DATED 31st October 2002

HUNTINGDONSHIRE DISTRICT COUNCIL (1)

and

CAMBRIDGESHIRE COUNTY COUNCIL (2)

and

HINCHINGBROOKE HEALTH CARE NHS TRUST (3)

PLANNING AGREEMENT

made pursuant to inter alia Section 106 of the Town and Country Planning Act 1990 re: Ambulatory Care and Diagnostic Unit at Hinchingbrooke Hospital

---

Mills & Reeve
Cambridge

Contents

1 Definitions and interpretation 1
1.1 Definitions 1
1.2 Interpretation 3

2 Statutory Powers 3

3 Commencement 4

4 Covenants by the Owner 4

5 Covenants by the County Council 4

6 Registration as Local Land Charge 5

7 Costs of this deed 5

8 Successors in title 5

9 Resolution of Disputes 5

10 Further Planning Permissions 6

11 Revocation of Permission 6

12 Third party rights 6

13 Entry 6

14 Service of Notices 6

15 Payments 7

16 Severance and enforceability 7

Schedule 1 8
(The Property) 8

Schedule 2 9
(The Development) 9

Schedule 3 10
(Owner's Covenants) 10

Schedule 4 12
(County Council's Covenants) 12

Schedule 5 13
(Green Transport Plan) 13
Part 1 13
Part 2 14

THIS DEED is made on 31st October 2002 **BETWEEN:**

(1) **HUNTINGDONSHIRE DISTRICT COUNCIL** of Pathfinder House, St Mary's Street, Huntingdon Cambridgeshire PE 29 3TN(the "**Council**"); and

(2) **CAMBRIDGESHIRE COUNTY COUNCIL** of Shire Hall Castle Hill Cambridge Cambridgeshire CB3 OAP (the "**County Council**"); and

(3) **HINCHINGBROOKE HEALTH CARE NATIONAL HEALTH SERVICE TRUST** of Hinchingbrooke Hospital Hinchingbrooke Park Road Huntingdon Cambridgeshire PE29 6NT(the "**Owner**");

WHEREAS:

(A) The Council is the Local District Planning Authority for the purposes of the 1990 Act for the area within which the Property is situated and is one of the Local Planning Authorities by whom the planning obligations contained in schedule 3 are enforceable.

(B) The County Council is a Local Planning Authority for the purposes of the 1990 Act and the Highways Authority for the purposes of the Highways Act 1980 Act for the area within which the Property is situated and is one of the Local Planning Authorities by whom the planning obligations contained in schedule 3 are enforceable.

(C) The Owner is the owner of an estate in fee simple of the Property subject to the matters referred to in Schedule 1

(D) The Owner has submitted the Application for permission to develop the Application Site

(E) The Council and the County Council are satisfied that the Development is such as may be permitted by the Council under the Act subject to conditions and subject also to the prior execution of this deed into which the parties hereto have agreed to enter.

NOW THIS DEED WITNESSES as follows:

1 **Definitions and interpretation**

1.1 Definitions

In this deed where the context so admits the following expressions shall have the following meanings:

"**Application**" means the application for outline planning permission relating to the Application Site dated 1 May 2001 submitted to the Council and registered on 9 May 2001 under ref. no. 01/00959/OUT relating to the Development;

"Application Site" means the land edged blue on Plan B annexed to this deed

"ACAD Centre" means that part of the Development consisting of the erection of the Ambulatory Care and Diagnostic Centre;

Construction ... operation in respect of the ACAD centre subject to the same exemptions as are contained in the definition of Implementation and

"the Criteria" means in relation to projects on which all or part of the Sustainable Transport Contribution is, or is to be, spent that the said projects should be;

i) designed having regard to and capable of serving the need of the users of the Property

ii) fairly and reasonably related in kind and scale to the ACAD Centre

iii) such that it is reasonable that the Owner meet the cost of them taking into account both the anticipated impact of the ACAD centre on the local highway network and the measures which will be required of the Owner through the Green Transport Plan

PROVIDED ALWAYS that the Criteria shall not be interpreted so as to require any project to overcome a greater hurdle than the test provided for a planning obligation to be material in PPG 13 and Circular 1/97

"**Development**" means the development described in schedule 2;

"**Green Transport Plan**" means the plan referred to in clause 4.2 relating to the ACAD Centre incorporating the provisions of Schedule 5 and any reviews of such plans pursuant to that Schedule

"**the Head of Planning Services**" means the Head of Planning Services for the time being of the Council or such other officer as the Council may specify

"**Implementation**" means implementation of the Permission by the carrying out of a material operation as defined in s.56(4) of the 1990 Act comprised in the Development and exclusively referable to the Permission save for the following matters which shall not constitute a material operation and consequently shall not individually or together constitute Implementation:

> enabling works demolition site clearance the provision of infrastructure exploratory boreholes operations permitted by the Town and Country Planning General Permitted Development Order 1995 or any amendment or replacement thereof provision of underground drainage and sewers construction of temporary construction accesses archaeological investigations and digs works matters and operations to enable any of the foregoing to take place;

"Nearby Residential Development" means Site B (Phase II) of the development permitted by planning permission reference 94/O1133/OUTgranted 1 August 1996 by the Council and shown on the residential plan attached to the said permission;

"Off Site Highway Works" means the provision of traffic lights for the emergency vehicle lane at the junction of Hinchingbrooke Park Road with Brampton Road required by the 1996 Covenant

"the 1996 Covenant" means the obligation at paragraph 7(c) of the Schedule to an agreement dated 1 August 1996 made under section 106 of the 1990 Act in connection with inter-alia the Nearby Residential Development;

"**Permission**" means a planning permission to be issued by the Council pursuant to the Application in the form of the draft permission annexed to this deed at Appendix 1

"Plan A" means the plan so marked and annexed hereto

"Plan B" means the site plan (from the Application) so marked and annexed hereto

"**Property**" means the land edged red on Plan A and described in schedule 1;

"**1990 Act**" means the Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991).

"Sustainable Transport Contribution" means £100,000 which will be spent on projects designed to improve the sustainable transport networks in the vicinity of the site for the benefit of site users which projects shall satisfy the Criteria ;

1.2 Interpretation

(a) The expression "Council" and "County Council" shall include successors to their statutory functions.

(b) Titles and headings to the clauses and paragraphs in this deed and its schedules are for convenience only and shall not be construed in or affect the interpretation of this deed.

(c) Any references to a particular statute include any statutory extension, modification, amendment or re-enactment of such statute

(d) unless otherwise specified

(i) where any agreement certificate consent permission or other approval is to be given by any party or any person on behalf of any party hereto under this Agreement the same shall not be unreasonably withheld or delayed and

(ii) where any expression of satisfaction is to be given by any party or any person on behalf of any party under this Agreement such expression of satisfaction shall not be unreasonably withheld or delayed

2 Statutory Powers

2.1 This deed is made pursuant to Section 106 of the 1990 Act Section 111 of the Local Government Act 1972 and all other powers them enabling and constitutes a planning obligation for the purposes of the 1990 Act enforceable by the Council and the County Council as herein set out

2.2 Nothing in this deed will prejudice or affect the rights, powers, duties and obligations of the Council or the County Council in the exercise of their respective statutory functions.

2.3 the obligations on the part of the Owner specified in Clause 4 and Schedule 3 and Schedule 5 are planning obligations

2.4 the land the subject of the planning obligations is the Property

2.5 the Owner is the person entering into the planning obligations and is the owner of the Property

3 Commencement

3.1 The entry into force of the provisions of this deed (other than this clause 3 and clause 7.1 which have effect immediately upon delivery of the deed) is conditional upon the Permission being duly granted;

3.2 Further the covenants in clause 4 insofar as they relate to Schedules 3 and 5 of this deed (apart from paragraph 1 and 3.1 of the Schedule 3 which shall take effect on the Permission being duly granted) shall be conditional upon Implementation.

4 Covenants by the Owner

4.1 The Owner hereby covenants with the Council and the County Council that subject to the Council and the County Council complying with clause 5 it shall carry out and comply with the restrictions provisions and obligations contained in Schedule 3 and Schedule 5.

4.2 The Owner shall

4.2.1 submit a Green Transport Plan to the Council and the County Council for approval at least 3 months prior to commencement of construction of the ACAD Centre but in any event no later than 31 December 2002 and in the event that the Green Transport Plan shall not be agreed between the Owner the Council and the County Council within 6 months of its receipt by the Council and the County Council it shall be referred forthwith to an Appointed Expert in accordance with clause 9 at the request of any party to this Agreement

4.2.2 be bound by the obligations in Schedule 5 and shall not occupy the ACAD centre until the Green Transport Plan has been approved or contained within a decision of an Appointed Expert pursuant to clause 9 and measures identified in it agreed to be implemented prior to first occupation have been implemented to the satisfaction of the Council and the County Council.

4.2.3 at no cost to the Council and the County Council observe and perform the implementation of all Green Transport Plan measures once agreed in accordance with the Green Transport Plan

4.2.4 undertake and submit reviews of the Green Transport Plan to the Council and the County Council in accordance with Schedule 5

5 Covenants by the County Council

The County Council hereby covenants with the Owner that it will carry out and comply with the provisions and stipulations contained in schedule 4

6 **Registration as Local Land Charge**

It is hereby agreed and declared between the parties hereto that this deed shall forthwith be registered as a local land charge for the purposes of the Local Land Charges Act 1975 provided that the Council shall cancel such registration if the provisions of clause 4 shall have been complied with.

7 **Costs of this deed**

7.1 The Owner shall pay the County Council's and the Council's reasonable legal costs incurred in the negotiation and preparation of this deed

8 **Successors in title**

8.1 This deed shall be enforceable against the Owner and any person for the time being deriving title of the Property (or part thereof) from the Owner as provided in Section 106(3) of the 1990 Act but in accordance with Section 106(4) of the 1990 Act neither the Owner nor any person deriving title from the Owner shall have any further liability under this deed (but without prejudice to the rights of the Council and County Council in respect of any antecedent breach) in respect of any period during which the Owner (or as the case may be such other person) no longer has an interest in the land save for any reservation of easements wayleaves or restrictive covenants for the benefit of adjoining land.

9 **Resolution of Disputes**

9.1 In the event of any dispute or difference arising out of this deed other than a dispute or difference relating to a question of law or upon the interpretation of this deed the same shall be referred to an expert ("the Appointed Expert") to be agreed between the parties and being an experienced planning and development surveyor with relevant experience and a member of the Royal Institution of Chartered Surveyors or in the event of failure to agree on the application of any party hereto appointed by the President for the time being of the Royal Institution of Chartered Surveyors

9.2 The Appointed Expert shall:

(a) afford to each of the parties to the dispute an opportunity to make representations to him/her in writing and if he/she so directs submissions upon one another's representations;

(b) be entitled to stipulate the periods of time for the making of such representations as is reasonable in the circumstances;

(c) be bound to have regard to such representations;

(d) in the case of any dispute regarding the Sustainable Transport Contribution determine whether any projects for which all or part of the Sustainable Transport Contribution is intended to be applied or has been applied would satisfy or has satisfied the Criteria

(e) have the power of making directions as to the responsibility for the costs of his/her award;

(f) in the making of his/her award not be liable save to the extent in law as provided in relation to the decisions of an expert;

(g) make awards which are final and conclusive as between the parties to such dispute (except that such awards shall not remove the parties' rights of appeal on matters of law) and;

(h) be replaced by a fresh appointee in the event of his/her becoming at any time unable or unwilling for any reason to proceed to discharge his/her function such fresh appointee to be appointed in the manner prescribed in sub-clause 9.1 of this clause 9.

10 Further Planning Permissions

Nothing in this deed shall prohibit or limit the right to develop any part of the Property in accordance with a planning permission other than the Permission to be granted or the approval of any application for reserved matters arising out of that Permission (whether or not on appeal) after the date of this deed.

11 Revocation of Permission

If the Permission is quashed by the Court cancelled revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires before it has been implemented this deed shall cease to have effect from that time.

12 Third party rights

12.1 The parties intend that no person who is not a party to this deed is to have the benefit of or be capable of enforcing any term of this deed as a result of the Contracts (Rights of Third Parties) Act 1999

13 Entry

13.1 The Owner shall permit any person duly authorised by the Council or the County Council to enter the Property at any reasonable hour to ascertain whether there is or has been any breach of the planning obligations or any other provisions covenants or stipulations in this deed

14 Service of Notices

14.1 All notices requests demands or other written communications to or upon the respective parties hereto pursuant to this deed shall be deemed to have been properly given or made if dispatched by first class letter or (except to the Council) facsimile transmission to the party to which such notice request demand or other written communication is to be given or made under this deed and addressed as follows:

(a) if to the Council: Pathfinder House St Mary's Street Huntingdon Cambridgeshire PE29 3TN

Attention: The Chief Executive

(b)	if to the County Council:	Shire Hall Castle Hill Cambridge Cambridgeshire CB3 OAP
	Facsimile Transmission:	01223 717074
	Attention:	The Head of Legal Services
(c)	if to the Owner:	Hinchingbrooke Hospital Hinchingbrooke Park Road Huntingdon Cambridgeshire PE29 6NT
	Facsimile Transmission:	01480 416434
	Attention:	The Director of Finance

15 Payments

15.1 The payments specified in this deed shall from the date of this deed be linked to the Royal Institution of Chartered Surveyors Cost Information Service Building Cost Index regionally adjusted for the land within the Application Site and shall increase or decrease by the percentage increase or decrease in the said Index from the month preceding the date hereof to the month preceding the date of actual payment

15.2 The Owner hereby acknowledges and agrees that the Council and/or the County Council may at any time after the date hereof commence the provision or provide (in whole or in part) any of the infrastructure or facilities for which contribution is to be made under the terms of this deed and in such case notwithstanding that the trigger point for payment of the relevant contribution shall not have arisen at commencement of such provision the Owner shall pay the relevant contribution in accordance with the provisions of this deed at the times provided for in this deed so as to reimburse the Council or the County Council the cost incurred in respect of such provision up to the maximum which may be required by the remainder of this deed

16 Severance and enforceability

16.1 If any provision of this deed is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable, the remaining provisions of this deed shall continue in force and effect and the parties shall amend that provision in such reasonable manner as achieves the intention of the parties without illegality provided that any party may seek the consent of the other or others to the termination of this deed on such terms as may in all other circumstances be reasonable if the effect of the foregoing provisions would be to defeat the original intention of the parties.

16.2 The failure by any party to enforce at any time or for any period any one or more of the terms or conditions of this deed shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this deed.

IN WITNESS whereof this deed has been executed by the parties hereto and is intended to be and is hereby delivered on the date first above written.

Schedule 1

(The Property)

The land situated at Hinchingbrooke Hospital, Huntingdon and shown edged red on Plan A annexed to this deed (including that part of the Property shown hatched blue on Plan A with title registered at HM Land Registry under title number CB 175784) but subject to

1 the leasehold interest in part of the Property held by the Secretary of State for Health and registered at HM Land Registry under title number CB 175783

2 the leasehold interest in part of the Property held by the Secretary of State for Health and registered at HM Land Registry under title number CB 175782

3 the leasehold interest in part of the Property held by East Anglian Ambulance National Health Service Trust and registered at HM Land registry under title number CB 177732

4 rights of the County Council to lay services such rights arising out of a conveyance dated 19 March 1979 between the County Council (1) and the Secretary of State for Social Services (2)

Schedule 2

(The Development)

Erection of Ambulatory Care and Diagnostic Centre, new Support Services block, internal roads and car parking.

Schedule 3

(Owner's Covenants)

Part 1

1 **Commencement of the ACAD Centre**

The Owner will give not less than ten working days advance written notice to the Council and the County Council of the commencement of Construction of the ACAD Centre.

2 **Payment of the Sustainable Transport Contribution**

a) To pay 75% of the Sustainable Transport Contribution ("the First Contribution") to the County Council or its nominee not later than one month prior to first occupation of the ACAD Centre and not to occupy the ACAD Centre until the First Contribution has been paid.

b) Following payment of the First Contribution to pay the remaining 25% of the Sustainable Transport Contribution ("the Balance") within 14 days or such other period as the County Council may agree of a Notice of Demand for the same being received by the Owner from the County Council

Part 2

3 **The Off Site Highway Works**

3.1 Prior to commencement of Construction of the ACAD Centre or such later date as may be agreed by the County Council the Owner shall enter in to an agreement with the County Council under the powers and in the form then currently used by the County Council for securing the carrying out of works to the highway (including the provision of any relevant bond or other security) to secure the provision of the Off Site Highway Works and shall thereafter carry out or arrange the carrying out of the Off Site Highway Works at no cost to the County Council or the Council

3.2 The Owner shall not occupy or permit occupation of the ACAD Centre unless otherwise agreed by the County Council until the County Council has issued a Provisional Certificate of Completion (with a copy to the Council's Head of Planning Services) in respect of the Off-Site Highways Works pursuant to the agreement referred to in paragraph 3.1 of this Schedule or to the 1996 Covenant or otherwise

PROVIDED THAT sub paragraph 1 and 2 in this paragraph 3 shall cease to apply if prior to commencement of construction of the Offsite Highway Works in accordance with the timetable secured under agreement pursuant to paragraph 3.1 of this part of this Schedule the Off Site Highway Works shall have been provided or are in the course of construction pursuant to the 1996 Covenant or if the performance of the 1996 Covenant shall have fallen due which shall mean that a dwelling forming part of

the development to which the 1996 Covenant relates shall have been occupied without the works having been carried out and further that it shall be reasonable for the Council to enforce the 1996 Covenant taking into account the following;

i) the circumstances of the person or persons bound by the 1996 Covenant and

ii) the likelihood of enforcement of the 1996 Covenant by the Council being able to result in the satisfaction of the 1996 Covenant (i.e. the construction of the works to which the covenant relates) and

iii) the fact that the failure of satisfaction of 1996 Covenant may result in the Owner having to procure the Off Site Highway Works

Schedule 4

(County Council's Covenants)

1 Application of the Sustainable Transport Contribution

The County Council (or its nominee) shall apply and appropriate the Sustainable Transport Contribution towards the cost of projects which satisfy the Criteria

2 Information regarding the application of the Sustainable Transport Contribution

Within 14 days of a written request for the same from the Owner or its agent the County Council shall supply the Owner or its agent as the case may be with the following information;

i) details including costings of any projects to which the County Council or its nominee proposes to apply all or part of the Sustainable Transport Contribution

ii) details including proof of cost of any projects to which all or part of the Sustainable Transport Contribution shall have been applied

3 Repayment of the Contribution

If the County Council (or its nominee) has not applied or made arrangements for the application of all or any part of the Sustainable Transport Contribution within 5 years from the date of receipt of the Balance in accordance with this Deed then the Sustainable Transport Contribution or part thereof (as the case may be) shall become repayable on demand to the Owner together with any interest accrued thereon by the County Council Provided always that if before the expiry of the said five year period there is any contract or contracts in existence relating to the provision of the improvements to which the said contribution is attributable in the absolute discretion of the County Council which contract or contracts shall be completed after the expiry of the said five year period any sum to be repaid to the Owner shall be repaid following payment of the final account of any and all such contracts and the sum to be repaid shall be less all costs incurred and/or paid to provide the said improvements pursuant to such contract or contracts.

4 Highway Works

The County Council agrees without prejudice to its statutory duties that if the Off Site Highway Works are required to be executed by the Owner to enter into any agreements and to issue any permits or consents which shall be necessary to ensure that the Off Site Highway Works can be performed.

Schedule 5

(Green Transport Plan)

Part 1

The Owner shall be subject to and comply with the following obligations in relation to the ACAD centre and its staff, which shall not be altered except with the approval in writing of the County Council and the Council:

Use reasonable endeavours to achieve the Plan Objectives and the Specific Target by implementing the Measures described in Part 2 of this Schedule

Not allow employees in the ACAD Centre to park the vehicles they drive to work in other than in designated areas and to take such action as shall be necessary to ensure compliance and to discourage employees from driving to work

Appoint and thereafter continue to employ or engage a Green Transport Co-Ordinator (reporting directly to the Senior Management of the Owner) to implement and thereafter monitor the Green Transport Plan and to:

- liaise with employees to explain the Green Transport Plan policies, aims, objectives and benefits;
- encourage participation and compliance therewith;
- set up and maintain a database of employees and monitor their vehicle usage to and from the ACAD Centre including alternative forms of travel to work
- set up and maintain a database of visitors and patients travel patterns to and from the ACAD Centre including alternative modes of travel to the car
- submit formal annual monitoring reports to the Council
- promote so far as practicable co-operation with other departments on the Hinchingbrooke Hospital site to reduce car driven journeys to work
- act as a point of contact on transport matters at the ACAD Centre for the Council, the County Council, local Parish Council(s), the wider public and transport operators

- establish and maintain or contribute to a car sharing data base in respect of all persons employed at the ACAD Centre

- carry out such reasonable additional duties as may be included in the relevant Green Transport Plan as may be agreed with the County Council from time to time

Part 2

1. Plan Objectives

A. Increase the proportion of all ACAD Centre users travelling to work by public transport, walking, cycling and ride-sharing by a specified percentage which shall form part of the Green Transport Plan

B. Reduce the proportion of employee-driver journeys (journeys by employees driving alone) to the ACAD Centre in accordance with the target set out in Section 2 below and not to increase the proportion at any time during 20 years from first occupation of the ACAD Centre without written consent of the Council and County Council

2. Specific Target

Reduce employee-driver journeys to and from work at the ACAD Centre as a proportion of all employee journeys to and from work at the ACAD Centre by 20% within 5 years from the first occupation of the ACAD Centre on an incremental basis to be incorporated in the approved plan

3. Measures

Implementation of some or all of the following by agreement from time to time with the County Council and the Council:

- Appoint Staff Co-Ordinator to organise and promote car sharing register and provide car sharing data base

- Provide emergency "get you home" service for all staff based on a pool car system or taxi service

- Encourage and promote public transport use to and from Huntingdon Town centre and station (including the offering of interest free public transport season ticket loans for persons employed at the ACAD Centre)

- Prepare, periodically update and distribute to staff (and others) an information pack detailing availability of public transport services to the site

- Promote cycling as an alternative travel mode by providing bicycle storage facilities appropriate to need

- Prepare a monitoring regime of the employee parking spaces designated to the ACAD Centre

- Maintain a record of:

  (A) the number of employees at the ACAD Centre

  (B) the proportion of ACAD Centre employee-drivers (as driving alone) to work

  (C) the mode of travel for the remainder of ACAD Centre employees

  (D) the number of ACAD Centre employee parking spaces in designated areas

  (E) the number of ACAD Centre employee parking spaces used in accordance with the agreed monitoring regime

  (F) the number of ACAD Centre employees sharing journeys to work and the number of cars used

- Supply maps showing local cycle routes within a five mile radius

- Offer financial incentives to cyclists such as one-off grants for cycle purchase and cycle business mileage allowance

- Keep under review car park control and car park access arrangements

- Review periodically the number of car parking spaces for employees in the light of progress towards achievement of the Specific Target. As progress is made the number of car parking spaces should be reduced

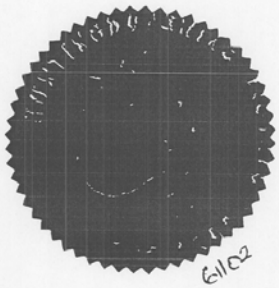
- Promote the environmental safety and health benefits of the Green Transport Plan

- Keep staff, visitors and patients informed of initiatives and opportunities aimed at offering a choice of travel mode

- Undertake annual surveys to monitor movement on and off site for the first five years and once every two years thereafter

- Review and report survey results to the Council and County Council to examine the rate at which travel habits are changing and discuss measures to maintain or increase the rate of change

The common seal of **HUNTINGDONSHIRE DISTRICT COUNCIL** was affixed in the presence of:)
)
)
)
)



..Executive Director of Central Services.....

.....

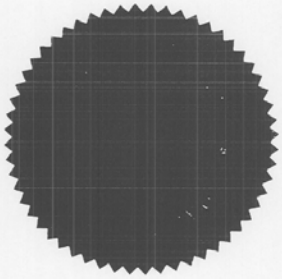
The common seal of **CAMBRIDGESHIRE COUNTY COUNCIL** was affixed in the presence of:)
)
)
)
)



C.R. Betts
.....

SENIOR LAWYER
.....

The common seal of **HINCHINGBROOKE HEALTH CARE NHS TRUST** was affixed in the presence of:)
)
)
)



S.L. Smith. Chairman.
.....

.....