

DATED

2024

(1) LAVER LEISURE (OAKAMOOD) LIMITED

TO

(2) STAFFORDSHIRE MOORLANDS DISTRICT COUNCIL

**UNILATERAL UNDERTAKING PURSUANT TO
SECTION 106 OF THE TOWN AND COUNTRY
PLANNING ACT 1990**

**Relating to land at Moneystone Quarry, Whiston Eaves
Lane, Whiston, Staffordshire**

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THIS UNDERTAKING is given on

2024

BETWEEN:-

- (1) **LAVAR LEISURE (OAKAMOOD) LIMITED** (Company registration no. 06982054) of Aizlewoods Mill, Nursery Street, Sheffield, England, S3 8GG ("**Owner**");

TO:-

- (2) **STAFFORDSHIRE MOORLANDS DISTRICT COUNCIL** of Moorlands House, Stockwell Street, Leek, Staffordshire ST13 6HQ (the "**Council**")

WHEREAS:-

- (A) By virtue of the 1990 Act the Council is the local planning authority for the purposes of this Deed for the area in which the Site is situated and is the local planning authority by whom the planning obligations hereby created are enforceable.
- (B) The Owner is the registered freehold proprietor of the Site with absolute title as registered at HM Land Registry under Title Numbers SF377935, SF564636, SF364233 and SF564637.
- (C) The Owner and the Council previously entered into the Principal Section 106 Agreement in respect of the Planning Permission.
- (D) The Reserved Matters Application was made by the Owner pursuant to the Planning Permission and validated by the Council on 5 November 2019.
- (E) Following the Council's refusal of the Reserved Matters Application on 14 November 2023, the Applicant lodged the Planning Appeal on 8 May 2024.
- (F) The Owner is thereby entering into this Deed to create planning obligations pursuant to the provisions of Section 106 of the 1990 Act in respect of the Site in the event the Secretary of State (or the Planning Inspector) considers that the obligations contained in this Deed meet the three tests for planning obligations as set out in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 and therefore a material planning consideration to be taken into account by the Secretary of State (or the Planning Inspector) in determining the Planning Appeal.

IT IS AGREED as follows:-

1. DEFINITIONS AND INTERPRETATION

- 1.1 The definitions of the Principal Section 106 Agreement apply to this Deed unless the context requires otherwise.
- 1.2 Unless the context requires otherwise, in this Deed, the following expressions shall have the following meanings:-

"**1990 Act**" means the Town and Country Planning Act 1990 (as amended)

"**CIL Regulations**" means the Community Infrastructure Levy Regulations 2010 (as may be amended from time to time)

"**Commencement of Development**" means the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development authorised by the Planning Permission begins to be carried out other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, erection of any

	temporary means of enclosure, the temporary display of site notices or advertisements and "Commence Development" shall be construed accordingly
"Decision Letter"	means a decision letter by the Secretary of State (or the Planning Inspector) in respect of the Planning Appeal
"Deed"	means this unilateral deed of planning obligation made under section 106 of the Act and all other enabling powers
"Development"	means the development of the Site in accordance with the Planning Permission and as further defined in the Principal Section 106 Agreement
"Index"	means the All-in Tender Price Index
"Indexed"	means in relation to a sum that is to be increased in accordance with Clause 10 of this Deed
"Interest"	means interest at 4% above the base lending rate of the Bank of England from time to time
"Parties"	means the parties to this Deed as the context so requires and "Party" means any one of them
"Plan"	means the plan attached to this Deed at Appendix 1
"Planning Appeal"	means the appeal made under section 78 of the 1990 Act in respect of the Council's refusal of the Reserved Matters Application and which has been allocated PINS reference APP/B3438/W/24/3344014
"Planning Inspector"	means the Inspector appointed by the Secretary of State to determine the Planning Appeal
"Principal Section 106 Agreement"	means the agreement entered into pursuant to section 106 of the 1990 Act between (1) the Council; (2) the Owner; (3) Paul Nicholas Firth (a chargee previously registered on the title of SF364233) in respect of the Planning Permission dated 26 October 2016
"Reserved Matters Application"	means the application for reserved matters approval submitted to the Council and given reference number SMD/2019/0646 for "details for the appearance, scale, layout and landscaping for phase 1 of the leisure development comprising 190 lodges; erection of a new central hub building (providing farm shop, gym, swimming pool, spa, restaurant, cafe, games room, visitor centre, hub management and plant areas); reuse and external alterations to the existing office building to provide housekeeping and maintenance accommodation (including meeting rooms, offices, storage, staff areas and workshop); children's play areas; multi use games area; quarry park; car parking; refuse and lighting arrangements; and managed footpaths, cycleways and bridleways set in attractive hard and soft landscaping" and subject to the Planning Appeal
"Reserved Matters Approval"	means the reserved matters approval that may be granted pursuant to the Planning Appeal and as may be amended under section 96A of the 1990 Act

"Secretary of State"	means the Secretary of State for Levelling Up, Housing and Communities
"Site"	means the land at Moneystone Quarry, Whiston Eaves Lane, Whiston, Staffordshire being the land against which this Deed may be enforced as shown (for the purposes of identification only) edged red on the Plan
"Working Day"	means a day other than a Saturday or Sunday or public holiday in England

1.3 Where the context so requires:-

- 1.3.1 the singular includes the plural and vice versa and words importing the masculine gender only include the feminine and neuter genders and extend to include a corporation sole or aggregate;
- 1.3.2 references to any party or body in this Deed shall include the successors in title and assigns of that party and in the case of the Council shall include any successor local planning authority exercising planning powers under the 1990 Act;
- 1.3.3 any undertaking by a party not to do any act or thing shall be deemed to include an undertaking not to cause, permit, procure or suffer the doing of that act or thing;
- 1.3.4 any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it;
- 1.3.5 references to Clauses, paragraphs, and Schedules are references to clauses, paragraphs, and schedules to this Deed and are for reference only and shall not affect the construction of this Deed; and
- 1.3.6 the headings and contents list are for reference only and shall not affect construction.

2. **OPERATIVE PROVISIONS**

- 2.1 This Deed is a deed made pursuant to Section 106 of the 1990 Act.
- 2.2 The undertakings, restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the 1990 Act and are enforceable by the Council as local planning authority against the Owner.

3. **CONDITIONALITY**

- 3.1 This Deed is conditional upon:-
 - 3.1.1 the grant of the Reserved Matters Approval;
 - 3.1.2 the Commencement of Development;
 - 3.1.3 the Secretary of State or his Planning Inspector (as applicable) in determining the Planning Appeal expressly stating in the Decision Letter that the obligations set out in this Deed are material planning considerations and are compliant with the statutory tests set out in Regulation 122 of the CIL Regulations provided that where the Planning Inspector or the Secretary of State (as applicable) expressly states in the Decision Letter that any one or more of the obligations set out in the Deed are not material planning considerations or do not comply with the statutory tests in Regulation 122 then the obligations so specified shall cease to have effect and the Owner shall be released from their obligation to comply with them but the remainder of this Deed and the remaining obligations herein (if there are any) shall continue to have effect; and

3.1.4 any limitations or directions placed on the obligations as to the amount or otherwise specified by the Secretary of State or his Planning Inspector in the Decision Letter.

4. **PLANNING OBLIGATIONS**

4.1 From the date ascertained pursuant to Clause 3 above the Owner hereby undertakes to the Council as set out in Schedule 1 to this Deed.

4.2 This Deed is supplemental to and shall be read in conjunction with the Principal Section 106 Agreement which binds the Site, and the covenants undertakings obligations and other provisions in the Principal Section 106 Agreement are hereby confirmed by the Owner and shall continue in full force and effect.

5. **MISCELLANEOUS**

5.1 No party shall be bound by the terms of this Deed or be liable for the breach of any undertakings, restrictions or obligations contained in this Deed:-

5.1.1 occurring after he or it has parted with his or its interest in the Site or the part in respect of which such breach occurs (but without prejudice to liability for any subsisting breach of undertaking prior to parting with such interest); and

5.1.2 if it is a statutory undertaker which has an interest in any part of the Site for the purposes of its undertaking.

5.2 The obligations hereby created may be registered by the Council as a Local Land Charge after the date of this Deed.

5.3 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Reserved Matters Approval shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development and the Council may remove the entry relating to this Deed from the Register of Local Land Charges as soon as reasonably practicable upon the request of any of the Owner.

5.4 Unless otherwise required by the Council in the event that an application is made pursuant to section 73 of the 1990 Act for an amendment to the Reserved Matters Approval, the covenants or provisions of this Agreement shall be deemed to bind the varied approval and to apply in equal terms to the new approval save where the Council in their determination of such an application for the new approval indicate that consequential amendments are required to this Deed to reflect the impact of the section 73 application and in such circumstances a separate deed pursuant to section 106 of the 1990 Act will be required to secure relevant planning obligations relating to the new approval.

5.5 Insofar as any Clause or Clauses of this Deed are found (for whatever reason) to be invalid, illegal or unenforceable then such invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of the remaining provisions of this Deed.

5.6 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than one relating to the Development as specified in the Planning Application) granted after the date of this Deed.

5.7 Nothing in this Deed shall be construed as restricting the exercise by the Council of any power or discretion exercisable by it under the 1990 Act or under any other Act of Parliament nor prejudicing or affecting the Council's rights, powers, duties and obligations in any capacity as a local or public authority.

5.8 Any future mortgagee or chargee shall not be personally liable for any breach of the obligations in this Deed unless committed or continuing at a time when the mortgagee or chargee is in possession of all or any part of the Site PROVIDED THAT a mortgagee or chargee shall only remain liable for the part of the Site for which it has an interest.

6. NOTIFICATION

6.1 All notices, requests and demands or other written communications to or upon the parties pursuant to this Deed shall be deemed to have been properly given or made if delivered personally or sent by recorded delivery service to the following officials/persons at the respective addresses hereinafter specified:-

6.1.1 to the Council at its address shown on page 1 of this Deed or such other address as notified in writing to the Owner from time to time;

6.1.2 to the Owner at its address shown on page 1 of this Deed or such other address as notified in writing to the Council from time to time.

6.2 Any notice or other written communication will conclusively be deemed to have been received on the day two Working Days after the date of posting.

6.3 If a notice, demand or any other communication is served after 4:00pm on a Working Day, or on a day that is not a Working Day, it is to be treated as having been served on the next Working Day.

6.4 Where proceedings have been issued in the Courts of England the Civil Procedure Rules must be complied with in respect of the service of documents in connection with those proceedings.

7. THIRD PARTIES

Save the Council no person who is not a party to this Deed may enforce any terms hereof pursuant to the Contracts (Rights of Third Parties) Act 1999 PROVIDED THAT this Clause shall not affect any right of action of any person to whom this Deed has been lawfully assigned or becomes vested in law.

8. WAIVER

No waiver (whether expressed or implied) by the Council or the Owner of any breach or default in performing or observing any of the undertakings, terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council or the Owner from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

9. LEGAL COSTS

The Owner shall pay to the Council its reasonable legal fees in connection with this Deed prior to completion of this Deed.

10. INDEXATION.

10.1 The Air Quality Monitoring Contribution to be paid pursuant to this Deed will be increased by reference to the amount of the quarterly increase in the Index from the date of this Deed until the date the Air Quality Monitoring Contribution is paid.

11. INTEREST

If the Air Quality Monitoring Contribution payable under this Deed is paid late, Interest shall be payable from the date payment is due to the date of payment.

12. OWNERSHIP

The Owner undertakes to the Council to give the Council written notice of any change in ownership of any of their interests in the Site occurring before all the obligations under this Deed have been discharged as soon as reasonably practicable after the completion of any such change in ownership, such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation purchased by reference to a plan.

13. **JURISDICTION**

This Deed is governed by and interpreted in accordance with the law of England and Wales and the parties submit to the exclusive jurisdiction of the courts of England and Wales.

14. **DELIVERY**

The provisions of this Deed (other than this Clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

EXECUTED AS A DEED by the Owner on the date which first appears in this Deed.

SCHEDULE 1

OWNER OBLIGATIONS

In this Schedule the words below shall mean as follows:-

“Air Quality Monitoring Contribution”	means a single contribution of £4,500 (Indexed) payable by the Owner in respect of the Development which shall be used by the Council towards the monitoring of air quality within the Cellarhead Air Quality Management Area
“Cellarhead Air Quality Management Area”	means Staffordshire Moorlands District Council Air Quality Management Area No.2: Cellarhead declared 30 July 2019
“Council Monitoring Sum”	The sum of £218.83 payable to the Council towards the cost of monitoring (including reporting under the Community Infrastructure Levy Regulations 2010) the obligations relating to the Council contained in this Deed

AIR QUALITY MONITORING CONTRIBUTION

1. The Owner shall pay the Council the Air Quality Monitoring Contribution (Indexed) prior to Commencement of Development and Development shall not be Commenced until the Air Quality Monitoring Contribution has been paid to the Council in full.
2. To pay the Council Monitoring Sum to the Council prior to Commencement of Development and Development shall not be Commenced until the Council Monitoring Sum has been paid to the Council in full.

EXECUTED as a Deed
(but not delivered until dated) by
LAVAR LEISURE (OAKAMOOR) LIMITED
Acting as a Director in the presence of

)
)
)

.....
Director

.....
Witness signature

.....
Witness name

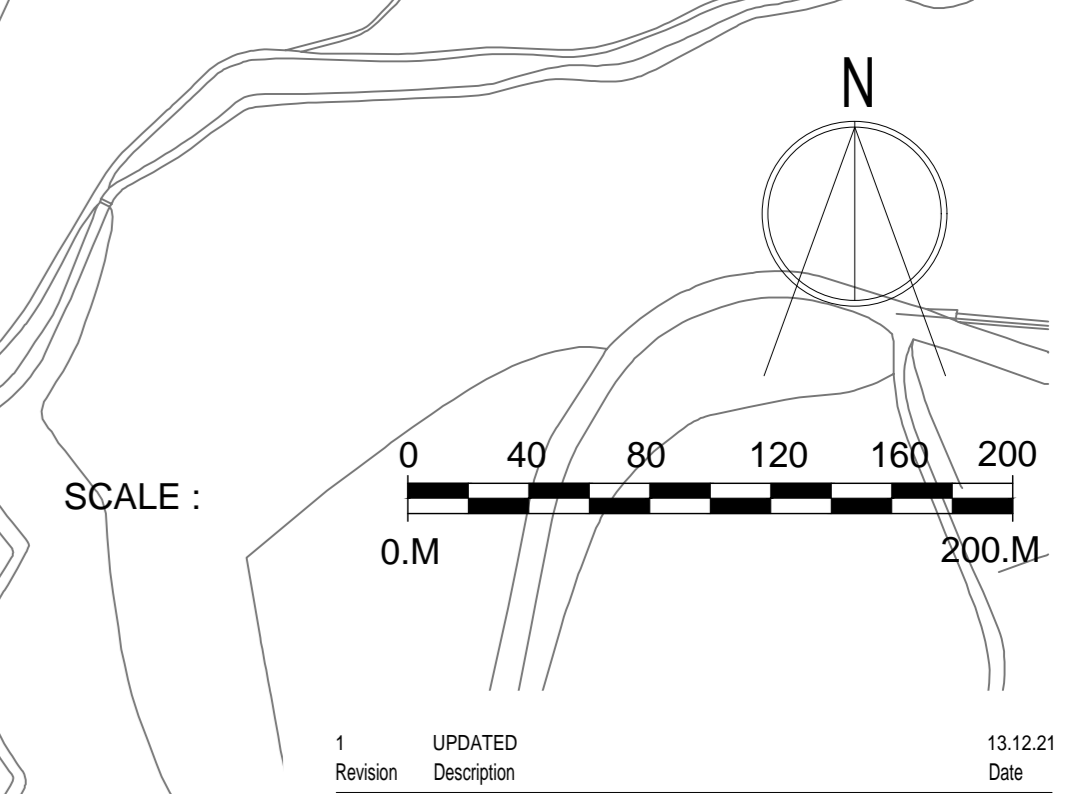
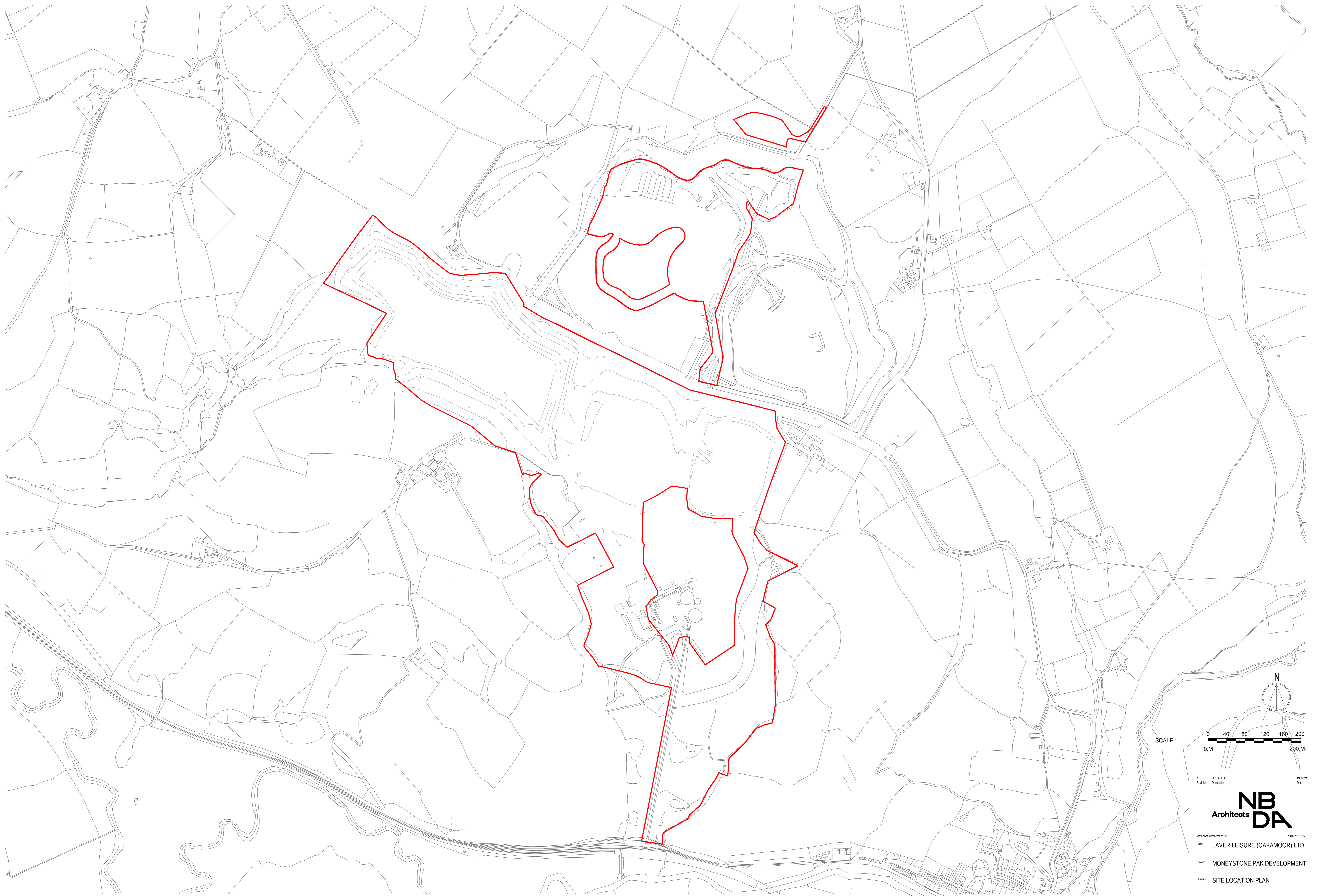
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Witness address

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Witness occupation

APPENDIX 1

THE PLAN



1 UPDATED
Revision Description Date



www.nbdarchitects.co.uk Tel: 01263 515550
Client LAVER LEISURE (OAKAMOR) LTD

Project MONEYSTONE PAK DEVELOPMENT

Drawing SITE LOCATION PLAN

Drawing No: 1733/MS-020 Revision: 1
Scale: 1:2500@A0 Date: 14.10.19 Drawn: T.J.F.

— Ownership Boundary