

DATED 1st JUNE 1994

NORFOLK COUNTY COUNCIL

- and -

PATRICK DOUGLAS COOK

- and -

ALFRED PETER COOK

- and -

REDLAND AGGREGATES LIMITED

A G R E E M E N T

under Section 106 of the Town
and Country Planning Act 1990
relating to land at Spixworth

Nicholas Hancox
Director of Legal Services
Norfolk County Council
County Hall
Martineau Lane
Norwich NR1 2DH

JCB/SMA Cook

THIS AGREEMENT is made the ^{1st} day of JUNE One thousand nine hundred and ninety-four

BETWEEN THE NORFOLK COUNTY COUNCIL ("the County Council") of County Hall Martineau Lane Norwich of the first part PATRICK DOUGLAS COOK and ALFRED PETER MALCOLM COOK ("the Owners") both of Grange Farm Spixworth Norfolk of the second part and REDLAND AGGREGATES LIMITED (Company Number 297905) whose registered office is situate at Redland House Reigate Surrey ("the Developer") of the third part

WHEREAS:-

- (1) The County Council is a local planning authority for the purposes of the Town and Country Planning Act 1990 ("the Act") the highway authority for the purposes of the Highways Act 1980 and a local authority for the purposes of the Local Government Act 1972 for the area in which the land shown edged red on the attached plan ("the Land") is situated
- (2) The Owners are the joint owners in fee simple in possession of the Land
- (3) The Developer holds an option to acquire a leasehold interest in the Land
- (4) The Developer has made an application (reference C/92/5009) dated 10 February 1993 ("the Application") in accordance with the Act and the orders and regulations for the time being in force thereunder for planning permission to develop the Land by the

extraction of sand and gravel and the subsequent partial infilling and restoration to agriculture ("the Development")

- (5) There are highway objections to the Development which can only be overcome by the works specified in Schedule 1 hereto ("the Works")
- (6) The obligations created by this deed are planning obligations within the meaning of Section 106 of the Act (as amended)
- (7) The obligations created by this deed are enforceable by the County Council

N O W THIS DEED WITNESSETH as follow:-

- 1. This Agreement is made in pursuance of Section 106 (as substituted by Section 12(a) of the Planning and Compensation Act 1991) of the Act Section 278 of the Highways Act 1980 Section 111 of the Local Government Act 1972 and all other enabling powers
- 2. In this Agreement:-
 - (i) "the Covenantee Parties" shall mean the Owners and the Developer
 - (ii) "the Planning Permission" shall mean the planning permission to be granted pursuant to this Agreement in the form annexed hereto in Schedule 3

3. (i) This Agreement is conditioned upon the grant of the Planning Permission Provided That in the event that the Covenantee Parties do not implement the Planning Permission by the carrying out of a material operation (as defined by Section 56(4) of the Act nothing in this Agreement shall oblige the Covenantee Parties to carry out the Works or to pay any monies to the County Council other than to comply with obligations arising before the commencement of the Development envisaged by the Planning Permission
 - (ii) If the Planning Permission shall expire before the Development has been implemented or is quashed or revoked or otherwise withdrawn or without the consent of the Covenantee Parties modified by any statutory procedure this Agreement shall cease and be of no effect
4. No person shall be liable for any breach of the covenants restrictions or obligations in this Agreement (save in respect of any subsisting breach or obligation) occurring after that person shall have parted with their interest in the Land or any part of the Land in respect of which such a breach occurs
5. It is hereby agreed and declared that the Covenantee Parties shall bear all the costs associated with the preparation and implementation of the programme of archaeological work referred to in the Planning Permission
6. The Covenantee Parties hereby covenant with the County Council that in the event of planning permission being granted in respect of the Application:-

- (i) no part of the Development shall be brought into use until the completion (at the expense of the Developer) of the Works to the satisfaction of and in accordance with the requirements and specifications of the County Council
 - (ii) that the Developer will before the commencement of the Works provide a Bond of Surety with an Assurance Company Guarantee Society Bank or like body approved by the County Council in the total sum to be agreed representing a reasonable estimate of the cost of the Works as a guarantee for the due performance by the Developer of the covenant in 6(i) such sum to be reviewed if the Works have not been completed within twelve months of the date of this Agreement and thereafter at 12 monthly intervals and amended to such sum as the County Council may determine
- 7. The Owners hereby agree that they will upon completion of the Works dedicate to the County Council such land which as a result of the Works shall form part of the highway
- 8. The County Council hereby agree to the Works being carried out by the Covenantee Parties or their respective contractors subject to the conditions set out in Schedule 2
- 9. The Covenantee Parties further covenant with the County Council that in the event of planning permission being granted for the Development that for the duration of the Development they will not cause or permit the Land to be used for the purpose of the Development unless all vehicles travelling between the Land and the existing mineral processing plant site at Hainford shown edged green on the attached plan do so via

the route shown in yellow on the attached plan

10. The Owners hereby covenant with the County Council that they will reimburse the County Council in respect of any compensation properly paid by the County Council under Part I of the Land Compensation Act 1973 as a result of carrying out of or use of the Works
11. The Covenantee Parties hereby covenant with the County Council that:-
 - (i) within 6 months from the date of this Agreement they will submit to and obtain the approval (such approval not to be unreasonably withheld or delayed) of the County Council to a scheme for the provision and maintenance of permissible footpaths ("the Footpath Scheme") along the routes shown coloured pink on the attached plan
 - (ii) within 6 months from the date of receipt of the County Council's approval they will implement the Footpath Scheme
 - (iii) thereafter they will maintain the footpaths comprised in the Footpath Scheme to a standard required by the said scheme
 - (iv) within 6 months from the date of this Agreement they will submit to and obtain the approval (such approval not to be unreasonably withheld or delayed) of the County Council to a management plan for Spixworth Park shown edged blue ("the Blue Land") on the attached plan with the objective of maintaining

and enhancing the character of the historic parkland which management plan shall be implemented as shall be provided therein

- (v) they will not cause or permit any further mineral working to take place on the Blue Land

12. This document is executed as a Deed and is delivered on the date first before written

13. The expressions "the County Council" "the Owners" and "the Developer" shall include their respective successors and assigns as appropriate within the terms of Section 106 of the Act

14.1 If a Planning Challenge (defined below) results in the Planning Permission being quashed or found never to have been valid then all obligations under this Agreement (apart from this Clause 3) shall automatically be extinguished and the parties shall co-operate in taking all steps necessary to achieve that end

14.2 "Planning Challenge" means any application to the High Court (including any application for leave to apply for a judicial review) which may result in the Planning Permission being quashed or found never to have been valid

15. Any dispute shall be referred to a person having appropriate professional qualifications and experience in such matters ("the Expert") appointed jointly by the parties or in default by the President for the time being of the Royal Institution of Chartered

Surveyors (or on his behalf) on the application of either party. The Expert shall act as an expert and not as an arbitrator. The decision of the Expert shall be final and binding upon the parties and the following provisions shall apply to the Expert:-

- (i) The charges and expenses of the Expert shall be borne equally between the parties or in such other proportions as the Expert may direct
- (ii) The Expert shall give the parties an opportunity to make representations in writing to him before making his decision
- (iii) The Expert shall supply each party with a copy of the other parties representation and each party shall be entitled to respond by way of a counter-representation in writing within ten days of receipt of the same. The Expert is not obliged to disclose the contents of any counter-representations received
- (iv) The Expert shall be entitled to obtain opinions from others if he so wishes
- (v) The Expert shall give reasons for his decision
- (vi) The Expert shall comply with any time limits or other directions agreed by both parties on or before his appointment. If the Expert fails to comply with the time limits any party may apply prior to the making of his decision for a fresh appointment to be made

16. Any Notice under this Agreement shall be in writing and shall be served in the

manner hereinafter appearing:-

- (i) On the County Council by sending it by recorded delivery post or by hand addressed to the Chief Executive and Clerk Norfolk County Council County Hall Martineau Lane Norwich or such other person who is notified in writing to the Developer
 - (ii) On the Developer by sending it by recorded delivery post or by hand to its registered office and a further copy to Farthing Green House Loddon Norfolk
 - (iii) On the Owners by sending it recorded delivery cost or by hand to the address given in this Agreement
17. The Agreement shall be registered as a Local Land Charge
18. The Council will upon the written request of the Owners or any successor in title to the Owners at any time after the obligations of the Covenantee Parties hereunder have been performed or otherwise discharged issue written confirmation thereof and thereafter forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Agreement
19. The expression 'the County Council' 'the Owners' and 'the Developer' shall include the successors in title to and any person claiming through or under each respectively
20. Where any party to this Agreement comprises more than one person all covenants herein given are given jointly and severally

SCHEDULE 1

- (i) the provision of a right turning lane on Buxton Road as shown on the attached plan
- (ii) the crossing of Church Lane by the haul road with associated visibility splays
- (iii) any necessary statutory undertakers works
- (iv) any necessary ancillary works

SCHEDULE 2

- (1) The name of any contractor introduced by the Covenantee Parties shall be notified in writing to the County Council not less than twenty-eight days before the commencement of the Works
- (2) The Covenantee Parties shall only be entitled to introduce contractors who are specifically approved by the County Council (such approval not to be unreasonably withheld or delayed)
- (3) The Owners shall upon receiving a written request so to do produce to the County Council for inspection any contract documents in respect of the Works
- (4) (a) The Works shall be carried out:-

- (i) In accordance with a timetable to be approved (such approval not to be unreasonably delayed) by the County Council before the commencement of the Works
 - (ii) Under the supervision of the County Council
 - (iii) In accordance with the reasonable requirements and specifications of the County Council
 - (b) The Works shall not be commenced until the relevant Covenanting Parties have received from the County Council a written authorisation to commence the Works (such authorisation not to be unreasonably delayed)
- (5)
- (a) The Covenanting Parties shall be responsible for producing contract drawings for the Works
 - (b) The contract drawings shall require the approval of the County Council prior to the commencement of the Works or where the Covenanting Parties propose to introduce a contractor prior to any arrangements being entered into between Covenanting Parties and their contractor
- (6) The Covenanting Parties shall be responsible for ensuring that any reasonable requirements of statutory undertakers are met prior to the commencement of the Works and the cost of any works required by the statutory undertakers shall be met in full by the Owners

- (7) The Works shall be completed to the written satisfaction of the County Council
- (8) The Covenantee Parties shall be responsible for the execution of all works of repair amendment reconstruction rectification and making good of defects as may reasonably be required in writing by the County Council during the period ending 12 months after the date of the completion of the Works
- (9) (a) The County Council reserve the right to terminate forthwith in writing the arrangement whereby the Covenantee Parties (or their contractor) carry out the Works if the conditions set out in this schedule are not strictly complied with
- (b) Upon termination under Paragraph 9 (a) above the County Council shall be entitled to call in the Bond referred to in Clause 4(ii) for the purposes either of completing the Works or reinstating the site to its condition immediately prior to the commencement of the Works
- (10) In the event of the County Council terminating these arrangements they shall not be liable in any way for any direct or indirect loss resulting from termination
- (11) The County Council its servants and authorised agents shall at all times during the Works and the maintenance period referred to in Paragraph 8 above have access to the Works
- (12) (a) Throughout the execution of the Works the Covenantee Parties shall insure

against any damage loss or injury which may occur to any property or to any person by or arising out of the execution of the Works such insurance to be effected with an insurer in terms approved by the County Council (such approval not to be unreasonably withheld or delayed) for such sum as the County Council may reasonably determine

- (b) Prior to the commencement of the Works the Owners shall forward to the County Council evidence of their insurance cover

- (13) The Covenanting Parties shall be responsible to the County Council for the proper execution and maintenance of the Works and shall indemnify and keep indemnified the County Council against (a) all losses and claims for injury or damage to any person or property whatsoever which may arise out of or in consequence of the execution and maintenance of the Works (b) all claims demands proceedings damages costs charges and expenses whatsoever in respect thereof or in relation thereto (This liability to indemnify the County Council shall be reduced proportionately to the extent that the said loss injury or damage is proved to be contributed to by the act or neglect of the County Council or its servants)

- (14) The Covenanting Parties shall pay to the County Council the following sums:-

- (i) A legal and administration charge amounting to £1,750 (such sum to be paid upon completion of this Agreement)
- (ii) A sum to cover the actual staff costs (plus overheads) incurred by the County

Council in supervising the carrying out of the Works (such sum to be paid on such date or dates as the County Council may specify)

- (iii) A sum to cover the costs (plus overheads) incurred by the County Council in checking the contract document and drawings for the Works (such sum to be paid on such date or dates as the County Council may specify and to be based on a charge of £30.00 per hour)
- (15)
- (a) If the Covenantee Parties should fail to complete the whole of the Works in accordance with the timetable approved by the County Council pursuant to Paragraph (4)(a)(i) above then the Covenantee Parties shall pay to the County Council for such default the sum of 30 pounds for every day which shall elapse between the date on which the Works should have been completed under the said Paragraph (4)(a)(i) and the date of completion of the whole of the Works
 - (b) All sums payable by the Covenantee Parties to the County Council pursuant to this paragraph shall be paid as liquidated damages for delay and not as a penalty
 - (c) It is hereby declared and agreed that the sum of 30 pounds per day represents the County Council's genuine pre-estimate of the damage likely to be suffered by them in the event that the whole of Works shall not be completed in accordance with the timetable approved under the said Paragraph (4)(a)(i)

- (16) On the date that the Works are completed pursuant to Paragraph (7) of this Schedule the amount of the Bond as set out in Clause 6(ii) of this Agreement shall be reduced by 90% and the remaining 10% shall be discharged on the first anniversary of such completion provided that any identified remedial works have been completed in accordance with this Agreement

-----DRAFT-----

County Council Ref. C/92/5009

District Council Ref. 5/92/1333

NORFOLK COUNTY COUNCIL

Town and Country Planning Act, 1990

Town and Country Planning General Development Order 1988

To: Redland Aggregates Limited
Broads Green
Great Waltham
Chelmsford
Essex CM3 1DY

Particulars of Proposed Development:

Location: Grange Farm, Spixworth

Applicant: Redland Aggregates Limited

Agent: ---

Proposal: Extraction of sand and gravel, partial infilling, and return to agriculture

The Norfolk County Council hereby gives notice of its decision to PERMIT the development specified in the application and particulars deposited on the 17th September 1992 with the Norfolk County Council, as amended by the applicant's letter and revised application, including supporting statement and plans dated the 10th February 1993, and as amended by the applicant's letter dated the 25th February 1993.

This permission is subject to the conditions specified on the attached sheets.

The reasons for these conditions are also set out on the attached sheets.

Signed _____ Date _____ 1994

DIRECTOR OF PLANNING AND TRANSPORTATION

Norfolk County Council
County Hall
Martineau Lane
Norwich, NR1 2SG

SEE NOTES ON REVERSE SIDE

Location: Grange Farm, Spixworth

Application reference: C/92/5009

1. The development to which this permission relates must commence not later than one year from the date of this permission.
2. The extraction of mineral and the deposit of waste to which this permission relates shall cease within 10 years of the date of this permission.
3. The site shall be restored in accordance with conditions 23 to 29 within 11 years of the date of this permission.
4. No more than 125,000 tonnes of mineral shall be removed from the site per calendar year.
5. No operation authorised or required under this permission shall take place on Sundays or Public Holidays, or other than during the following periods:-

07.00 - 18.00 Mondays to Fridays;
07.00 - 13.00 Saturdays.
6. No operation shall take place except in accordance with the scheme of working shown on Plan Nos. F7/11B and F7/12A dated 10/2/93 unless otherwise agreed in writing with the Mineral Planning Authority.
7. No development shall take place within the site until the applicant has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted by the applicant and approved by the Mineral Planning Authority.
8. Notwithstanding the provisions of the Town and Country Planning General Development Order, 1988 (or any Order revoking and re-enacting that Order), no buildings, plant or machinery, nor structures of the nature of plant or machinery shall be erected on the site, except with permission granted on an application under Part III of the Town and Country Planning Act 1990.
9. No plant, machinery or equipment shall be used on the site until it is maintained in a condition whereby it is efficiently silenced.
10. Screens, chutes and hoppers shall not be used until they have been lined with rubber or similar material.
11. Measures shall be taken to minimise dust nuisance and sand blow caused by the operations, including spraying of road surfaces and stockpiles as necessary.
12. No lighting shall be installed, placed or used on the site unless it is designed and maintained to the satisfaction of the Mineral Planning Authority to ensure horizontal cut-off to avoid the direction of light towards pilots using Norwich Airport.
13. No extraction or filling shall take place until a bird management scheme has been submitted to and agreed by the Mineral Planning Authority. Such scheme as may be agreed shall be implemented for the duration of this permission.

Refer to continuation sheet

14. The development hereby permitted shall not commence until such time as full details of the construction of the haul road have been submitted to and approved by the Mineral Planning Authority. The haul road shall not be used until such time as it has been completed in accordance with the details as may be so approved.
15. There shall be no vehicular access to or from the site except via the proposed haul route as indicated on Plan No. F7/5A dated 10/2/93.
16. The haul road shall not be used until such time as sign has been erected at the exit from the haul road onto the Buxton Road indicating that mineral lorries should turn left on leaving the haul road from the site. The sign shall be maintained to the satisfaction of the Mineral Planning Authority for the duration of this permission.
17. Measures shall be taken to ensure that vehicles leaving the site shall not be in a condition whereby they would deposit mud or other loose material on the public highway.
18. The base of the excavation shall be levelled prior to the tipping of any waste.
19. No waste shall be deposited on the site except that falling within Waste Category 1 as defined in the schedule of types of waste as attached to this notice.
20. No discharge shall be made into any watercourse without the prior consent in writing of the Mineral Planning Authority.
21. An unsaturated zone of at least two metres in thickness shall be maintained beneath the base of the infill material.
22. Any oil storage tanks on the site shall be sited on impervious bases and surrounded by oil tight bund walls; the bunded areas shall be capable of containing 110% of the tank volume and shall enclose all fill and draw pipes.
23. Handling, movement and re-spreading of topsoil and subsoil shall not take place except when the soils are in a suitably dry and friable condition and in such a way and with such equipment as to ensure minimum compaction. The criteria for moving agricultural soils are to be based on measurement of their Lower Plastic Limit (LPL) unless otherwise agreed in writing with the Mineral Planning Authority, and the following requirements shall be met:
 - (a) a Speedy Moisture Meter, in good working order, shall be available on site for use by the Mineral Planning Authority at all times when soils are being moved;
 - (b) the LPL for both topsoil and subsoil on each major soil type is to be determined and agreed with the Mineral Planning Authority in consultation with MAFF;
 - (c) agricultural soils may not be moved by dump truck or backacter unless they are drier than their LPL;
 - (d) Soils may not be moved by other machinery unless they are at least 5% drier than their LPL.
24. Until the topsoil and subsoil have been stripped from the site, the land shall not be traversed by any plant or machinery, save that which is engaged in stripping operations. and all such machinery shall be used in such a way as to minimise soil compaction.

Refer to continuation sheet

Location: Grange Farm, Spixworth

Application reference: C/92/5009

25. Topsoils, upper and lower subsoils as shown in the submitted (MAFF/ADAS) Soil Characteristics Report shall be separately stripped to a total depth of 1.2 metres and be separately replaced/restored to recreate the original profiles to the same settled depths. This includes the area in the south-east of the site which is only subject to re-grading. The exception to this procedure is where the lower subsoils from below 1.2 metres in Soil Types II and IV are used as lower subsoil substitute for Soil Type III.
26. Where soils are being reinstated by backacter and dumptruck, the machines shall only traffic on the overburden layer.
27. The final metre of backfill shall be free from stones and any extraneous material damaging to cultivations, and shall be ripped with a winged subsoiler to relieve compaction.
28. The scheme of landscaping, Plan No. F7/11B dated 10/2/93 shall be implemented within one year of the date of this permission, unless otherwise agreed with the Mineral Planning Authority. It shall make provision for re-seeding and re-planting where failures or damage occur within a period of five years from the date of initial planting. Any damaged or dead trees shall be replaced with trees of similar size and species at the next appropriate season.
29. The restoration of the site shall be in accordance with the submitted scheme shown on Plan No. F7/13B dated 10/2/93 and as described in the submitted document "Amendments to Planning Application" dated February 1993 unless otherwise agreed in writing with the Mineral Planning Authority.
30. In any part of the site where differential settlement occurs during the restoration and Aftercare period, the applicant, where required by the Mineral Planning Authority, shall fill the depression to the final settlement contours specified with suitable imported soils, to a specification to be agreed with the Mineral Planning Authority.
31. An aftercare scheme specifying that such steps as may be necessary to bring the land to the required standard for use for agriculture shall be submitted for the approval of the Mineral Planning Authority not later than one year from the date of this permission. The outline Aftercare scheme and details for the first year shall be submitted 6 months before any of the site is restored. The approved aftercare scheme shall be implemented over a period of five years following the completion of restoration in stages each of five years duration dating from each completed restoration phase.

Refer to continuation sheet for reasons

Location: Grange Farm, Spixworth

Application reference: C/92/5009

Reasons for conditions:

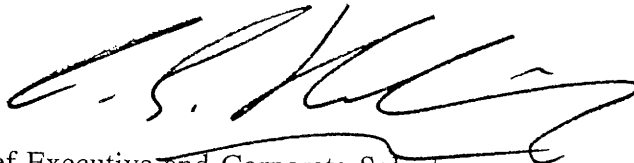
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|----------------------|---|
| 1. | Required to be imposed pursuant to Section 91 of the Town and Country Planning Act 1990, to avoid the accumulation of unexercised planning permissions. |
| 2-6, 8-11,
23-31. | To ensure the proper and expeditious restoration of the site, and to protect the amenities of the surrounding area. |
| 7. | To secure the implementation of a programme of archaeological work. |
| 12,13. | To avoid hazards to aircraft using Norwich Airport. |
| 14-17. | In the interests of highway safety, and to protect the amenities of the area. |
| 18-22. | To safeguard hydrological interests. |
-

Note:

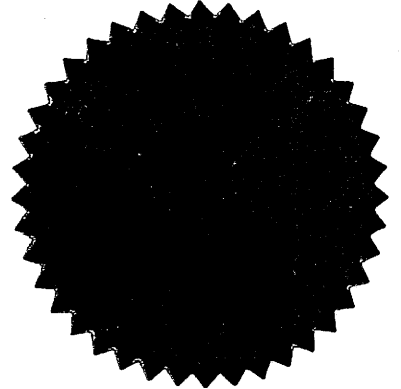
1. Attention is drawn to the requirements of Eastern Electricity as contained in their letter dated the 27th October 1992 as attached to this notice.
2. Attention is drawn to the requirements of Anglian Water as contained in their letter dated the 28th September 1992 as attached to this notice.
3. Attention is drawn to the requirements of the Civil Aviation Authority as contained in their letter dated 24th February 1993 as attached to this notice.
4. This permission is subject also to an agreement under Section 106 of the Town and Country Planning Act 1990, concerning archaeology, public access, reinstatement of parkland, limit on future working to the east, and highway requirements.

IN WITNESS whereof this document has been exercised as a Deed by "the County Council" "the Owners" and "the Developer" and delivered the day and year first before written

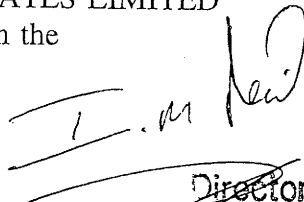
THE COMMON SEAL of THE NORFOLK COUNTY COUNCIL was hereunto affixed in the present of:-



Assistant Chief Executive and Corporate Solicitor



THE COMMON SEAL of REDLAND AGGREGATES LIMITED was hereunto affixed in the presence of:-

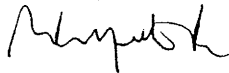


Director

REDLAND SECRETARIES LIMITED

Secretary

SIGNED as a DEED by PATRICK DOUGLAS COOK in the presence of:-



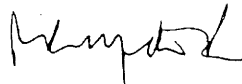
M.R. ALLOUSMITH - BROWN

Francis House, 3/7 Redwell Street

Norwich

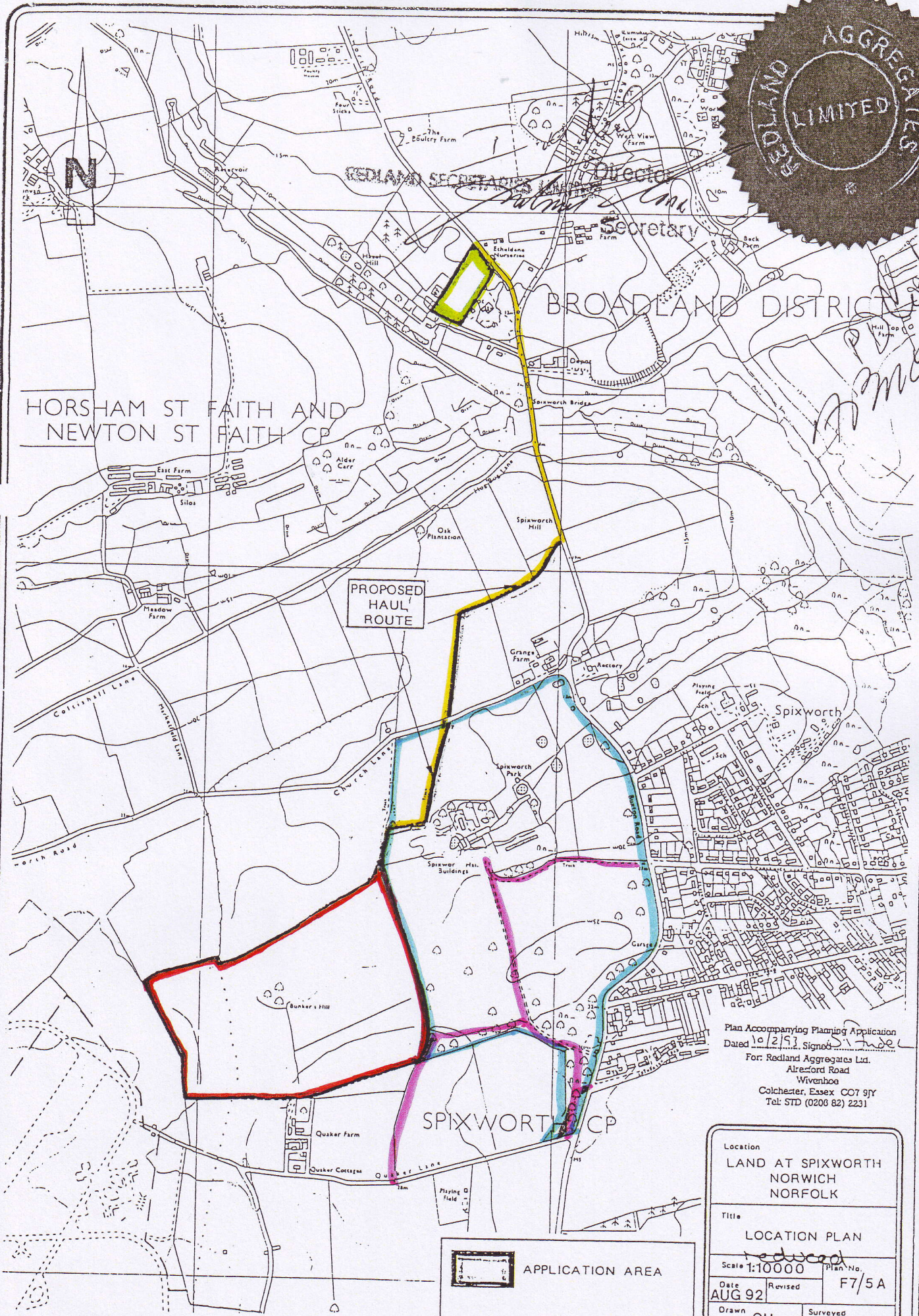
Senator

SIGNED as a DEED by PETER MALCOLM COOK in the presence of:-



As above





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**APPLICATION AREA**

**LAND IN APPLICANT'S CONTROL**

Plan Accompanying Planning Application
Dated 10/2/91 Signed *S. J. Wel*
For: Redland Aggregates Ltd.
Alresford Road
Wivenhoe
Colchester, Essex CO7 9PY
Tel: STD (0206 82) 2231

Location LAND AT SPIXWORTH NORWICH NORFOLK	
Title LOCATION PLAN	
Scale 1:10000	Plan No. F7/5A
Date AUG 92	Revised
Drawn OH	Surveyed
Redland Aggregates Ltd ALRESFORD ROAD, WIVENHOE, COLCHESTER, ESSEX, CO7 9JH TELEPHONE WIVENHOE (0206 82) 2231	



T. M. New
REDLAND SECRETARIES LIMITED
John J. ... Director
... Secretary

PD Cook
ADN 1/10/02

