

## Planning Performance Agreement

In respect of

Royal Brunswick Park ("the Site")

### 1. Parties

1.1 This Agreement is made on \_\_\_\_\_ between the following parties:

The Mayor and Burgesses of the London Borough of Barnet of the Town Hall, The Burroughs, Hendon, London, NW4 4BG ("the Council");

and

Hindale Ltd ("the Developer")

### 2. Recitals

2.1 The Council is the local planning authority for the area in which the Site is situated.

2.2 The Council, through agreement with the Developer, is preparing a site development brief ("Brief") to guide the future redevelopment of the Site to provide a robust framework and detailed design guidance within which individual planning applications can be made for future development phases. It is also an opportunity for the community and stakeholders to participate in the shaping development in their area and aligns with the localism approach and agenda. The Council and the Developer have agreed a project programme that seeks to adopt the brief by October 2015.

2.3 In addition, the Developer is preparing planning applications for the redevelopment of the Site in tandem with the Brief process. The Developer is seeks to develop its proposal through pre-application discussions with the intention of submitting an application formally by November 2015

2.4 The Developer and the Council agree to enter into this Planning Performance Agreement for the following purposes:

- Agree requirements and timescales in the form of the Project Programme for the preparation and adoption of the Brief
- Agree requirements and timescales in the form of the Project Programme for the provision of pre-application advice that will then inform the emerging planning applications to be submitted by the Developer
- To agree to the resource requirements of the Council and the funding of those requirements by the Developer
- To establish governance and review mechanisms in respect of the Project Programme and the scope/terms of this Agreement, and
- To establish appropriate measures for monitoring compliance with the respective parties' obligations under this agreement

2.5 This Agreement is intended to facilitate the Brief process and the planning application submitted by the Developer for the Site generally in accordance with Government guidance but not so as to fetter the decision making responsibility of the Council or the likely outcome of the Brief or the planning applications.

2.6 Nothing in this Agreement shall restrict or inhibit the Developer from exercising its right of appeal under Section 78 of the Act nor its right to request (pursuant to Article 7(6) of the Mayor of London Order 2008) that the Mayor of London issues a Direction pursuant to Section 2A of the Act.

### 3. Definitions

- **“Act”** means the Town and Country Planning Act 1990 as amended
- **“Agreement”** means this Planning Performance Agreement between the Council and the Developer
- **“Commencement Date”** means the day on which the provisions of this Agreement commences
- **“Council’s Appointed Officers”** means officers appointed by the Council, to advise on this project; such advice to cover a range of Council services as required under the agreement
- **“Dedicated Planning Officer”** means a qualified planning officer with the relevant experience of a type and scale required in order to handle the tasks covered in the Agreement and dedicated solely to the Development
- **“the Developer’s Agent”** means an agent appointed by the Developer to act on their behalf to carry out the functions of this agreement
- **“Development”** means the proposed development set out in Appendix 1
- **“Function 1”** means the first work activity of the Council to which this Agreement relates, namely the preparation of the Brief
- **“Function 2”** means the second work activity of the Council to which this Agreement relates, namely the processing of pre-application advice and planning applications for the redevelopment of the Site
- **“Functions”** means the collective term for Function 1 and Function 2 as may be referred to from time to time
- **“Joint Working Meetings”** means any meetings in relation to this agreement, Function 1 and Function 2 as specified in the agreement or any substitute and or additional meetings as requested by either party
- **“Parties”** means the Council and the Developer
- **“Project Programme”** means the programme set out at Appendix 3 of this Agreement
- **“Re”** means Regional Enterprises Limited, the joint venture between the London Borough of Barnet and Capita (Registered in England 08615172 at 17 Rochester Row, London, England SW1P 1QT) to run the development and regulatory services of the Council from 1st October 2013
- **“Review Date”** means 2 months before the annual anniversary of the Commencement Date
- **“Services”** means activities and advice provided by the Council using Re to deliver including town and country planning, urban design, master planning, transportation, regeneration and support services pursuant to this agreement

- **“Stakeholder Engagement Schedule”** means the stakeholder engagement schedule set out at Appendix 5
- **“the Site”** means the Royal Brunswick Park bound [by residential properties along Weirdale Avenue to the North, by residential properties along Brunswick Crescent to the South, New Southgate Cemetery and residential properties along Brunswick Park Gardens to the East and by the East Coast Mainline railway to the West, outlined in red on the plan attached at Appendix 2
- **“Working Days”** means a day which is not a Saturday, Sunday or a Bank Holiday

#### 4. **Statutory Authority**

This Agreement is made pursuant to Section 93 of the Local Government Act 2003, Section 111 of the Local Government Act 1972 and Sections 1 and 2 of the Localism Act 2011

#### 5. **Term**

This Agreement will apply from the Commencement Date and shall remain in force for a period of 9 months (or such extension of this term as is agreed by the Parties in writing).

This Agreement will be reviewed on or before the Review Date.

#### 6. **Functions**

The Developer and the Council will use their Reasonable Endeavours to adhere to the terms and timelines for the tasks set out in this Agreement in accordance with the Council's Service Standards contained in Schedule 1, the Developer's Obligations contained in Schedule 2 and the Project Programme contained in Appendix 3.

#### 7. **Joint Working**

7.1 All Parties shall act with the utmost fairness and good faith towards each other in respect of all matters in respect of the handling of the pre-application planning advice and to work jointly with each other in complying with their respective obligations under this Agreement.

7.2 In particular the Parties shall work collaboratively to ensure that the preparation and adoption of the Brief for the Site and the pre-application discussions and determination of the planning applications for the Site are achieved in accordance with the Project Programme.

#### 8. **Dedicated Planning Officer**

Without prejudice to its other obligations the Council shall designate a dedicated planning officer through Re to be the Dedicated Planning Officer who alone or as part of a team shall be responsible for overseeing or carrying out the Functions in accordance with this Agreement PROVIDED ALWAYS THAT THE Council shall designate a Dedicated Planning Officer who has the relevant experience of a type and scale required in order to handle the tasks covered in the Agreement and who is dedicated to the Development. In the event the Dedicated Planning Officer leaves the post the Council will consult with the Developer regarding any further appointment.

#### 9. **Developer's Obligations on Funding and Resource**

9.1 In respect of Function 1, the Developer agrees to pay to the Council:

9.1.1 The Core Fee: The sum limited to £27,277 [Twenty seven thousand pounds] at a rate of up to £7000 [Seven thousand pounds] (variable) per calendar month for 7 months from the Commencement Date based on the schedule agreed and set out in

Appendix 4 being the costs of funding the Council's Appointed Officers and the Dedicated Planning Officer for the purposes of preparing, drafting and adopting the Brief PROVIDED ALWAYS that the Council shall provide the Developer with a monthly report identifying the scope of work that has been carried out and the costs associated with the work carried out in that calendar month.

- 9.1.2 The Technical Work Fee (in addition to the Core Fee): Additional technical work may need to be carried out but this has to be identified by the Council and approved by the Developer.
- 9.1.3 In the event that additional technical work is required pursuant to paragraph 9.1.2 above then:
- (a) the Council shall notify the Developer of the projected scope of work required and the anticipated cost for that calendar month (including hourly rates of the relevant officers and cost per piece of work) with such forecasts being amended during the month if required
  - (b) the Council shall obtain the Developer's prior written agreement to the scope and cost provided under paragraph (a) above
  - (c) once the Developer agrees the scope and cost provided under (a) and (b) above the Council shall invoice the Developer monthly in arrears for the approved additional technical work per calendar month and the Developer shall pay the agreed cost within 14 working days of receipt of the invoice
- 9.1.4 The work carried out pursuant to 9.1.2 and 9.1.3 above may be tendered if deemed appropriate or if the Developer agrees that they have the skills and capacity to carry out the work then the actual sum payable by the Developer will be calculated on a time charge basis (amount of time incurred multiplied by the time charge rates (as set out at Appendix 4 PROVIDED ALWAYS that the scope of work and the agreed additional costs have been approved pursuant to 9.1.3 (a) and (b) above.
- 9.2 In respect of Function 2, the Developer agrees to pay to the Council:
- 9.2.1 The sum between £3,500.00 to £19,739.00 (variable) per calendar month from the Commencement Date based on the rates as set out in Appendix 4 being the costs of funding the Council's Appointed Officers and the Dedicated Planning Officer for the purposes of providing pre-application advice to inform the Developer's preparation of the planning applications and to provide a dedicated officer for the processing of the planning applications. The actual sum payable by the Developer will be calculated on a time charge basis (amount of time incurred multiplied by time charge rates) as set out at Appendix 4 PROVIDED ALWAYS that:
- (a) the Council shall provide a monthly report identifying the projected scope of work required and the anticipated cost (including the hourly rates for the relevant officers and cost per piece of work pursuant to those set out at Appendix 4) in relation to the sum limited to between £3,500.00 to £19,739.00 (variable) per calendar month referred to paragraph 9.2.1 above and
  - (b) the Council shall obtain the Developer's prior written agreement to the scope and cost provided under 9.2.1 (a) above
  - (c) once the Developer has approved the scope and cost pursuant to 9.2.1 (a) and (b) above the Council shall invoice the Developer monthly in arrears for the Council's Services approved pursuant to 9.2.1. (a) and (b) above and the Developer shall pay the agreed costs within 14 working days of receipt of the invoice.

- 9.3 Subject to the payments of the contributions within the terms set out above:
- 9.3.1 the Council will provide sufficient resource(s) to discharge its obligations in compliance with the Agreement set out in the Project Programme.
- 9.3.2 In the event that the Developer ceases to require the preparation of the Brief or fails to progress with the planning applications or withdraws or otherwise abandons the development proposals for the Site, the Developer shall give 20 (twenty) Working Days notice of such withdrawal and shall pay all amounts due to the Council up to the date, being 20 (twenty) Working Days following the date of the notice, for Services that the Developer has provided.
- 9.4 Additional resources - If the Council does not have the required specialist knowledge in-house or if its specialists are unavailable for more than 5 consecutive Working Days, then the Council can seek:
- 9.4.1 the employment of external consultants as may be required to provide specialist knowledge which cannot be provided in-house by the Council in relation to the preparing the Brief the pre-application and the planning process PROVIDED ALWAYS that the Council will prior to retaining such specialist consultant:
- (i) set out a proposed scope of works for the relevant consultant in relation to the planning application and the pre-application process;
  - (ii) obtain a fee proposal from each consultant identified by the Council for the relevant scope of works; and
  - (iii) obtain the Developer's written agreement for the scope and fee proposal under (i) and (ii) above and the appointment of the consultant
- 9.4.2 the Developer shall pay the Council's fees of the relevant consultant appointed pursuant to 9.5.1 above within 14 Working Days of receipt of the invoice produced by the Council which shall be submitted one calendar month in arrears FOR THE AVOIDANCE OF DOUBT any additional resources approved pursuant to paragraph 9.5 shall be paid and form part of the Core Fee or the fee paid pursuant to paragraph 9.2.1

## 10. Governance and Joint Working Meetings

- 10.1 The Dedicated Planning Officer and/or the Council's Appointed Officers shall liaise with the Developer in respect of matters relating to this Agreement.
- 10.2 The Parties shall attend Joint Working Meetings in accordance with the Stakeholder Engagement Schedule or if and when necessary to achieve the Project Programme, at premises of the Council or such other premise as agreed by the Parties to discuss any matters/issues arising from the emerging Brief or planning applications. Each matter/issue will be evaluated and discussed with the Parties and a method of resolution agreed and minuted.
- 10.3 Where reasonably requested by the Developer, and where the Dedicated Planning Officer is not available then the Council shall make available, within 5 (five) Working Days, an officer with the appropriate level of authority and relevant experience to attend meetings with external third parties.

## 11. Review

At the request of either Party, the Parties shall on the Review Date in good faith discuss the progress of the emerging Brief or planning applications against the Project Programme and review whether any extension of the Term will be necessary in order to enable the Council to



discharge its Functions under the Project Programme or the Developer to comply with the Project Programme.

## **12. Breach and Termination**

12.1 If any Party shall commit any breach of its obligations under this Agreement and shall not remedy the breach within 10 Working Days of written notice from the other Party to do so, then the other Party may notify the party in breach that it wishes to terminate this Agreement forthwith and the Agreement shall be terminated immediately upon the giving of written notice to this effect to the Party in breach PROVIDED ALWAYS that the breach is within the control of the Party that is in breach and it is capable of being remedied.

12.2 Without prejudice to their rights the Parties may by mutual agreement terminate this Agreement with immediate effect.

12.3 For the avoidance of any doubt and in the event that the agreement is terminated, any services provided by the Council as subject to its adopted procedure and fees and charges.

## **13. Nature of the Agreement**

13.1 Nothing in this Agreement shall create, or be deemed to create, a partnership between the Parties.

13.2 If any provision of this Agreement is held by any court or other competent body to be void or unenforceable in whole or part, then the other unaffected remaining provisions of the Agreement shall continue.

13.3 Nothing in this Agreement shall fetter or restrict the Council in the exercise of its powers under any enactment statutory instrument regulation order or power for the time being in force.

13.4 The Council enters into this Agreement on the basis that it has done so without prejudice to the preparation and delivery of adoption of a Brief, or its determination of any planning application, and nothing in this Agreement is intended to commit to the delivery of an approval of any planning application or unlawfully fetter the statutory powers, duties or discretions of the Council.

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**SCHEDULE 1****The Council's Service Standards**

- 1.1 Subject to the Council not fettering its lawful discretion, it shall use Reasonable Endeavours to carry out the Functions at all times in accordance with the following service standards. The Council shall use Reasonable Endeavours to:
- 1.1.1 Respond substantively to all urgent emails, letters and telephone calls within 3 Working Days of receipt. Where circumstances beyond the reasonable control of the Council prevent its compliance with this service standard, the Council shall in each case notify the Developer of such circumstances forthwith and the Council shall endeavour to respond substantively no later than 5 Working Days after receipt of any communication.
  - 1.1.2 Notify the Developer no later than 10 Working Days wherever possible or at the earliest time thereafter to allow the Developer to consider the report prior to any meeting of the Council's Planning Committee at which any report or matter relevant to the Development will be discussed and or considered and to provide the Developer with a copy of any report to the Planning Committee at that time.
  - 1.1.3 Provide to the Developer at least 3 Working Days prior to any meeting all substantive and relevant documents which are relevant to that meeting and which relate to any relevant action or agenda points identified. These can be provided in electronic format.
  - 1.1.4 To provide to the Developer within 10 Working Days of any meeting at which any report or matter relevant to the Development will be discussed and or considered (not attended by the Developer) the minutes or action points arising from that meeting.
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## SCHEDULE 2

### Developer's Obligations

- 1.1 The Developer agrees:
    - 1.1.1 In discussion with the Council to consult with the relevant "**Statutory Consultee**" in respect to the emerging Brief and planning applications (which may include, but not be limited to, the Environment Agency, Natural England, Transport for London, the Greater London Authority, English Heritage, English Heritage GLAAS)
    - 1.1.2 To use Reasonable Endeavours to address any concerns raised by any Statutory Consultee prior to the submission of the applications to the Council
    - 1.1.3 To provide the Council with such additional information as may be requested within 5 Working Days of such written request from the Council (or such other time period as may be agreed between the Parties) in order to enable the Council to discharge its Functions under this Agreement
    - 1.1.4 To provide to the Council at least 5 Working Days prior to any meeting all substantive and relevant documents which are relevant to that meeting and which relate to any relevant action points or agenda identified
    - 1.1.5 The Developer will pay to the Council the charges submitted for the Council's time and internal expenses in accordance with Clause 9 of this agreement.
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### **Appendix 1: The Proposed Development**

Residential-led redevelopment to deliver in the region of 1300-1500 new residential units, alongside a new 5FE secondary school for the Russell Education Trust and other necessary small-scale uses to serve the masterplan. Includes the delivery of a central green open space and other landscaping features such as a linear park and accessible courtyards.

Hybrid planning application will be sought with the detailed element comprising the secondary school and the first phase of housing in the south-east corner of the site. Later development will be phased in a sensible manner having regard to access and infrastructure.

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**Appendix 2: Red line plan of the Site**



Appendix 3: Project Programme

Function 1: North London Business Park Planning Brief		1	2	3	4	5	6	7
		Apr	May	Jun	Jul	Aug	Sep	Oct
<b>KEY STAGES</b>	0.00 Key Stages							
	Stage A - Prepare draft Planning Brief (Apr 2015 - June 2015)							
	Stage B - Approve draft Planning Brief - Policy & Resources (Apr - July 2015)							
	Stage C - Consultation on draft Planning Brief (July 2015 - Sept 2015)							
	Stage D - Revise and finalise Planning Brief (Sept 2015 - Oct 2015)							
	Stage E - Adopt Planning Brief - Policy & Resources - Oct 2015							
<b>KEY ACTIVITIES</b>	A Prepare draft Planning Brief (Apr 2015 - June 2015)							
	Site objectives							
	Site context							
	Identification of key planning policy issues							
	Development requirements							
	Urban Design							
	Sustainability objectives							
	Community benefits							
	Implementation and delivery							
	Progress Reporting and Project Meetings							
	B Approve draft Planning Brief - Policy & Resources (April - July 2015)							
	Consultation Plan							
	Leader's Briefing							
	Pre consultation with Brunswick Park ward members							
	Pre consultation with GLA, TfL and other strategic stakeholders							
	Approve draft Planning Brief for public consultation (July 13th)							
	C Consultation on draft Planning Brief (July 2015 - Sept 2015)							
	Implement Consultation Plan							
	D Revise and finalise Planning Brief (Sept 2015 - Oct 2015)							
	Collection and Analysis of Scoping Consultation Responses							
	Revise Planning Brief							
	Progress Reporting and Project Meetings							
E Adopt Planning Brief - Policy & Resources - Oct 2015								
Leader's Briefing								
Adopt Planning Brief (Oct 15th)								



### Appendix 4: Council's Charges

#### Function 1

**Core Fee:** This is the estimated fee for the preparation of the Planning Brief, totalling £27,277.00 (payable in 7 monthly instalments, Apr to Oct 2015 inclusive). This includes the resources set out in Part One of the table included in the Re fee proposal to the Developer, and makes an allowance for input from technical disciplines to the master planning and Planning Brief process.

**Technical Work:** Indicative fees for technical work have been included, that is anticipated is required to complete a sound Planning Brief. At this stage, whilst the resource has been identified, a complete resource plan has not been put forward, as the final scope of the work is to be specified and agreed with the Developer as the master plan develops and Re has sight on the information held by the Developer.

DRS Grade	Regeneration Roles	Strategic Planning Roles	Hourly Rates		
			0 - 20 Days	Projects 21 - 60 Days	Projects 60 days +
<b>Senior Director</b>	Director of Place Assistant Director Strategic Planning & Regeneration		£122.62	£113.35	£107.36
<b>Director</b>	Head of Regeneration Regeneration Transport Manager Head of Economic Development Programme Director Senior Commercial Manager	Head of Strategic Planning	£95.54	£88.41	£83.55
<b>Associate Director</b>	Housing Development Partnership Manager Programme Manager Regeneration Manager Senior Regeneration Manager Property Support	Planning Policy Manager Urban Design and Heritage Manager Infrastructure Planning and Delivery Manager Major Developments Team Manager	£79.34	£73.35	£69.47
<b>Principal Professional</b>	Senior Regeneration Officer Collindale Project Manager Commercial Manager	Housing Strategy Manager Principal Planner (Planning Policy) Principal Planner (MDT)	£67.29	£62.18	£58.94
<b>Senior Professional</b>	Regeneration Officer Skills Development Programme Officer	Senior Planner (Planning Policy) Senior Planner (MDT) Senior Planner (Urban Design and Heritage)	£55.20	£51.01	£48.25
<b>Professional</b>	Business Liaison Officer Town Centre Projects Officer Management Accountant	Planning Officer (Planning Policy) Planning Obligations Officer Planning Officer (Urban Design and Heritage)	£53.04	£49.06	£46.47
<b>Senior Support</b>	Support Officer	Support Officer	£40.25	£37.24	£35.14
<b>Support</b>	Support	Support	£28.37	£26.23	£24.77

#### Function 2

This is the estimated fee for the pre-application program, totalling £78,087.00 (payable in 9 monthly instalments, Mar to Nov 2015 inclusive). This includes the resources set out in Part One of the table included in the Re fee proposal to the Developer, and makes an allowance for input from technical disciplines to the pre-application process.



DRS Grade	Regeneration Roles	Strategic Planning Roles	Hourly Rates		
			0 - 20 Days	Projects 21 - 60 Days	Projects 60 days +
Senior Director	Director of Place Assistant Director Strategic Planning & Regeneration		£122.62	£113.35	£107.36
Director	Head of Regeneration	Head of Strategic Planning	£95.54	£88.41	£83.55
	Regeneration Transport Manager				
	Head of Economic Development				
	Programme Director				
	Senior Commercial Manager				
Associate Director	Housing Development Partnership Manager	Planning Policy Manager	£79.34	£73.35	£69.47
		Urban Design and Heritage Manager			
	Programme Manager	Infrastructure Planning and Delivery Manager			
	Regeneration Manager	Major Developments Team Manager			
	Senior Regeneration Manager				
	Property Support				
Principal Professional	Senior Regeneration Officer	Housing Strategy Manager	£67.29	£62.18	£58.94
	Collindale Project Manager	Principal Planner (Planning Policy)			
	Commercial Manager	Principal Planner (MDT)			
Senior Professional	Regeneration Officer	Senior Planner (Planning Policy)	£55.20	£51.01	£48.25
	Skills Development Programme Officer	Senior Planner (MDT)			
		Senior Planner (Urban Design and Heritage)			
Professional	Business Liaison Officer	Planning Officer (Planning Policy)	£53.04	£49.06	£46.47
	Town Centre Projects Officer	Planning Obligations Officer			
	Management Accountant	Planning Officer (Urban Design and			
Senior Support	Support Officer	Support Officer	£40.25	£37.24	£35.14
Support	Support	Support	£28.37	£26.23	£24.77



**IN WITNESS** whereof the Parties have executed this Agreement in the presence of the persons mentioned respectively below this day and year first before written.

Executed as a Deed by:

**HINDALE LIMITED**

acting by: **Brian Comer**

Director:



Witness:

**R Sheppard**



The Common Seal of

London Borough of Barnet:

was hereunto affixed in the presence of:

Assurance Director

Head of Governance

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