

London Borough of
Hammersmith & Fulham
RECEIVED

- 6 MAY 2022

Legal Services
Department

**Eversheds Sutherland
(International) LLP**
Clearwater Court
Vastern Road
Reading
RG1 8DB
United Kingdom

T: +44 20 7497 9797
F: +44 20 7919 4919

eversheds-sutherland.com

Legal Services
Hammersmith & Fulham Council
Town Hall
King Street
London
W6 9JU

Date: 4 May 2022

Your ref: Rachel Silverstone, Senior Property Solicitor

Our ref: TUCKERA\117761-004805

Direct: +44 20 78 49 52 35

Email: andrewtucker@eversheds-sutherland.com

Dear Rachel

Agreement for the grant of an easement at Wormwood Scrubs and Old Oak Wood Lane

Further to the above matter, please find attached an engrossment of the agreement for execution by your client.

Kindly advise once you are in a position to complete the matter.

Kind regards

Yours sincerely



Andrew Tucker
Solicitor
Eversheds Sutherland (International) LLP

ips_1b\1542005\1\tuckera

Eversheds Sutherland (International) LLP is a limited liability partnership, registered in England and Wales (number OC304065), registered office One Wood Street, London EC2V 7WS. Authorised and regulated by the Solicitors Regulation Authority. A list of the members' names and their professional qualifications is available for inspection at the above office.

Eversheds Sutherland (International) LLP is part of a global legal practice, operating through various separate and distinct legal entities under Eversheds Sutherland. For a full description of the structure and a list of offices, please visit www.eversheds-sutherland.com.

Dated: 2022

(1) **LONDON BOROUGH OF HAMMERSMITH & FULHAM**

(2) **WORMWOOD SCRUBS CHARITABLE TRUST**

(3) **THAMES WATER UTILITIES LIMITED**

Agreement for the grant of an easement

relating to land known as Wormwood Scrubs and Old Oak Wood Lane, London W12 0DF

THIS AGREEMENT is made on

202[]

BETWEEN

- (1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF HAMMERSMITH & FULHAM** of Town Hall, King Street, London W6 9JU and **WORMWOOD SCRUBS CHARITABLE TRUST** of/o Old Oak Community Centre, 76 Braybrook Street, London W12 0AP (together the "**Grantor**"); and
- (2) **THAMES WATER UTILITIES LIMITED** (registered number 02366661) whose registered office is at Clearwater Court, Vastern Road, Reading RG1 8DB (the "**Undertaker**").

BACKGROUND

- (A) The Grantor is the owner of the Property.
- (B) As part of the works by High Speed Two (HS2) Limited("HS2") to construct High Speed 2, the Undertaker is required to divert part of its sewer into the Grantor's property in accordance with the provisions as set out in Part 2 of Schedule 33 to the High Speed Rail (London - West Midlands) Act 2017 .
- (C) Following completion of the diversion works, and prior to adoption of the sewer by the Undertaker, the Undertaker will require the Grantor to grant to the Undertaker an easement in respect of the sewer.
- (D) The Grantor and the Undertaker have agreed to enter into this Agreement in respect of the grant of an easement over the Grantor's property.
- (E) The Undertaker requires completion of the easement prior to it serving a provisional vesting certificate
- (F) Upon satisfactory completion of the diversion works, and to the extent that the Undertaker is ready to serve the provisional vesting certificate, the Undertaker will give notice to the Grantor in accordance with the terms of this agreement.

OPERATIVE PROVISIONS

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement the following words and expressions have the following meanings:

- "Deed of Easement"** a deed of easement substantially in the form annexed to this Agreement under the schedule subject to such amendments to the plan as the Undertaker may reasonably require and the Grantor acting reasonably may agree to reflect the extent of the Easement Land
- "Property"** the freehold property shown edged red on the attached plan registered under Title Number BGL75687
- "Easement Land"** that part of the Property in respect of which the Undertaker serves a Trigger Notice
- "Trigger Notice"** a written notice served by the Undertaker to the Grantor requiring the Grantor to grant the Deed of Easement

Longstop Date

In the event that a Trigger Notice is not served by 31st December 2025 then this agreement will determine immediately thereafter.

- 1.2 References to clauses are to the clauses of this Agreement.
- 1.3 The Particulars form part of this Agreement and will have the same force and effect as if set out in the body of this Agreement and any reference to this Agreement will include the Particulars.
- 1.4 All headings are for ease of reference only and will not affect the construction or interpretation of this Agreement.
- 1.5 Unless the context otherwise requires:
 - 1.5.1 references to the singular include the plural and vice versa and references to any gender include every gender; and
 - 1.5.2 references to a **"person"** include any individual, body corporate, association, partnership, firm, trust, organisation, joint venture, government, local or municipal authority, governmental or supra-governmental agency or department, state or agency of state or any other entity (in each case whether or not having separate legal personality).
- 1.6 References to any statute or statutory provision will include any subordinate legislation made under it and will be construed as references to such statute, statutory provision or subordinate legislation as modified, amended, extended, consolidated, re-enacted or replaced and in force from time to time.
- 1.7 Any words following the words **"include"**, **"includes"**, **"including"**, **"in particular"** or any similar words or expressions will be construed without limitation and accordingly will not limit the meaning of the words preceding them.
- 1.8 The rule known as the ejusdem generis rule will not apply and accordingly the meaning of general words introduced by the word **"other"** or a similar word or expression will not be restricted by reason of the fact that they are preceded by words indicating a particular class of acts, matters or things.
- 1.9 An obligation on a party to procure or ensure the performance or standing of another person will be construed as a primary obligation of that party.
- 1.10 References to the Grantor and the Undertaker include their respective successors in title to this Agreement and, where applicable, to the Property and the Easement Land and, in the case of individuals, their personal representatives.
- 1.11 References to the Property and the Easement Land include any part of them.
- 1.12 Where two or more persons form a party to this Agreement, the obligations they undertake may be enforced against them all jointly or against each individually.

2. OBLIGATION TO GRANT A DEED OF EASEMENTS

- 2.1 The Undertaker will serve the Trigger Notice after satisfactory completion of the diversion works and prior to the Longstop Date. If HS2's programme of works is delayed such that the Undertaker is not in a position to serve the Trigger Notice by the Longstop Date, then the Undertaker will seek the Grantor's approval to extend the Longstop Date, such approval not to be unreasonably withheld or delayed.

2.2 Trigger Notice

Within two calendar months of receipt of a Trigger Notice, the Grantor shall grant the Deed of Easement to the Undertaker.

2.3 Preparation of the Deed of Easements

- 2.3.1 Engrossments of the Deed of Easement will be provided by the Undertaker.
- 2.3.2 The Grantor and the Undertaker will use reasonable endeavours to agree the plan to be annexed to the Deed of Easement as soon as reasonably practicable after the date of the Trigger Notice.

3. NOTICES

- 3.1 Any notice or other communication given under or in connection with this Agreement will be in writing and:

- 3.1.1 sent by recorded delivery to that party's address; and
- 3.1.2 delivered to that party's address.

- 3.2 The addresses for each party are set out below.

London Borough of Hammersmith & Fulham at Assistant Director, Legal Services, Hammersmith and Fulham Council, Town Hall, King Street, London W6 9JU;

Wormwood Scrubs Charitable Trust at Assistant Director, Legal Services, Hammersmith and Fulham Council, Town Hall, King Street, London W6 9JU; and

Thames Water Utilities Limited at Clearwater Court, Vastern Road, Reading RG1 8DB.

- 3.3 Any notice or communication given in accordance with **clause 3.1** will be deemed to have been served:

- 3.3.1 if given as set out in **clause 3.1.1**, at 09:00 on the second working day after the date of posting.

- 3.4 To prove service of a notice or communication it will be sufficient to prove that the provisions of **clause 3.1** were complied with.

4. SEVERANCE

If any term of this Agreement is found by any court or body or authority of competent jurisdiction to be illegal, unlawful, void or unenforceable, such term will be deemed to be severed from this Agreement and this will not affect the remainder of this Agreement which will continue in full force and effect.

5. VARIATION

Save as otherwise expressly provided in this Agreement, no variation to this Agreement will be effective unless it has been agreed by the parties and it is executed as a deed.

6. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which will constitute an original, but which will together constitute one agreement.

7. RIGHTS OF THIRD PARTIES

The parties do not intend that any term of this Agreement will be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person.

8. **GOVERNING LAW**

This Agreement and any non-contractual obligations arising out of or in connection with it will be governed by the law of England and Wales.

9. **JURISDICTION**

9.1 Subject to **clause 9.2** and the provisions of **clause 9**, each party agrees that the courts of England and Wales have exclusive jurisdiction to determine any dispute arising out of or in connection with this Agreement (including in relation to any non-contractual obligations).

9.2 Any party may seek specific performance, interim or final injunctive relief or any other relief of similar nature or effect in any court of competent jurisdiction.

10. **Non-merger**

All the provisions of this agreement shall (to the extent that they remain to be observed and performed) continue in full force and effect notwithstanding completion of the Easement.

11. **RIGHTS OF THIRD PARTIES**

The parties do not intend that any term of this Agreement will be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person.

SIGNED BY or on behalf of the parties on the date stated at the beginning of this Agreement.

Executed as a deed by affixing the common seal
of

**LONDON BOORUGH OF HAMMERSMITH AND
FULHAM**

On behalf of

WORMWOOD SCRUBS CHARITABLE TRUST in
the presence of:

Authorised Signatory / Assistant Director / Chief Solicitor

Executed as a deed by affixing)
the common seal of)
THAMES WATER UTILITIES LIMITED)
in the presence of:)

Authorised Signatory

Schedule

The agreed form of the deed of easement.

DATED

202[]

LONDON BOROUGH OF FULHAM

&

WORMWOOD SCRUBS CHARITABLE TRUST

- to -

THAMES WATER UTILITIES LIMITED

DEED OF GRANT OF EASEMENT

relating to land at Wormwood Scrubs and Old Oak Wood Lane, London
W12 0DF

THE LAND REGISTRY

LAND REGISTRATION ACT 2002

County and District : **London**

Title Number : **BGL75687**

Dated : **202[]**

THIS DEED is made **BETWEEN**

THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF HAMMERSMITH AND FULHAM of Town Hall, King Street, London W6 9JU and **WORMWOOD SCRUBS CHARITABLE TRUST** of c/o Old Oak Community Centre, 76 Braybrook Street, London W12 0AP (together "the Grantor") of the one part and

THAMES WATER UTILITIES LIMITED (Co Regn No 2366661) whose registered office is situate at Clearwater Court Vastern Road Reading Berkshire RG1 8DB ("the Company") of the other part

1. DEFINITIONS

"the Company" means Thames Water Utilities Limited and its successors in title.

"the Apparatus" means the foul/surface water main and any accessories thereto as defined by Section 219 of the Water Industry Act 1991 as are within the Easement Land defined below.

"the Foul /Surface Water Main" means the new foul/surface water main which the Company is required to lay within the Easement Land.

"the Plan" means the Plan annexed attached Schedule 2.

"the Easement Land" means that strip of land shown on the Plan and thereon outlined and hatched pink and being 6.6 metres wide

where the length of the Easement Land is shown on the Plan running from west to east and being 7.4 metres wider where the length of the Easement Land is shown running south to north on the Plan.. Unless the contrary shall be stipulated or be clear from the drawings the Protected Strip shall lie one half to each side of the centreline of the Apparatus.

“the Dominant Tenement”

means the undertaking of the Company within its areas as particularised in the Undertaker’s “Instrument of Appointment” as a sewerage undertaker and taking effect under the Water Act 1989 and the properties and rights forming part thereof.

“the Planting Schedule”

means the Planting Schedule attached under Schedule 1.

2. WHEREAS:

- 2.1 The Grantor is registered as Proprietor under Title Number BGL75687 of the freehold land situated at Wormwood Scrubs and Old Oak Wood Lane, London W12 0DF within which the Easement Land lies;
- 2.2 The Company has by virtue of the High Speed Rail (London – West Midlands) Act 2017 been required to move its apparatus and lay a new Foul /Surface Water Main within the Easement Land; and
- 2.3 The Grantor has agreed to grant to the Company such perpetual easements rights powers and privileges in respect of the Easement Land as set out below.

3. RIGHTS

Subject to the Company complying with its obligations under this Deed the Grantor hereby grants with full title guarantee the following perpetual rights (“the Rights”) to the Company for the benefit of the Dominant Tenement and each and every part thereof:

- 3.1 The right to lay the Foul/Surface Water Main in the Easement Land and thereafter the right to use inspect reconstruct replace enlarge line relay alter maintain cleanse repair improve and manage the Foul/Surface Water Main in through under over or upon the Easement Land;

- 3.2 Subject to providing at least 5 days' notice to the Grantor (except in cases of emergency), the right at any time and at all times with or without vehicles materials plant machinery apparatus employees contractors and others to enter upon and pass and repass along the Easement Land by a route within the same or by such other convenient route from the a public highway as the Company shall with the approval of the Grantor (which shall not be unreasonably withheld or delayed) from time to time require, and to maintain reasonable markers indicating the Easement Land and/or the Foul/Surface Water Main and the right to excavate and the right following at least 5 days' notice to the Grantor (except in cases of emergency) to tip soil temporarily on land adjoining the Easement Land if necessary, the extent of such land (save in cases of emergency) to be approved in advance by the Grantor (such approval not to be unreasonably withheld or delayed), **SUBJECT TO** levelling out when the excavations are completed and removing any surplus sub soil provided that the Grantee makes good any damage caused to the Grantor's property to the reasonable satisfaction of the Grantor;
- 3.3 The right at all times to the uninterrupted passage of foul and surface water through the Foul/Surface Water Main;
- 3.4 The right (without any liability to pay compensation or to return the surface of the Easement Land) to remove any trees hedges or shrubs (except those contained in the planting schedule as set out under Schedule 1) growing in the Easement Land and any buildings walls fences or other structures built thereon and in the exercise of such rights the Company shall not cause unreasonable damage and shall make good so far as practicable any damage caused **PROVIDED ALWAYS THAT** no compensation will be paid for cutting off any encroaching roots for breaking pavings or damaging surfaces;
- 3.5 The right to erect any necessary temporary fencing or other barrier for so long as shall be necessary to enjoy the Rights set out under paragraphs 3.1 & 3.2; and
- 3.6 The right of support for the Apparatus from the subjacent and adjacent land and soil including the minerals of the Grantor.

4. GRANTORS COVENANTS

The Grantor to the intent that the burden of this covenant may run with the Easement Land and so as to bind the Easement Land into whosoever hands the same may come and every part thereof and to benefit and protect the apparatus and the undertaking of the Company and each and every part thereof capable of being so benefited or protected but not so as to render

the Grantor personally liable for any breach of covenant committed after the Grantor shall have parted with all interest in the land in respect of which such breach shall occur **HEREBY COVENANTS** with the Company that the Grantor will at all times hereafter observe perform and enforce the following restrictive and other covenants in respect of the Easement Land as follows:-

- 4.1 Not to use the Easement Land or the adjoining land so as to put at risk or damage the Foul /Surface Water Main or to interfere with the Rights;
 - 4.2 Not to erect construct or place any building walls or other structure or erection on the Easement Land other than roads or driveways **AND PROVIDED ALWAYS** that this covenant shall not be deemed to prevent the erection of boundary or other fences of an easily removable nature;
 - 4.3 Not to lay or permit to be laid in over or upon the Easement Land any drains pipes conduits cables ducts wires or similar thing without the prior written consent of the Company;
 - 4.4 Not to use the Easement Land except for agricultural or residential garden purposes or as open space or for roads and services;
 - 4.5 Subject to Schedule 1 not to plant or permit the planting of trees hedges or shrubs on the Easement Land;
 - 4.6 Not to alter the ground levels within the Easement Land;
 - 4.7 Not to cover or obscure any manhole cover or chamber or other accessory which relates to or which lies over the Foul /Surface Water Main in the Easement Land;
 - 4.8 Not to allow any piling operation in the Easement Land;
 - 4.9 To advise any tenant for the time being of the Easement Land or any part thereof of the existence of the Foul/Surface Water Main and of this Deed; and
 - 4.10 Not to withdraw support from the Apparatus or from the Easement Land.
- 5.0 **Grantee's Covenants**
- 5.1 The Company hereby covenants with the Grantor to pay all rates taxes impositions and outgoings of an annual or recurring nature payable in respect of the Apparatus.

5.2 The Grantee indemnifies the Grantor and keeps the Grantor indemnified against all liabilities, costs, expenses, damages and losses suffered or incurred by the Grantor arising directly out of or in connection with:

- 5.2.1 the exercise of the Rights;
- 5.2.2 any breach of any of the Grantees Covenants; and
- 5.2.3 any breach of the terms of this agreement;

by the Grantee or by any personnel employed or contracted by the Grantee or invitee, or any other person who is allowed or permitted by the Grantee to exercise the Rights.

Provided that to the extent permitted by law, the total liability of the Grantee under this clause shall be limited to £10,000,000 (Ten Million Pounds) per incident.

6. The Company shall have the benefit of the right to enforce these covenants pursuant to The Contracts (Rights of Third Parties) Act 1999.

7. IT IS HEREBY AGREED AND DECLARED

7.1 Any dispute concerning these rights and covenants may be referred to an arbitrator under the Arbitration Act 1996 or any statutory modification or re-enactment thereof.

7.2 The Company shall not be liable for any compensation save as herein expressly provided in respect of its use or enjoyment of the Rights.

8. The Grantor and the Company do now apply to the Registrar to enter registered notice of the Rights hereby granted in the Charges Register in respect of the Easement Land.

IN WITNESS of which the parties hereto have executed this Deed the day and year above written

Executed as a deed By affixing the common seal of

**LONDON BOORUGH OF
HAMMERSMITH AND FULHAM**

On behalf of

**WORMWOOD SCRUBS CHARITABLE
TRUST** In the presence of:-

Authorised Signatory / Assistant Director /
Chief Solicitor

**EXECUTED AS A DEED BY AFFIXING
THE COMMON SEAL of THAMES
WATER UTILITIES**

In the presence of:-

Authorised Signatory

SCHEDULE 1 – THE PLANTING SCHEDULE

The Planting Schedule

13. The design of landscaping should be undertaken at the same time as the design of the drains and sewers so that the impact of tree roots on sewers and drains can be considered. A sewer or lateral drain should not be located closer to trees/bushes/shrubs than the canopy width at mature height, except where special protection measures are provided, in accordance with Clause B6.6. A tree should not be planted directly over sewers or where excavation onto the sewer would require removal of the tree. The following shallow rooting shrubs are generally suitable for planting close to sewers and lateral drains:

- *Berberis candidula*; (Paleleaf barberry)
- *Berberis julianae*; (Wintergreen barberry)
- *Ceanothus burkwoodii*; (Californian lilac 'Burkwoodii')
- *Cotoneaster dammeri*; (Bearberry cotoneaster)
- *Cotoneaster skogholm*; (*Cotoneaster x suecicus*, 'Skogholm')
- *Cytisus varieties* or *Sarothamnus*; ((Common or Scotch) Broom)
- *Euonymus japonica*; (Japanese spindle)
- *Euonymus radicans*; Variety of *Euonymus* (Fortune's spindle or wintercreeper)
- *Mahonia varieties*; can be included in the genus *Berberis*, most common name is *M. aquifolium* (Oregon grape)
- *Potentilla varieties*; most varieties are types of cinquefoil. Also includes Common tormentil, silverweed and barren strawberry
- *Skimmia japonica*; (Skimmia)
- *Spiraea japonica*; (Japanese spirea or Japanese meadowsweet)
- *Veronica varieties*; (Speedwell)
- *Viburnum davidii*; (David viburnum)
- *Viburnum tinus*; (Lauristinus)

14. When in a highway, the outside of the sewer should be in the vehicle carriageway (not footway) and be at least 1 m from the kerb line. The external faces of manholes should be at least 0.5 m from the kerb line.

15. Where it is proposed to lay pipes in third party land, agreement should be obtained from the owner of the land surface as to acceptable levels of predicted settlement, prior to the construction. The construction techniques should be selected to ensure that the maximum settlement is within the agreed limits.

16. Typical layouts are shown in Figures B.3 to B.6.

SCHEDULE 2 – THE PLAN



	Area of LAP30399; Easement land for the pipeline
	LBHF FreshM Tm - BGL75687

Rev	Date	Description	By	Chk	App
v2	22/02/22		AM		

Map Name
Pipe Line and Easement Land - LAP30399
 Overlapping BGL75687

HS2 High Speed Rail
High Speed Rail (London - Birmingham) Bill 2017
 HS2 Limited is responsible for the development and construction of the HS2 railway network in England and Wales. HS2 Limited is a subsidiary of HS2 Infrastructure Limited.

Scale at A1: 1:1,250

 Date: 22/02/22

