

DATED 29th June 2010 /

NORFOLK COUNTY COUNCIL

- and -

PATRICK DOUGLAS COOK and ALFRED PETER MALCOLM COOK

- and -

LAFARGE 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 Quarry Extraction Site, Grange Farm, Spixworth

Head of Law
Norfolk County Council
County Hall
Martineau Lane
Norwich
NR1 2DH

T H I S A G R E E M E N T is made by Deed the ^{29th} day of *June* 2009 B E T W E E N NORFOLK COUNTY COUNCIL of County Hall Martineau Lane Norwich (the "County Council") (1) and PATRICK DOUGLAS COOK of Grange Farm 2 Buxton Road Spixworth Norwich NR10 3PR and ALFRED PETER MALCOLM COOK of Quaker Farm Spixworth Norwich NR12 7BH (the "Owners") (2) and LAFARGE AGGREGATES LIMITED of Granite House Granite Way Syston Leicestershire LE7 1PL (the "Developer") (3)

AND RECITES:-

- (1) The Owners are the freehold owners of the land shown edged red (the "Land") on the attached plan (the "Plan")
- (2) The County Council is a Local Planning Authority within the meaning of the Town and Country Planning Act 1990 (the "Act") for the area within which the Land is situated
- (3) The Developer has the benefit of a Lease dated 18th October 1996 over the Land and has made application to the County Council (reference C/5/2009/5012) (the "Application") in accordance with the Act and the Orders and Regulations for the time being in force thereunder for planning permission to vary condition 1 of planning permission C/5/1498/5007 to allow an extension of time to secure remaining mineral reserves (the "Development")

- (4) Subject to completion of this Agreement the County Council have resolved to grant planning permission for the development pursuant to the Application (the "Planning Permission")
- (5) The obligations created by this Deed are planning obligations within the meaning of Section 106 of the Act (as amended) and are enforceable by the County Council

N O W THIS DEED WITNESSETH as follows: -

1. This Agreement is made in pursuance of Section 106 of the Act Section 111 of the Local Government Act 1972 and all other enabling powers
2. The Developer and the Owners hereby jointly and severally covenant with the County Council that with effect from the date of the Planning Permission that the Land shall not be used for the purposes authorised by the Planning Permission unless:-
 - 2.1 All vehicles operated by the Developer or its employees or otherwise under the direct control of the Developer approach and leave the Land via the route shown coloured red on the Plan (the "Permitted Route")
 - 2.2 in relation to vehicles not under the direct control of the Developer all reasonable endeavours shall be used to ensure that such vehicles approach and leave the Land via the Permitted Route

2.3 there are affixed and displayed and maintained on the Land such signs approved by the County Council in writing as to locations numbers size and legend and as shall be required from time to time by the County Council (including any modifications, additions or subtractions to those first or subsequently approved by the County Council)

3. It is hereby agreed and declared for the purposes of clause 2.2 that the requirement to use reasonable endeavours:

3.1 requires the Developer to incorporate in all contracts with persons likely to visit the Land a term having the same effect as clause 2.1

3.2 requires the Developer to communicate in writing with persons whose vehicles from time to time regularly visit the Land informing them of the Permitted Route and requesting that their vehicles follow it at all times when visiting the Land at a method and frequency as shall be reasonably likely to secure co-operation with the use of the Permitted Route such method and frequency to be determined by the Developer and disclosed to the County Council as requested or at the County Councils discretion shall be as reasonably determined by the County Council

3.3 requires the Developer on receiving information that any driver of a vehicle shall have taken any route to or from the Land other than the Permitted Route

to take all necessary and lawful action possible against the Driver to ensure future compliance

3.4 will be breached if an employee of the Developer uses a route other than the Permitted Route

4 the Developer and the Owners hereby further covenant with the County Council:-

4.1 to maintain the footpaths shown coloured pink on the attached plan in accordance with the scheme detailed in the attached letter dated 17th October 1994 and marked "Footpath Scheme"

4.2 within 6 months from the date of this Agreement the Developer 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 on the attached plan ("the Blue Land") with the objective of maintaining and enhancing the character of the historic parkland which management plan shall be implemented as shall be provided therein

4.3 not to cause or permit any further mineral working to take place on the Blue Land

- 5.1 The parties will attempt in good faith to resolve any dispute or claim arising out of or relating to this Agreement promptly through negotiations between the respective senior executives of the parties who have authority to settle the same
- 5.2 If the matter is not resolved through negotiation the parties will attempt in good faith to resolve the dispute or claim through an Alternative Dispute Resolution ("ADR") procedure as recommended to the parties by the Centre for Dispute Resolution
- 5.3 If the matter has not been resolved by an ADR procedure within 28 days of the initiation of such procedure or if either party will not participate in an ADR procedure the dispute may be referred by either party to arbitration for decision by a person appointed by agreement between the parties or in default of agreement by the President for the time being of the Institute of Civil Engineers who shall act as an expert and not as an arbitrator and whose decision shall be final and binding upon the parties
- 5.4 Nothing in clauses 5.1 and 5.2 shall apply to the recovery of a liquidated sum or prevent the parties from commencing or continuing court proceedings
- 6.1 Without prejudice to the enforcement of restrictions and obligations against successors in title no person shall be liable for any breach of this Agreement if at the time the breach occurs they have no interest in the Land

- 6.2 The County Council shall not be liable to any person under this Agreement after that person has parted with all interest in the land but without prejudice to any liability arising prior thereto
7. No waiver (whether express or implied) by the County Council of any breach of default by the Owners or their successors in title in performing or observing any of the terms and conditions of this Agreement shall constitute a continuing waiver and no such waiver shall prevent the County Council from enforcing any of the terms and conditions or from acting upon any subsequent breach or default in respect thereof by the Developers the Owners or their successors in title
7. If the Planning Permission is quashed revoked or expires without implementation then this Deed shall absolutely determine
8. The Owners hereby covenant that they are the freehold owners of the Land and have full power to enter into this Agreement that the Land is free from all mortgages charges or other encumbrances and there is no person having any interest in the Land other than those notified in writing to the County Council's Head of Law prior to the date hereof
9. The expressions "the County Council" "the Developer" and "the Owner" shall include their respective successors and assigns as appropriate within the terms of Section 106 of the Act

10. The parties do not intend that any term of this Agreement shall be enforceable solely by virtue of the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Agreement
11. The Developer shall pay the County Councils reasonable legal costs in connection with this Agreement
12. This Agreement shall be registered as a local land charge

IN WITNESS WHEREOF the parties hereto have executed and delivered this Deed
the day and year first before written

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

Vick N

HEAD OF LAW



29621

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

CSH

PD Cook

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

CSH

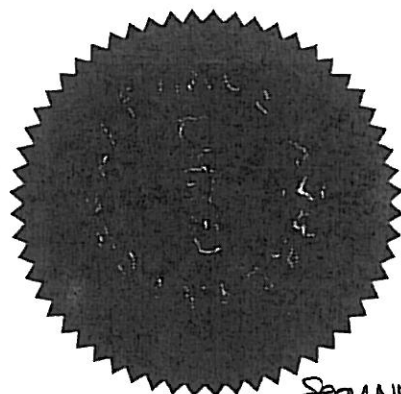
APM Cook

THE COMMON SEAL of
LAFARGE AGGREGATES LIMITED
Was hereunto affixed in the presence of:-

Director *RH Meston*

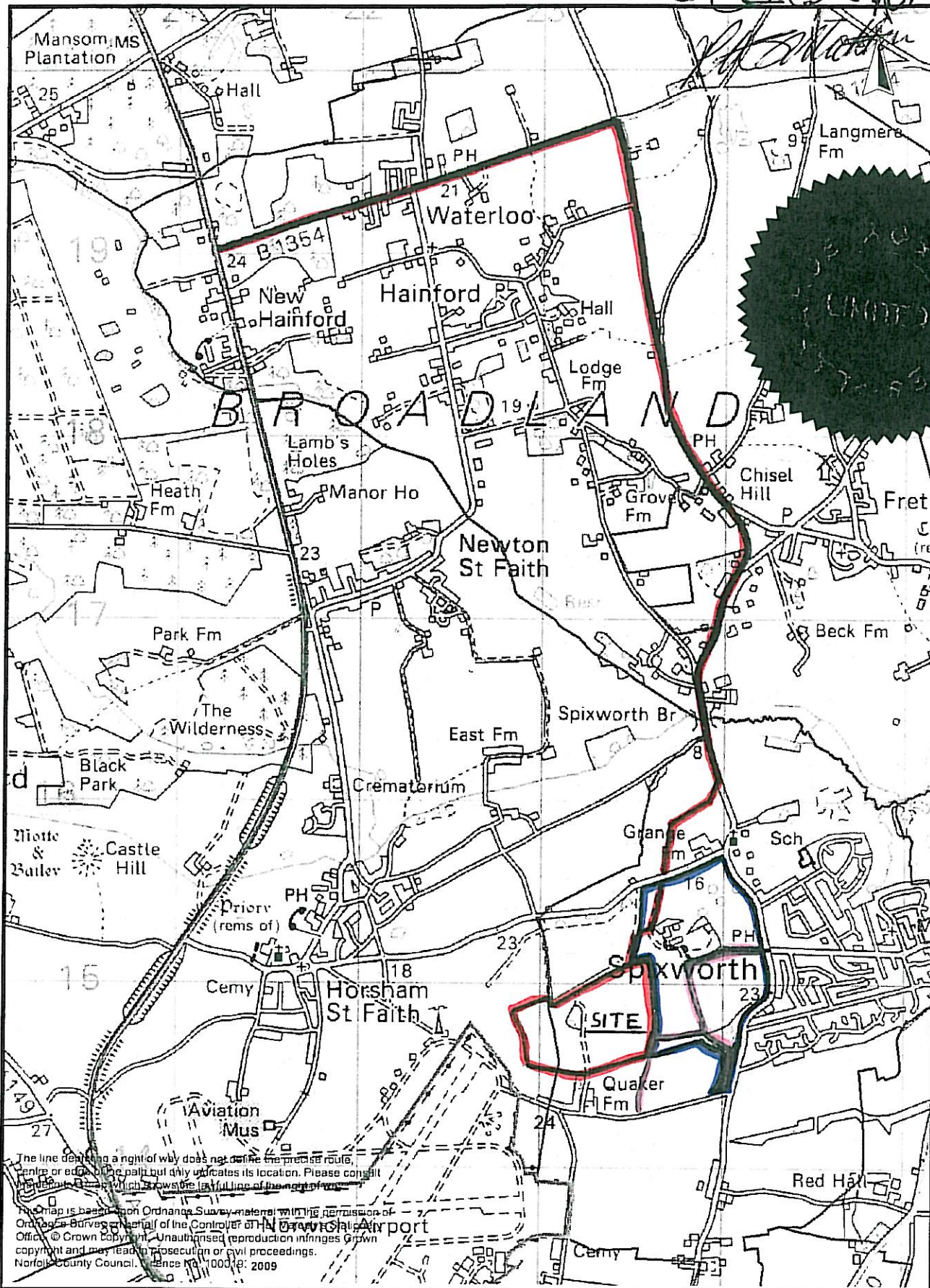
Secretary DIRECTOR

ASL



Seal No 653

W. Look at B. 10 Dec



The line denoting a right of way does not define the precise route, centre or edge of the path but only indicates its location. Please consult the Ordnance Survey map which shows the full line of the right of way.

This map is based upon Ordnance Survey material with the permission of Ordnance Survey on behalf of the Controller of Her Majesty's Stationery Office. © Crown Copyright. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings. Norfolk County Council. Licence No. 100016. 2009

NMB print

County Council

Produced using NMB Express
Scale 1:30000
Map centre: 622616,316843

FOOTPATH SCHEME

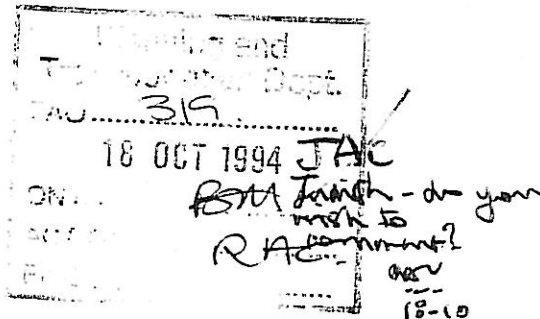
Redland Aggregates Limited
Alresford Road
Wivenhoe
Colchester
Essex
CO7 9JY
Telephone: 0206 82 2231
Fax: 0206 82 2555

Our reference: SJA/KEB/F.7/PL.2

17 October 1994



R A Cranthorne Esq
Norfolk County Council
Planning & Transportation
County Hall
Martineau Lane
Norwich
Norfolk



Dear Mr Cranthorne

RE: SPIXWORTH - GRANGE FARM MINERAL EXTRACTION

We refer to our Planning Permission and Section 106 Agreement dated 1 June 1994 and, in particular, to Clause 11 of that Agreement relating to the footpath scheme and the Historic Parkland Management Plan.

The line of the permissive footpaths, where they are not on farm tracks, have now been cut through the existing woodland to a minimum width of 1.8 metres and considerable quantities of vegetation have been removed. The surface of the footpaths is left as natural ground formation as the conditions are good and there is no need to introduce other materials, such as hoggins.

The line of the footpaths was walked with members of the Spixworth Liaison Committee and your good self and everybody seemed pleased with the new routes and that the condition of the footpaths was satisfactory, except for two specific locations, namely:-

- 1 Where the footpath emerging from woodland onto the Buxton Road opposite Arthurton Road was partially obstructed and it was agreed that a bole of a tree should be removed.
- 2 Where the footpath emerges from the woodland onto Quaker Lane down a steep embankment and it was agreed that this embankment should be graded out to prevent people accidentally stumbling onto the highway.

(contd.....)

Other works to be carried out were to take place after sugarbeet harvest where the footpath will run down the western side of Field No 6947 from the woodland to Quaker Lane. This hedgerow will be flailed back mechanically by the landowner and the headland of 1.8 metres' wide left for people to use between that hedgerow and the arable field.

Signposts and direction indicators will be ordered up and it is intended to open the footpath for public use by Christmas 1994 and the routes will be publicised in the village magazine.

Regarding future maintenance of the permissive footpaths, it is hoped that, with public usage, they will be very much self-maintained but, should additional works need to be carried out, either with strimmers or mechanical flails, these will be done as and when required.

We should be grateful if you would confirm that the works carried out to date and, subject to the other items being completed, meet the County Council requirements under Clause 11 (i), (ii) and (iii).

Regarding Clause 11 (iv), we enclose for your approval our Plan No F7/20 showing proposed planting on the Spixworth Park area. Each tree will be planted in a 1.2 metre high grow cone and, where it is in an area of grazing animals, they will be protected by stockproof fencing with wooden top rail in order that the plants cannot be grazed by horses.

We have endeavoured to take account of comments from Judith Cantell and Ben Hobden in the preparation of the scheme, although, at this stage, there is no intention to alter the actual cropping rotation of the park.

It is proposed to do additional planting on the track running east to west from the Buxton Road to form an avenue of mainly oak. In the damper low-lying area, north of this track, running from Spixworth Hall buildings through to the Buxton Road it is proposed to plant with mainly ash, willow, alder and some native black poplar immediately adjacent to water areas. Additional ash and oak will be planted adjacent to a track that runs north towards Grange Farm buildings and, in the two fields north of Spixworth Hall buildings, currently in arable use, it is proposed to under-plant existing oak trees, some of which are in poor condition, each with three transplants, again protected by grow cones.

It would be our intention to maintain these trees for a period of at least five years, both by spraying off competitive weeds and by actual replacement, should that become necessary.

(contd.....)

We should be grateful for your confirmation or otherwise that these proposals meet with your requirements of Clause 11 (iv) of our Agreement.

Yours sincerely

A handwritten signature in black ink, appearing to read 'S.J. Anderson'. The signature is fluid and cursive, with a large initial 'S' and a long, sweeping underline.

S.J. ANDERSON

Lands & Planning Manager

Copy to: Judith Cantell
Ben Hobden