

This LICENCE is dated 8th March 2017 and made between

(1) **COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL** of Plough Lane Offices, Plough Lane Hereford HR4 0LE ("the Council") and

(2) **KINNERSLEY AND DISTRICT GROUP PARISH COUNCIL** ("the Applicant").

BACKGROUND

(A) the Council is the local highway authority for the purposes of the Act for the Highway Land

(B) the Applicant proposes to execute the Works to construct the Car Parking Improvement on the Highway Land.

(C) the Council has agreed to grant a licence to the Applicant for the construction and maintenance of the works on the Highway Land on the terms and conditions set out in this licence.

AGREED TERMS

1. INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in this agreement.

"Act": Highways Act 1980 as amended

"Council": County of Herefordshire District Council and any agent company appointed to act on its behalf for highway matters

"Car Parking Improvement": the car parking area to be constructed on the Highway Land in accordance with this Licence. The car parking area is to be sited on the south side of the A4112/C1087 junction. It will be as per the attached sketch, allowing for a maximum of 18 parking spaces, each with dimensions 2.4m x 4.8m, plus 2 disability spaces close to the entrance at double the width. Visibility of 2.4 x 55 m is to be maintained at the junction of the A4112/C1087. The extent of the car parking area on the south-west side is to be no closer than 2.75 m from the carriageway.

The bank of earth to be left on the edges of the car park adjacent to the highway will remain similar in height to its current height before commencement of the Works. The Applicant will ensure that the grass on the bank is regularly mowed to keep it short, so as not to impede visibility. The Applicant will also ensure that that the hedge/verge on the C1087 is maintained in a constant clear to ground level condition as far as the advanced Give Way Sign, as agreed at a site meeting with the Herefordshire Council Safety Officer. The position of the grass banks, as detailed on the plan, will ensure that the access and egress is on the side closest to the A4112 to maximise visibility onto the C1087.

"Highway Land": that part of the highway maintainable at the public expense shown coloured blue on the plan attached to this licence.

“Necessary Consents”: all consents, licences, permissions, certificates, authorisations and approvals which are required for the construction, use, maintenance and/or repair of the Footway.

“Proper Officer”: any suitably qualified Council officer for the time being appointed for the purposes of this consent or any such officer of an agent company appointed by the Council to act on its behalf.

“Works”: the works to be carried out on Highway Land.

1.2 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.

1.3 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.4 Reference to any statutory provision shall include reference to any amendment or re-enactment thereof

1.5 An obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done and to use its best endeavours to prevent such act or thing being done by a third party.

1.6 This agreement is made under the provisions Section 101 Local Government Act 1972 as amended and all other statutory and other enabling powers and shall be enforceable accordingly.

2. LICENCE TO INSTALL AND MAINTAIN

2.1 The Council gives the Applicant licence to carry out the Works on the Highway Land in accordance with, and subject to, the terms and conditions of this consent.

2.2 This consent is given subject to the rights (if any) of the following:

- (a) the owners or occupiers of premises (if any) adjoining the Highway Land;
- (b) statutory undertakers;
- (c) operators of an electronic communications code network and/or a driver information network.

2.3 This consent shall not confer on the Applicant:

- (a) any other necessary consents that may be required for the Works and the Applicant shall make its own arrangements to obtain such consents if required; or
- (b) an interest in the Highway Land.

2.4 The parties hereto agree that this consent shall operate as a licence only and does not create the relationship of landlord and tenant between the Council and the Applicant or confer on the Applicant any right to which a tenant would be entitled.

3. APPLICANT OBLIGATIONS

The Applicant agrees with the Council to comply with the terms and conditions set out in this agreement.

4. COUNCIL'S OBLIGATIONS

Subject to the terms and conditions of this licence the Council gives the Applicant, its contractors and employees licence to enter the Highway Land with or without workmen, plant and machinery to enable the Applicant to carry out the Works and comply with its obligations in this licence.

5. RESTRICTIONS ON COMMENCEMENT OF THE WORKS

Prior to the commencement of the Works, the Applicant shall:

(a) obtain all other Necessary Consents (including a certificate of public liability insurance cover as mentioned in clause 8 below) and deliver copies of them to the Proper Officer;

(b) obtain approval in writing from the Proper Officer of/for:

(i) the Works and

(ii) any other information that the Proper Officer shall require.

(c) give to the Proper Officer at least 10 working days notice of the date the Works commences unless otherwise agreed ; and

(d) provide to the Proper Officer the contact details of a representative of the Applicant for the duration of the Works

6. CONSTRUCTION OF THE STRUCTURE

6.1 The Applicant, its contractors and employees shall, at its own cost, carry out the Works:

(a) in a good and workmanlike manner, using contractors and employees qualified to carry out works within the highway;

(b) in accordance with the details approved by the Proper Officer pursuant to clause 5(b) (or as otherwise agreed in writing with the Proper Officer), any said necessary consents, all relevant building standards, codes of practice and good building and engineering practice.

6.2 On practical completion of the Works, the Applicant shall to the satisfaction of the Proper Officer:

(a) notify the Proper Officer that the Works are complete;

(b) leave the Highway Land in a clean and tidy condition.

6.3 The Applicant shall maintain and keep the Works in a good and safe condition to the satisfaction of the Council

6.4 Before commencing any works for the maintenance or repair of the Structure that may affect the Highway Land, the Applicant must give at least 10 working days notice in writing to the Proper Officer (save in cases of emergency) describing:

- (a) the nature of the works; and
- (b) the method by which it is proposed to execute them

6.5 The Applicant shall comply with the requirements of the Proper Officer in relation to any work of maintenance or repair of the Works that may affect the Highway Land.

6.6 The Applicant shall take all reasonable precautions to avoid damage to the Highway Land (including any buildings, fixtures, street furniture or other permanent or temporary structures on the Highway Land) during:

- (a) the carrying out of the Works; or
- (b) any work to maintain or repair the Works; or
- (c) the dismantling and removal of the Works

but in the event that any damage is caused, the Applicant must make good at its own expense and in accordance with any terms and conditions required by the Proper Officer.

6.7 No advertisement, placard, bill or poster or similar device shall be placed on the Works without the prior consent in writing of the Proper Officer.

7. INDEMNITY

The Applicant shall indemnify the Council against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses suffered or incurred by the Council arising out of, or in connection with, any breach or non-observance by the Applicant or its agents of its obligations in this consent including:

- (a) third party claims for death, personal injury or damage to property;
- (b) third party claims for unlawful interference with any rights of light, air, support, water, drainage or any other easement or right.

This indemnity shall not cover the Council to the extent that a claim under it results from the Council's negligence or wilful misconduct.

8. INSURANCE

While the permitted Works are in place, the Applicant shall maintain (in his own name) fully comprehensive public liability insurance for a sum not less than £10 million in respect of any single claim, the number of claims being unlimited to cover claims for injury to, or death of, any person or loss or damage to any real or personal property arising out of the

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use, maintenance or repair of the Works and shall supply to the Proper Officer, evidence of such insurance within 7 days of a written request from the Proper Officer

9. BREACH OF TERMS AND CONDITIONS

9.1 The Council may serve a notice on the Applicant if any of the following events occur:

(a) the Applicant or its agents commits any breach of this consent which is not capable of remedy;

(b) the Applicant or its agents commits any breach of this agreement which is capable of remedy and Applicant or its agents fails to remedy, or procure the remedy of the breach within 14 days after receiving a written notice from the Council requiring the breach to be remedied or such other period as the Council may specify;

(c) the Council considers the withdrawal of the permission granted by clause 2.1 is necessary for the purpose of the exercise of its functions as a highway authority.

9.2 The notice may:

(a) require the Applicant to dismantle and remove the Works and carry out any reinstatement works at the expense of the Applicant as reasonably required by the Council within a period of time and in accordance with any terms and conditions specified in the notice;

(b) in the event that the Applicant fails to dismantle and remove the Works in accordance with the said above notice, the Council may dismantle and remove the Structure itself and carry out any reinstatement works itself and may recover all expenses incurred from the Applicant.

10. COUNCIL'S POWER TO EXECUTE WORKS IN DEFAULT

If the Applicant fails to carry out or complete the Works or any subsequent work of maintenance or repair in accordance with this licence, the Council after giving not less than 10 working days written notice (or in the event of there being a significant danger to users of the Highway Land such lesser period as may be reasonable in the circumstances) to the Applicant, shall be entitled to demolish any works carried out to date or to complete the Works or any subsequent works of maintenance or repair in default, using its own employees, or contractors of the Council or otherwise and to recover the costs of carrying out or completing such works from the Applicant as certified by the Proper Officer.

11. DISPUTES

If any dispute arises out of this licence, the dispute shall be referred to an arbitrator appointed jointly by the parties and if the parties cannot agree on the identity of the arbitrator they shall be appointed on the request by either party by the President for the time being of the Institution of Civil Engineers and the arbitrator shall act in accordance with the provisions of the Arbitration Act 1996 as amended and the costs of the arbitration shall be payable by the parties in the proportions determined by the arbitrator (or if the arbitrator makes no direction, then equally).

12. NOTICES

12.1 A notice or other communication to be given or delivered under this licence must be in writing and must be:

(a) delivered by hand; or

(b) sent by post.

12.2 Any notice or other communication to be given or delivered under this agreement must be sent to the relevant party as follows:

(a) to the Council care of Balfour Beatty, Unit 3, Thorn Business Park, Rotherwas Industrial Estate, Hereford, HR2 6JT marked for the attention of the Proper Officer;

(b) to the Applicant care of Kinnersley and District Parish Clerk, Pool Cottage, Norton Canon, Hereford, HR4 7BP

or as otherwise specified by the relevant party by notice in writing to each other party.

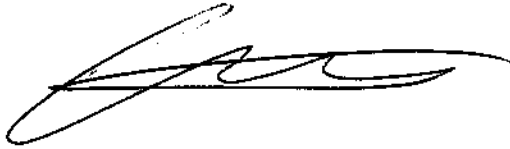
12.3 Any notice or other communication given or delivered in accordance with clauses 12.1 and 12.2 will be deemed to have been received:

12.4 This clause does not apply to the service of any proceedings or other documents in any legal action.

13. RIGHTS OF THIRD PARTIES

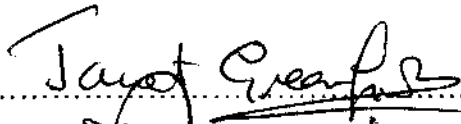
No one other than a party to this licence and their successors shall have any right to enforce any of its terms.

Signed on behalf of the Council

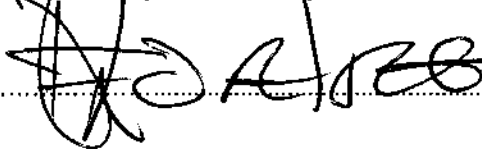


Authorised Officer – C Hall, Head of Highways and Community Services

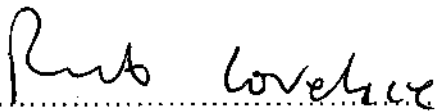
Signed on behalf of the Applicant



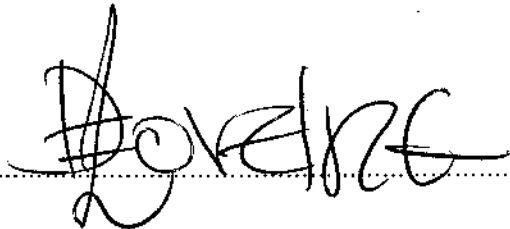
.....Chairman, Kinnersley and District Group Parish Council



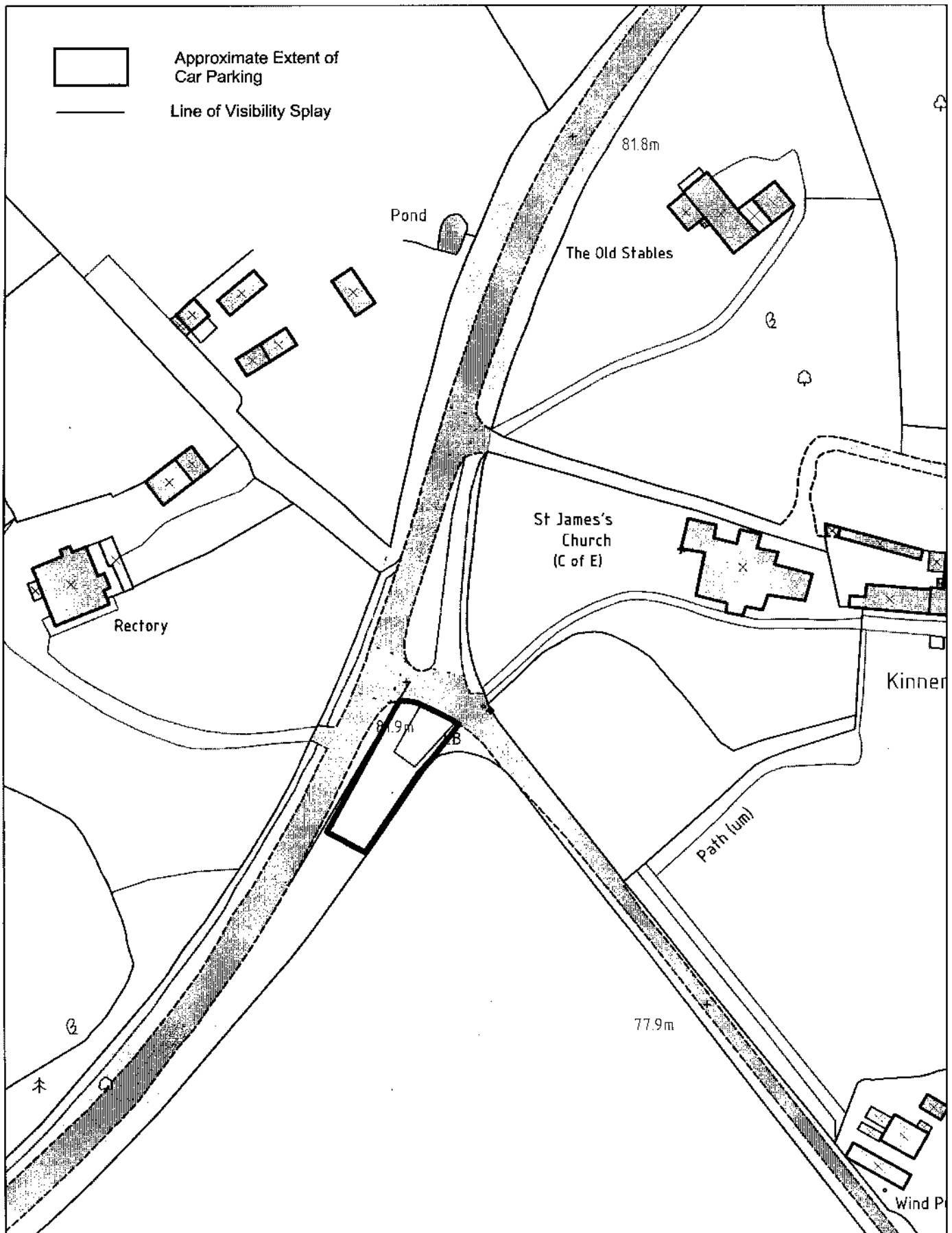
.....[SIGNATURE OF WITNESS]



.....Clerk, Kinnersley and District Group Parish Council



.....[SIGNATURE OF WITNESS]



PATH & IMPROVEMENT LICENCE - 003

LOCATION PLAN:
KINNERSLEY - CAR PARKING IMPROVEMENT

DATE: 8th March 2017

SCALE: 1:2500 @A4P



Balfour Beatty Herefordshire Council
Working for Herefordshire

IMPORTANT WARNING
Information regarding the location of apparatus is given for your assistance and is intended for guidance only. No guarantee is given of its accuracy

Balfour Beatty Living Places
Unit 3 Thorn Business Park
Rotherwas Industrial Estate
Hereford HR2 6JT

