED

2010

NATURAL ENGLAND
-and-
HAMPSHIRE COUNTY COUNCIL
-and-
BRACKNELL FOREST BOROUGH COUNCIL
-and-
ELMBRIDGE BOROUGH COUNCIL
-and-
GUILDFORD BOROUGH COUNCIL
-and-
HART DISTRICT COUNCIL
-and-
ROYAL BOROUGH OF WINDSOR AND MAIDENHEAD
-and-
RUNNYMEDE BOROUGH COUNCIL
-and-
RUSHMOOR BOROUGH COUNCIL
-and-
SURREY HEATH BOROUGH COUNCIL
-and-
WAVERLEY BOROUGH COUNCIL
-and-
WOKING BOROUGH COUNCIL
-and-
WOKINGHAM BOROUGH COUNCIL

AGREEMENT

Sharpe Pritchard
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Fulwood Place
London WC1V 6HG
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Ref: JS/100840/5

Email: jsharland@sharpepritchard.co.uk

THIS AGREEMENT is made the

day of

2010

BETWEEN:

- (1) **NATURAL ENGLAND** of 1 East Parade, Sheffield S1 2EZ (“NE”); and
- (2) **HAMPSHIRE COUNTY COUNCIL** of the Castle, Winchester SO23 8UJ (“the Administrative Body”); and
- (3) **BRACKNELL FOREST BOROUGH COUNCIL** of Town Square, Bracknell, Berkshire RG12 1AQ; and
- (4) **ELMBRIDGE BOROUGH COUNCIL** of Civic Centre, High Street, Esher, Surrey, KT10 9SD ; and
- (5) **GUILDFORD BOROUGH COUNCIL** of Millmead House, Millmead, Guildford, Surrey GU2 4BB ; and
- (6) **HART DISTRICT COUNCIL** of Civic Offices, Harlington Way, Fleet, Hampshire GU51 4AE; and
- (7) **ROYAL BOROUGH OF WINDSOR AND MAIDENHEAD** of Town Hall, St Ives Road, Maidenhead, Berkshire SL6 1RF; and
- (8) **RUNNYMEDE BOROUGH COUNCIL** of Runnymede Civic Centre, Station Road, Addlestone, Surrey KT15 2AH; and
- (9) **RUSHMOOR BOROUGH COUNCIL** of Council Offices, Farnborough Road, Farnborough, Hampshire GU14 7JU; and
- (10) **SURREY HEATH BOROUGH COUNCIL** of Surrey Heath House, Knoll Road, Camberley GU15 3HD; and
- (11) **WAVERLEY BOROUGH COUNCIL** of The Burys, Godalming, Surrey GU7 1HR; and
- (12) **WOKING BOROUGH COUNCIL** of Civic Offices, Gloucester Square, Woking, Surrey GU21 6YL; and
- (13) **WOKINGHAM BOROUGH COUNCIL** of Shute End, Wokingham RG40 1BN (“the LPAs”)

RECITALS:

- (A) Under EU Directive 2009/147/EC dated 30 November 2009 on the conservation of wild birds (“the Birds Directive”) member states are under a duty to protect and manage wild bird species.
- (B) The Thames Basin Special Protection Area (“the SPA”) was classified on the 9 March 2005. The area designated as the SPA contains important populations of three of the species considered to be vulnerable or rare and listed in Annex 1 to the Birds Directive.
- (C) The LPAs are the planning authorities for the areas covered by or located within two kilometres of the SPA.
- (D) Natural England, the LPAs and the Administrative Body have agreed to work together to put in place a strategic access management and monitoring programme for the SPA and to finance this by means of a tariff levied in respect of developments that would have an impact on the SPA.
- (E) It is intended that, once the tariff has been collected for sixteen years, i.e. until the South East Plan expires, sufficient amounts of tariff will have been collected to allow for the establishment of a permanent endowment to enable the strategic access management and monitoring programme to continue to be implemented for as long as this agreement remains in force.
- (F) The purpose of this Agreement is to enable the parties referred to in Recital (D) to give effect to these arrangements.
- (G) The LPAs have power to enter into these arrangements under S106 of the Town and Country Planning Act 1990, S111 of the Local Government Act 1972 and the Conservation (Natural Habitats, & C) Regulations 1994.

1 Definitions

- “Commencement Date” means [the date of this Agreement];
- “Current Expenditure Account” the bank account [details] into which the Administrative Body is required to pay a

proportion of the Guideline Tariffs in accordance with clause 4 and out of which it is required to pay the Delivery Bodies;

“Delivery Bodies”

NE, the Surrey Biodiversity Information Centre and any other body which may be employed by NE or the Administrative Body to carry out services connected with the delivery of the Project;

“EIR”

the Environmental Information Regulations 2004 or any re-enactment or replacement of these regulations;

“Endowment Account”

the bank account [details] into which a proportion of the Guideline Tariffs are to be paid by the Administrative Body in accordance with Clause 5 and any other account into which those monies are paid or any investment purchased with those monies;

“Financial Reporting Requirements”

the requirements set out at Schedule 2;

“Financial Year”

the period from 1 April in any year until 31 March in the following year;

“FOIA”

the Freedom of Information Act 2000 and any re-enactment or replacement of the Act;

“Guideline Tariff”

an amount payable by way of an obligation pursuant to s106 of the Town and Country Planning Act 1990 in respect of each unit of

residential accommodation within a Relevant Development, the starting point for the tariff being £630 for each such unit but such amount may be adjusted in the light of all relevant circumstances relating to the proposed development and shall be a matter for each individual LPA to determine;

“Index” means the Retail Prices Index published by the Office for National Statistics;

“Indexed” means adjusted by the change to the Index over the preceding twelve month period using the last version of the Index to be published preceding the date on which the adjustment is to be undertaken;

“Natural England Guideline Methodology (“NEGM”) the methodology for calculating the Guideline Tariff as set out at Schedule 1, or such revised methodology as may take its place following a review in accordance with clause 2.4 of this Agreement;

“Project” the delivery of a strategic access management and monitoring programme for the SPA further details of which are set out at Schedule 3;

“Project Current Expenditure” expenditure on payment of salaries and other revenue costs in relation to the delivery of the Project;

“Relevant Development” any proposed development which will involve the construction of one or more units of residential accommodation taking place more

than 400 metres and less than 5 kilometres from the boundary of the SPA.

2 Guideline tariff

- 2.1 Each LPA when granting a planning permission in respect of a Relevant Development shall apply the Natural England Guideline Methodology. Any amounts payable to an LPA in accordance with the NEGM shall be payable by way of an obligation pursuant to s106 of the Town and Country Planning Act 1990.
- 2.2 In the event of an appeal against a refusal of a Relevant Development the LPAs shall use all reasonable endeavours to ensure that if planning permission is granted on appeal, such grant shall be subject to the application of the NEGM.
- 2.3 The NEGM shall be applied by the LPAs in a way that is consistent with each LPA's Local Development Framework and any relevant Supplementary Planning Documents. The NEGM is subject to the statutory obligations of the LPAs and the application of the NEGM will take account of the individual circumstances of each application in respect of a Relevant Development.
- 2.4 The NEGM shall be reviewed every two years from the date of this agreement for as long as NE is a party to it. When undertaking such review NE shall consult with the LPAs and take account of all comments made by the LPAs relating to the operation of the NEGM. Following such review NE shall issue a revised NEGM to each LPA.

3 Payment arrangements

- 3.1 On 31 March, 30 June, 30 September and 31 December each year throughout the duration of this Agreement the LPAs shall pay to the Administrative Body all the amounts they have received by way of Guideline Tariff during the previous quarter.
- 3.2 The Administrative Body shall pay 30% of the amounts it receives pursuant to clause 3.1 above into the Current Expenditure Account and the remainder into the Endowment Account provided that, if the Administrative Body, having consulted NE, considers that, in any Financial Year, the payment of 30% of such amounts would be insufficient to meet the Project Current Expenditure for that year it may make additional payments into

the Current Expenditure Account, subject to the payment of additional sums into the Endowment Account over the next one or two Financial years, so that the payments into the Endowment Account are not less than 70% of the amounts received over any three Financial Years.

3.3 On the dates referred to in clause 3.1 above the LPAs shall in addition provide to the Administrative Body and NE the following details:

3.3.1 the number of Relevant Developments granted planning permission by the LPA during the preceding three month period;

3.3.2 a description of each Relevant Development including the number and type of units (i.e. house/flat/maisonette), numbers of bedrooms in each unit and location of the proposed development;

3.3.3 the amounts by way of Guideline Tariff which will be payable in respect of all such Relevant Developments.

4 Current Expenditure

4.1 As soon as practicable after each of the dates referred to in clause 3.1 above, NE shall forward to the Administrative Body an invoice for the amounts it requires to meet its Project Current Expenditure during the preceding quarter provided that at the time the invoice is received there are sufficient funds in the Current Expenditure Account. The Administrative Body shall pay the said invoice within 28 days.

4.2 NE shall pay any amounts that it receives in accordance with clause 4 above on the Project Current Expenditure including making payments to the Delivery Bodies which it is required to make to achieve delivery of the Project.

4.3 NE have agreed that with effect from the [Commencement Date] it will fund the post of Project Co-ordinator for a period of one year. The costs of such funding shall be reimbursed to NE during the period of three years with effect from the Commencement Date by the Administrative Body. The amount and timing of such repayments shall be decided by the Administrative Body.

4.4 The amounts paid into the Current Expenditure Account shall be reviewed by NE and the Administrative Body on or about each anniversary of the Commencement Date, in consultation with the LPAs and the outcome reported to the Joint Strategic Partnership Board, which shall decide whether the percentage of the receipts paid into that account in accordance with clause 3.2 should be adjusted.

5 Endowment

5.1 The balance of the amounts received by the Administrative Body in accordance with clause 3.1 above once payments have been made in accordance with clause 4 above shall be paid into the Endowment Account.

5.2 The amounts in the Endowment Account shall be used for the future funding of the Project.

5.3 The Administrative Body shall not make any substantial changes to the way in which the Endowment Account is managed without the consent of the LPAs which consent shall not be unreasonably withheld or delayed. For the avoidance of this clause a substantial change shall include investment decisions and appointments of financial advisers.

6 The Administrative Body

6.1 The Administrative Body shall undertake the following functions in relation to the financial administration of the Project:

6.1.1 Collection of the Guideline Tariffs in accordance with clause 3.1 above and ensuring collection of these payments.

6.1.2 Managing the accounts into which the payments are made.

6.1.3 Making payments to NE in accordance with clause 4.1 above.

6.1.4 Providing reports every [3] months to the Strategic Access Management Board and the Joint Strategic Partnership Board in accordance with the Financial Reporting Requirements.

6.1.5 Providing such financial information as may reasonably be requested by the Strategic Access Management Board, the Joint Strategic Access

Management Board, the Joint Strategic Partnership Board and NE in such format as may reasonably be required.

- 6.2 In consideration of the provision of the services set out in clause 6.1 above the Administrative Body shall be entitled to retain the sum of £20,000 [Indexed] payable on each anniversary of the Commencement Date while it carries out the role of Administrative Body in accordance with the terms of this Agreement.
- 6.3 On the third anniversary of the date of this agreement and every third anniversary thereafter the Administrative Body shall be entitled to cease undertaking the functions of the Administrative Body under this agreement provided that it has given at least [two months] prior written notice to NE and the LPAs.
- 6.4 It is agreed and understood that the role of the Administrative Body is limited to the functions set out in Clause 6.1 above and that the Administrative Body is not assuming any role in providing financial advice.
- 6.5 The Administrative Body shall keep full records relating to the functions in this clause and allow NE and the LPAs, and their statutory auditors access at all reasonable times to such records and the right to take copies of them.

7 Project delivery

- 7.1 NE shall be responsible for the delivery of the Project with a view to achieving the objectives set out at Schedule 3, Part 1 by undertaking the operations set out at Schedule 3, Part 2.
- 7.2 NE's responsibilities under clause 7.1 above shall continue for three years with effect from the Commencement Date. No less than [6] months prior to the third anniversary of the Commencement Date, NE shall notify the Administrative Body and the LPAs whether it is able to continue to carry out the functions referred to at clause 7.1. In the event that it is able to then it shall carry out the functions for a further three year period and the provisions of clause 7.1 shall continue to apply for such period. The provisions of this clause 7.2 shall apply in relation to the expiry of such further three year period. The same provisions shall apply in relation to any subsequent three year period.

- 7.3 In the event that NE states in accordance with clause 7.2 above that it will no longer be able to continue to deliver the Project, then the LPAs shall use their best endeavours to ensure that the Project continues to be delivered and appoint an organisation with relevant experience and expertise to take over the role of NE. The LPAs shall carry out such advertising and competition in relation to the appointment of a successor to NE as may be necessary to ensure that an open and transparent procedure is followed in relation to such appointment and all applicable laws and rules governing public sector procurement are complied with.
- 7.4 If NE ceases to be responsible for delivery of the Project it shall cease to be a party to this Agreement and any organisation that takes over the functions of NE shall be joined as a party to this Agreement.
- 7.5 NE shall report on the progress of the implementation and delivery of the Project to each meeting of the Strategic Access Management Board in accordance with the template for such reports set out at Schedule 4. NE shall in addition provide such information about the Project to the Administrative Body and/or the LPAs as may be reasonably required.

8 Governance arrangements

- 8.1 The delivery of the Project shall be overseen by the Strategic Access Management Board (“the Project Board”). The terms of reference of the Project Board and its membership are set out at Schedule 5, Parts 1 and 2 respectively. The Project Board shall meet every three months during the first year of the Project and every six months thereafter.
- 8.2 The Project Board shall report to the Joint Strategic Partnership Board which shall give final approval to the reviews and recommendations of the Project Board. The terms of reference of the Joint Strategic Partnership Board and its membership are set out at Schedule 5, Parts 3 and 4 respectively.
- 8.3 The governance arrangements referred to in this clause are summarised in the diagram set out at Schedule 5, Part 5.

9 Variation

9.1 No variation to this Agreement shall take place without the consent in writing of all parties. Any such variation shall state that it is a variation for the purposes of this clause and shall be signed for and on behalf of the parties to this Agreement.

10 Contract term/termination

10.1 This Agreement shall come into force on the Commencement Date and shall continue in force unless terminated in accordance with this clause or ended by mutual agreement.

10.2 In the event that any party is in material and substantial breach of this Agreement then any other party may by notice in writing to all the other parties require such breach to be remedied by the party in breach within such reasonable period as may be set out in the notice. The notice shall set out what steps are required to remedy the breach.

10.3 In the event that the breach is not remedied in accordance with clause 10.2 above then this Agreement may be terminated by the party which served the notice under clause 10.2 serving a notice of termination in writing on all the other parties.

10.4 This agreement shall be subject to review every third anniversary of the Commencement Date. In the event that any party considers that the agreement should be terminated then it shall notify the other parties to this effect no later than three months prior to such anniversary, setting out its reasons. The parties shall consider the issue of termination and the agreement shall terminate on such anniversary if all parties agree to such termination.

10.5 Following termination of the Agreement in accordance with this clause then any sums of money held by the Administrative Body shall be used to discharge any liabilities incurred by NE or any Delivery Body in relation to the Project including the payment of redundancy payments to any employees undertaking work in connection with the Project and in the event that any balance is left this shall be paid to the LPAs in the proportion of their payments of the Guideline Tariffs during the period from the Commencement Date until the date of termination..

11 Dispute Resolution

11.1 The following provisions shall apply in the event of any disputes arising between the parties relating to this Agreement;

11.1.1 The parties will endeavour to notify each other of any anticipated dispute arising under or in relation to the terms of this Agreement to the intent that it can be avoided by negotiation between them.

11.1.2 The parties will endeavour to resolve any dispute which does arise by direct negotiations in good faith between senior executives. The dispute may on the request of any party, be referred to mediation if it cannot be resolved by direct negotiation. The mediator shall be appointed, on the application of any party, by the Centre for Dispute Resolution. In the event of a referral to mediation each party shall pay its own costs in respect of the mediation.

11.2 Any dispute not resolved in accordance with clause 11.1 above shall be referred to and finally be resolved by arbitration in accordance with the Arbitration Act 1996. The identity of the arbitrator shall be agreed between the parties or in default of agreement appointed by the President of the Law Society.

12 Third Party Rights

The parties do not intend any term of this Agreement to be enforceable by any third party.

13 Entire Agreement

This Agreement constitutes the entire understanding and agreement between the parties relating to the subject matter of this Agreement and, save as may be expressly referred to stated or referenced herein, supersedes all prior representations, documents, negotiations or understandings with respect hereto and neither party has entered into this Agreement in reliance upon any representation whether written or oral by the other party or anyone acting or purporting to act on such other parties behalf.

14 Waiver

14.1 The failure of any party to insist upon strict performance of any provision of this Agreement, or the failure of any party to exercise any right or remedy to which it is entitled hereunder, shall not constitute a waiver thereof and shall not cause a diminution of the obligation established by this Agreement.

- 14.2 A waiver of any default shall not constitute a waiver of any subsequent default.
- 14.3 No waiver of any of the provisions of this Agreement shall be effective unless it is expressly stated to be a waiver and communicated by the waiving party to the other party in writing.

15 Law and jurisdiction

This Agreement shall be considered as a contract made in England and according to English Law, and shall be subject to the exclusive jurisdiction of the English Courts to which both parties hereby submit.

16 Assignment

This Agreement is personal to the parties hereto and may not be assigned.

17 Freedom of Information

- 17.1 The parties shall comply with their obligations under FOIA and the EIR.
- 17.2 In the event that a party receives a request for information under FOIA or the EIR that includes a request for information relating to any other party to the agreement, the party receiving the request shall forward it to that other party as soon as practicable and shall take account of any representations made by that other party received in time to respond to such request.
- 17.3 The parties shall provide each other with reasonable assistance in responding to requests for information under FOIA or the EIR when requested to do so by a party to this agreement.

18 Data Protection

The parties shall comply with their obligations under the Data Protection Act 1998 insofar as performance of this agreement gives rise to obligations under this legislation.

IN WITNESS whereof the parties hereto have executed this deed the day and year first before written

SCHEDULE 1

National England Guideline Methodology

SCHEDULE 2
Financial Reporting Requirements

SCHEDULE 3
Project

Part 1
Objectives

Part 2
Operations

SCHEDULE 4
Report Template

SCHEDULE 5
Governance Arrangements

Part 1

Project Board Terms of Reference

Part 2

Project Board Membership

Part 3

Joint Strategic Partnership Board Terms of Reference

Part 4

Joint Strategic Partnership Board Membership

Part 5

Diagram of Governance Arrangements

EXECUTED AS A DEED by)
NATURAL ENGLAND in the presence of:)

Authorised Signatory

Authorised Signatory

THE COMMON SEAL of)
HAMPSHIRE COUNTY COUNCIL)
was hereunto affixed to this Deed in the)
presence of:)

Authorised Signatory

Authorised Signatory

THE COMMON SEAL of **BRACKNELL**)
FOREST BOROUGH COUNCIL)
was hereunto affixed to this Deed in the)
presence of:)

Authorised Signatory

Authorised Signatory

THE COMMON SEAL of)
ELMBRIDGE BOROUGH COUNCIL)
was hereunto affixed to this Deed in the)
presence of:)

Authorised Signatory

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HART DISTRICT COUNCIL)
was hereunto affixed to this Deed in the)
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AND MAIDENHEAD)
was hereunto affixed to this Deed in the)
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WOKING BOROUGH COUNCIL)
was hereunto affixed to this Deed in the)
presence of:)

Authorised Signatory

Authorised Signatory

THE COMMON SEAL of
WOKINGHAM BOROUGH COUNCIL
was hereunto affixed to this Deed in the
presence of:

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Authorised Signatory

Authorised Signatory