

Dated 10th December 2020

**PLANNING OBLIGATION BY DEED OF
AGREEMENT UNDER SECTION 106 OF THE
TOWN AND COUNTRY PLANNING ACT 1990**

Between

(1) Kirklees Council

and

(2) Colston Trustees Limited

(3) Morbaine Limited

Relating to

Freehold property known as
Mirfield Caravans site
Huddersfield Road
Mirfield

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THIS DEED is dated the 10th December 2020

BETWEEN:

- (1) **KIRKLEES COUNCIL** of Market Street Huddersfield HD1 2JR (the **Council**)
- (2) **COLSTON TRUSTEES LIMITED** incorporated and registered in England and Wales with company number 6867955 whose registered office is situate at Curtis Banks Plc 3 Temple Back East Bristol BS1 6DZ (the **Owner**)
- (3) **MORBAIN LIMITED** incorporated and registered in England and Wales with company number 1295474 whose registered office is situate at The Finlan Centre Hale Road Widnes Cheshire WA8 8PU (the **Developer**)

INTRODUCTION

- (A) The Council is the local planning authority for the purposes of the Act and also the local highway authority for the area in which the Site is situated.
- (B) The Owner is the freehold owner of the Site.
- (C) The Developer has an option agreement to purchase the site by virtue of the Option Deed.
- (D) The Developer submitted the Application to the Council and the parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed.
- (E) The Council resolved on 26 August 2020 to grant the Planning Permission subject to the prior completion of this Deed.

NOW THIS DEED WITNESSES AS FOLLOWS:

OPERATIVE PART

1 DEFINITIONS

For the purposes of this Deed the following expressions shall have the following meanings:

Act: the Town and Country Planning Act 1990.

Application: the application for outline planning permission (all matters reserved other than access) dated 19 June 2019 submitted to the Council for the Development and allocated reference number 2019/92221.

Bus Stop Contribution: the sum of twenty three thousand pounds (£23,000.00) to be used by the Council as a contribution towards the upgrade of bus stop numbers 15150 and 15152 on Huddersfield Road Mirfield

Commencement of Development: the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out on the site 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 diversion and laying of services erection of any temporary means of enclosure the temporary display of site notices or advertisements and **Commence Development** shall be construed accordingly.

Contributions: any or all of the Bus Stop Contribution the Highway Contribution and the Travel Plan Contribution;

Development: the Development of the Site by the erection of a Class E [A1] retail unit with access servicing landscaping and associated car parking in accordance with the Planning Permission.

Highways Contribution: the sum of eight thousand four hundred pounds (£8,400.00) to be used by the Council as a contribution towards installation of bluetooth detectors at the Huddersfield Road/Station Road Mirfield traffic signalled junction

Index Linked: increased in accordance with the following formula:

Amount payable = the payment specified in this Deed x (A/B) where:

A= the figure for the Consumer Prices Index (All Items) that applied immediately preceding the date the payment is due; and

B= the figure for the Consumer Prices Index (All Items) that applied when the index was last published prior to the date of this Deed.

Interest: interest at 4% per cent above the base lending rate of Barclays Bank Plc from time to time.

Occupation and Occupied: occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction fitting out or decoration or occupation for marketing or display or occupation in relation to security operations or the installation or use by a statutory undertaker of any apparatus.

Option Deed: a deed dated the 22 January 2019 and made between the Owner(1) Kenmore Caravans Limited(2) and the Developer (3)

Plan: the plan attached to this Deed.

Planning Permission: the outline planning permission subject to conditions to be granted by the Council pursuant to the Application as set out in **Schedule 2**.

Site: the land against which this Deed may be enforced as detailed in **Schedule 1** and shown edged red on the Plan.

Travel Plan: a travel plan to be agreed with the Council pursuant to Condition [9] of the Planning Permission to promote more sustainable modes of travel car for all users of the Development.

Travel Plan Contribution: the sum of ten thousand pounds (£10,000.00) to be paid to the Council to cover the Council's costs of monitoring the Travel Plan and for an annual review of the Travel Plan.

2 CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed reference is made to any clause paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause paragraph or schedule or recital in this Deed.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies corporations and firms and all such words shall be construed interchangeable in that manner.
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and severally unless there is an express provision otherwise.
- 2.5 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.

2.6 References to any party to this Deed shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the Council its successors to its respective statutory functions.

2.7 The headings and contents list are for reference only and shall not affect construction.

3 LEGAL BASIS

3.1 This Deed is made pursuant to Section 106 of the Act Section 111 of the Local Government Act 1972 and Section 2 of the Local Government Act 2000.

3.2 The covenants restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council as the local planning authority against the Owner and its successors in title.

4 CONDITIONALITY

This Deed is conditional upon:

4.1 the grant of the Planning Permission; and

4.2 the Commencement of Development

save for the provisions of **clauses 7.1 9 13 14 and 15** which shall come into effect immediately upon completion of this Deed.

5 THE OWNER'S COVENANTS

The Owner from today until it has parted with all interest in the Site covenants and the Developer once it is bound under section 106 (3) of the Act in substitution for the Owner covenants with the Council as set out in the Third Schedule but subject to the provisions of **clauses 7.7 to 7.10**.

6 THE COUNCIL'S COVENANTS

The Council covenants with the Owner as set out in the Fourth Schedule.

7 MISCELLANEOUS

7.1 The Developer shall pay to the Council on completion of this Deed the reasonable and proper legal costs of the Council incurred in the negotiation preparation and execution of this Deed in the maximum sum of £1,000.00.

7.2 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999

7.3 This Deed shall be registrable as a local land charge by the Council.

7.4 Where the agreement approval consent or expression of satisfaction is required by the Owner from the Council under the terms of this Deed such agreement approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement consent approval or expression of satisfaction shall be given on behalf of the Council by the Head of Development and Building Control and any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party.

7.5 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall upon written request effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.

- 7.6 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 or enforceability of the remaining provisions of this Deed.
- 7.7 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission 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.
- 7.8 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 7.9 This Deed shall not be enforceable against:
- 7.9.1 statutory undertakers in relation to any parts of the Site acquired by them for electricity sub-stations gas governor stations pumping stations or similar structures and apparatus; or
 - 7.9.2 the tenant(s) of the unit constructed pursuant to the Planning Permission nor against those deriving title from them.
- 7.10 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 the Planning Permission) granted (whether or not on appeal) after the date of this Deed.
- 7.11 Nothing contained or implied in this Deed shall prejudice or affect the rights discretions powers duties and obligations of the Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority.

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 covenants 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 CHANGE IN OWNERSHIP AND LIMITATION OF LIABILITY

- 9.1 The Owner agrees with the Council to give the Council immediate written notice of any change in ownership of any of its interests in the Site occurring before all the obligations under this Deed have been discharged 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.
- 9.2 It is hereby agreed that the liability of Colston Trustees Limited shall not exceed the assets within its control in the Universal SIPP SA Bell the Universal SIPP R.A. Wilson and the Universal SIPP A.K. Wilson and that save for that neither the Council nor any other party shall have any claim whatsoever against Colston Trustees Limited.

10 INDEXATION

Any sum referred to in the Third Schedule shall be Index Linked.

11 INTEREST

If any payment due under this Deed is paid late Interest will be payable from the date payment is due to the date of payment.

12 **CIL**

12.1. In the event that the Council bring into force a Charging Schedule pursuant to the CIL Regulations the parties agree that this Deed shall be amended such that the Owner shall not be in a position where it is required to pay twice for the same item of infrastructure and furthermore that any monies paid pursuant to this Deed shall be repaid to the Owner or its nominee in the following circumstances:

12.1.1. a Charging Schedule has come into force; and

12.1.2. the Regulation 123 list includes infrastructure for which this Deed makes financial provision; and

12.1.3. the Owner subsequently is granted a further planning permission that does not benefit from the transitional provisions in regulation 128A of the CIL Regulations.

13 **VAT**

All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.

14 **NOTICES**

14.1 Any notice to be given under this deed must be in writing and must be:

14.1.1 delivered by hand; or

14.1.2 sent by pre-paid first class post or other next working day delivery service.

14.2 Any notice [or other communication] to be given under this deed must be sent to the relevant party as follows:

14.2.1 to the Council at Legal Services High Street Buildings Huddersfield HD1 2ND marked for the attention of Director- Legal Governance and Commissioning;

14.2.2 to the Owner at Curtis Banks Plc 3 Temple Back East Bristol BS1 6DZ marked for the attention of

14.2.3 to the Developer at The Finlan Centre Hale Road Widnes Cheshire WA8 8PU marked for the attention of Graham Adams Esq;

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

14.3 Any notice given in accordance with **clause 0** and **clause 0** will be deemed to have been received:

14.3.1 if delivered by hand on signature of a delivery receipt or at the time the notice or document is left at the address provided that if delivery occurs before 9.00 am on a Working Day the notice will be deemed to have been received at 9.00 am on that day and if delivery occurs after 5.00 pm on a Working Day or on a day which is not a Working Day the notice will be deemed to have been received at 9.00 am on the next Working Day; or

14.3.2 if sent by pre-paid first class post or other next working day delivery service at 9.00 am on the second Working Day after posting.

14.4 A notice given under this Deed shall not be validly given if sent by e-mail.

14.5 This clause does not apply to the service of any proceedings or other documents in any legal action or where applicable any arbitration or other method of dispute resolution.

15 JURISDICTION

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

16 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.

IN WITNESS whereof the parties hereto have executed this Deed on the day and year first before written.

SCHEDULE 1 - DETAILS OF THE OWNER/LEASEHOLDER'S TITLE AND DESCRIPTION OF THE SITE

ALL THAT land on the south west side of Huddersfield Road Mirfield and registered at the Land Registry under Title Number WYK292347 as shown edged red on the Plan

SCHEDULE 2 - FORM OF NOTICE OF PLANNING PERMISSION

DRAFT CONDITIONS

Application Number: 2019/92221

1. Approval of the details of the scale, layout, appearance, and the landscaping of the site (hereinafter called 'the reserved matters') shall be obtained from the Local Planning Authority in writing before any development commences.

Reason: No details of the matter referred to having been submitted they are reserved for the subsequent approval in writing of the Local Planning Authority.

2. Plans and particulars of the reserved matters referred to in Condition 1 above, relating to the scale, layout, appearance and the landscaping of the site, shall be submitted in writing to the Local Planning Authority and shall be carried out in full accordance with the approved plans.

Reason: No details of the matter referred to having been submitted they are reserved for the subsequent approval in writing of the Local Planning Authority.

3. Application for approval of any reserved matter shall be made to the Local Planning Authority before the expiration of three years from the date of this permission.

Reason: Pursuant to section 92 of the Town and Country Planning Act 1990, as amended by the Planning and Compulsory Purchase Act 2004.

4. The development hereby permitted shall be begun either before the expiration of two years from the final approval of reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.

Reason: Pursuant to section 92 of the Town and Country Planning Act 1990, as amended by the Planning and Compulsory Purchase Act 2004.

5. The net sales area of the retail unit hereby approved shall not exceed 1,254 square metres, and the floor space devoted to the sale of comparison goods within this net sales area shall not exceed 20% of the net sales area.

Reason: To accord with the guidance contained in chapter 7 of the National Planning Policy Framework ('Ensuring the vitality of town centres').

6. Notwithstanding the submitted information, a detailed scheme for the provision of a right turn lane from Huddersfield Road into the site and new pedestrian refuges on Huddersfield Road that is based on drawing number 15151-101 Revision D shall be submitted to and approved in writing by the Local Planning Authority before development commences. The scheme shall include construction specifications, white lining, signing, surface finishes and transport regulation orders together with an independent Safety Audit covering all aspects of the work. All of the agreed works shall be implemented before any part of the development is first brought into use.

Reason: In the interests of highway safety and to accord with Policy LP21 of the Kirklees Local Plan.

This is a pre-commencement condition so that such matters are addressed at an appropriate stage of the development process.

commencement condition to ensure that such matters are identified at an appropriate stage.

12. Where site remediation is recommended in the Phase II Intrusive Site Investigation Report approved pursuant to condition 11, further groundworks shall not commence until a Remediation Strategy has been submitted to and approved in writing by the Local Planning Authority. The Remediation Strategy shall include a timetable for the implementation and completion of the approved remediation measures.

Reason: To address unacceptable risks to human health and the environment arising from potential contamination. This is to accord with Policy LP53 of the Local Plan and guidance given in the National Planning Policy Framework. This is a pre-commencement condition to ensure that such matters are identified at an appropriate stage.

13. Remediation of the site shall be carried out and completed in accordance with the Remediation Strategy approved pursuant to condition 12. In the event that remediation is unable to proceed in accordance with the approved Remediation Strategy or contamination not previously considered in either the Preliminary Risk Assessment or the Phase II Intrusive Site Investigation Report is identified or encountered on site, all groundworks in the affected area (except for site investigation works) shall cease immediately and the Local Planning Authority shall be notified in writing within 2 working days. Works shall not recommence until proposed revisions to the Remediation Strategy have been submitted to and approved in writing by the Local Planning Authority. Remediation of the site shall thereafter be carried out in accordance with the approved revised Remediation Strategy.

Reason: To remove unacceptable risks to human health and the environment arising from potential contamination. This is to accord with Policy LP53 of the Kirklees Local Plan and guidance given in the National Planning Policy Framework. This is a pre-commencement condition to ensure that such matters are identified at an appropriate stage.

14. Following completion of any measures identified in the approved Remediation Strategy or any approved revised Remediation Strategy, a Validation Report shall be submitted to the Local Planning Authority. No part of the site shall be brought into use until such time as the remediation measures for the whole site have been completed in accordance with the approved Remediation Strategy or the approved revised Remediation Strategy and a Validation Report in respect of those remediation measures has been approved in writing by the Local Planning Authority.

Reason: To ensure unacceptable risks to human health and the environment arising from potential contamination have been addressed. This is to accord with Policy LP53 of the Kirklees Local Plan and guidance given in the National Planning Policy Framework.

15. Details of 'layout' and 'landscaping' submitted pursuant to condition 2 shall include a scheme detailing security measures to be incorporated into the development. The development shall be provided in accordance with the details so approved and shall thereafter be retained as such.

Reason: To mitigate the risk of flooding and to ensure adequate drainage provision for the development and to accord with Policies LP27 and LP28 of the Kirklees Local Plan and guidance in the National Planning Policy Framework.

20. Development shall not commence until a scheme restricting the rate of surface water discharge from the site to a maximum of 8.1 litres per second has been submitted to and approved in writing by Local Planning Authority. The drainage scheme shall be designed to attenuate flows generated by the critical 1 in 30 year storm event as a minimum requirement. Flows between the critical 1 in 30 or critical 1 in 100 year storm events +30% allowance for climate change shall be stored on site in areas to be approved in writing by the Local Planning Authority, unless it can be demonstrated to the satisfaction of the Local Planning Authority that discharge from site does not cause an increased risk in flooding elsewhere. The scheme shall include a detailed maintenance and management regime for the storage facility including the flow restriction. There shall be no piped discharge of surface water from the development and no part of the development shall be brought into use until the flow restriction and attenuation works comprising the approved scheme have been completed. The approved maintenance and management scheme shall be implemented thereafter.

Reason: To ensure the provision of adequate and sustainable systems of drainage in the interests of amenity and environmental well-being and to accord with Policy LP28 of the Kirklees Local Plan and guidance in the National Planning Policy Framework.

21. Details of 'layout' submitted pursuant to condition 2 shall include an assessment of flow routing within the site. The assessment shall detail the effects of 1 in 100 year storm events (with an additional 30% allowance for climate change) on drainage infrastructure and surface water run-off pre and post development between the development and the surrounding area, in both directions. The development shall be provided in accordance with the details so approved before it is first brought into use and shall thereafter be retained as such.

Reason: To ensure the provision of adequate and sustainable systems of drainage in the interests of amenity and environmental well-being and to accord with Policy LP28 of the Kirklees Local Plan and guidance in the National Planning Policy Framework.

22. Development shall not commence until a scheme detailing the treatment of all surface water flows from parking areas and hardstandings through an oil interceptor, (or a full petrol oil interceptor) reedbed or alternative treatment system has been submitted to and approved in writing by the Local Planning Authority. Use of the parking areas/hardstandings shall not commence until the works comprising the approved treatment scheme have been completed. Treatment shall take place prior to discharge from the treatment scheme. Roof water shall not pass through the interceptor. The treatment scheme shall be retained and maintained to ensure efficient working at all times.

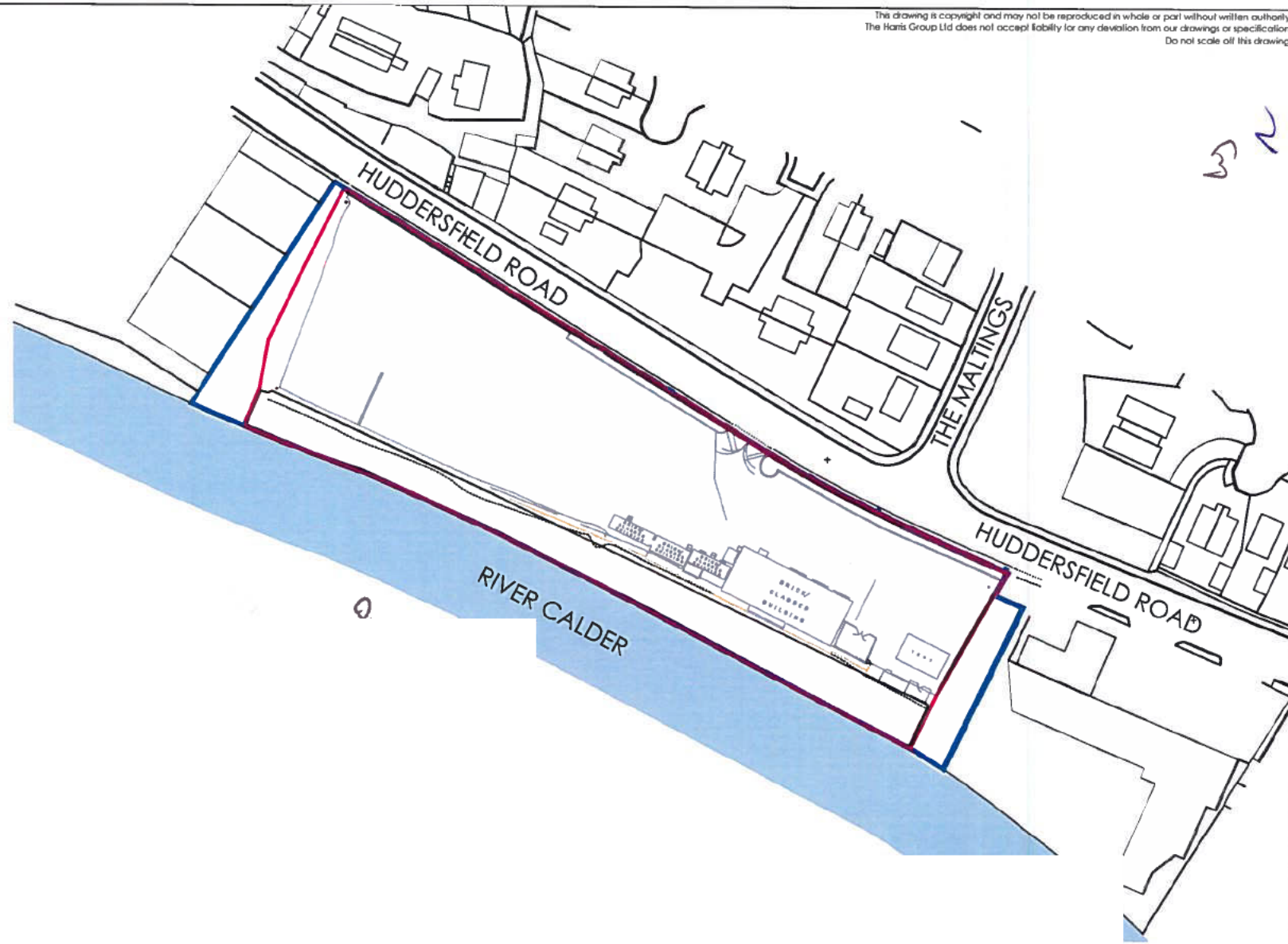
Reason: To ensure the provision of adequate and sustainable systems of drainage are employed to protect the aquatic environment and to accord with Policies LP27 and LP30 of the Kirklees Local Plan and guidance in the National Planning Policy Framework.

SCHEDULE 3 - THE OWNER & LEASEHOLDER'S COVENANTS WITH THE COUNCIL

- 1 Payment of Contributions**
- 1.1 To pay to the Council both the Bus Stop Contribution and the Highway Contribution on the Commencement of Development.
- 1.2 Not to Commence Development unless and until both the Bus Stop Contribution and the Highway Contribution have been paid to the Council in full.
- 1.3 To pay to the Council the Travel Plan Contribution on the date of first Occupation of the Development.
- 1.4 The Development shall not be Occupied unless and until all of the Contributions has been paid to the Council in full.

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 SITE OWNERSHIP
 APPLICATION EXTENTS



Rev	Date	Description	Rev By	Chkd By
A	18.06.19	Issued for Planning	RG	LEEB

Morbaine

Project Title	PROPOSED REDEVELOPMENT HUDDERSFIELD ROAD MIRFIELD			
Client	MORBAIN LTD			
Status	PLANNING			
Scale	1:1250	Drawing Size	A4	
Date	MAY 19	Drawn By	RG	Chkd by LEEB
Drawing Title	SITE LOCATION PLAN			
Job-Dwg No	15151-098			Rev A

-  2 St. Johns North, Wakefield, WF1 3QA
T. 01924 291800
-  Carvers Warehouse, 77 Dale Street, Manchester, M1 2HG
T. 0161 2368555
-  The Old Rectory, 79 High Street, Newport Pagnell, MK18 8AB
T. 01908 211577
-  101 London Road, Reading, RG1 5BY
T. 0118 9507700
-  10 Gees Court, 31 Christopher Place, London, W1U 1JJ
T. 0207 4691215



SITE LOCATION PLAN
 SCALE 1:1250@A4

The Corporate Common Seal of the)
COUNCIL OF THE BOROUGH)
KIRKLEES was affixed to this docum)
the presence of:)



6

EXECUTED AS A DEED by COLSTON)
TRUSTEES LIMITED acting by a director in the)
presence of:)

Signature of director

WILLIAM SELF

Name of director (PRINT)

Witness signature

Witness name (PRINT)

Witness address

Witness occupation

EXECUTED AS A DEED by MORBAINE)
LIMITED acting by a director in the presence of:)
)

Name of director (PRINT)

Witness signature

Witness name (PRINT)

Witness address

Witness occupation