
Dated:

11TH MAY 2021

- (1) KIRKLEES COUNCIL
(2) SAFEWAY STORES LIMITED

Deed

**under section 106 of the Town and Country Planning Act 1990 in relation to
Land at Morrisons, Station Street, Meltham, Holmfirth, HD9 5QR**

CONTENTS

Clause		Page
1	INTERPRETATION.....	3
2	EFFECT OF THIS DEED.....	5
3	OBLIGATIONS OF THE PARTIES	6
4	TERMINATION OF PLANNING OBLIGATIONS	6
5	COSTS OF THIS DEED.....	7
6	NOTICES.....	7
7	DETERMINATION OF DISPUTES.....	7
8	JURISDICTION.....	7
9	EXECUTION	8
Schedules		
1	Travel Plan	9
2	Meltham Greenway Contribution	10
Appendices		
1	Plan 1	11

THIS DEED is made on

11TH MAY

2021

BETWEEN:

- (3) **KIRKLEES COUNCIL** of Civic Centre 1, High Street, Huddersfield HD1 2NF (the "Council"); and
- (4) **SAFEWAY STORES LIMITED** (company registration number 00746956) whose registered office is at Hilmore House, Gain Lane, Bradford, West Yorkshire, BD3 7DL (the "Owner").

BACKGROUND

- (A) For the purposes of the 1990 Act, the Council is the local planning authority for the area within which the Site is located and the person who is entitled to enforce the obligations contained in this Deed.
- (B) The Owner is the freehold owner of the Site registered at HM Land Registry under title number WYK648009.
- (C) The Owner has submitted the Planning Application to the Council in order to secure the grant of the Planning Permission for the Development.
- (D) At a meeting of the Council's Planning Committee held on 17 November 2020 it was resolved that, subject to the completion of this Deed, the Planning Permission should be granted.
- (E) The Council and the Owner accepts by the terms of this Deed that the Development should not take place without the Owner entering into the obligations contained in this Deed.

OPERATIVE PROVISIONS

1. INTERPRETATION

- 1.1 In this Deed, the following words and expressions have the following meanings:

"1990 Act"	means the Town and Country Planning Act 1990;
"Commencement of Development"	means the date upon which the Development shall commence by the carrying out on the Site pursuant to the Planning Permission of a material operation as specified in Section 56(4) of the 1990 Act SAVE THAT the term "material operation" shall not include, operations in connection with any work of or associated with demolition, any site investigation works, trial holes or other operations to establish the ground conditions of the Site, site preparation, environmental investigation, archaeological investigations, erection of contractors work compound and erection of site office, erection of fencing to site boundary and "Commence Development" shall be construed accordingly;
"Development"	means the development of the Site in accordance with the Planning Permission;

"Index"	means the All Items Group (item reference CHAW) of the retail prices index published by HM Government Office for National Statistics provided that during any period where no such index exists, the index which replaces the same or is the nearest equivalent thereto (which shall be agreed by the parties or, in default of agreement, fixed by the president for the time being of the Law Society on the application of any party) shall be used;
"Index Linked"	means increased (if applicable) in proportion to movements in the Index between the date of this Deed and the date the particular payment is made and "Index Linking" shall be construed accordingly;
"Interest Rate"	the base rate from time to time of the Lloyds Bank plc or such other bank as may be nominated by the Council;
"Meltham Greenway"	means the walking/cycle path which runs to the south of the Site from Station Road to Huddersfield Road;
"Meltham Greenway Enhancement"	means the works to enhance, manage and improve the Meltham Greenway in order to promote walking to and from the Site;
"Meltham Greenway Contribution"	means the total sum of £10,000 (ten thousand pounds) Index Linked to be paid to the Council in accordance with paragraph 1.1 of Schedule 2 for Meltham Greenway Enhancement;
"Occupation"	means occupation of the Development for the use authorised by the Planning Permission and for the avoidance of doubt "Occupation" shall not be triggered by occupation for the purposes of constructing or fitting out the Development and "Occupy" shall be construed accordingly;
"Parties"	means the parties to this Deed and "Party" shall be construed accordingly;
"Plan 1"	means the plan contained in Appendix 1 to this Deed;
"Planning Application"	the application for planning permission made by the Owner and validated by the Council on 17 March 2020 with reference 2020/90614 for the erection of extensions to existing store, alterations to include relocation of ATM and the erection of garden centre at the Site;
"Planning Permission"	the planning permission to be granted pursuant to the Planning Application;
"Site"	means all of the land shown for identification purposes only edged red on Plan 1 known as Morrisons, Station Street, Meltham, Holmfirth, HD9 5QR registered at HM Land Registry under Title Number WYK648009 which for the avoidance of doubt excludes any highway land maintained at the public expense;
"Travel Plan"	means the travel plan dated January 2020 submitted and approved by the Council with the Planning Application;

"Travel Plan Monitoring Fee"

means the total sum of £10,000 (ten thousand pounds) Index Linked to be paid to the Council in accordance with paragraph 1.1 of Schedule 1 towards the costs incurred by the Council in monitoring the Travel Plan;

"Working Days"

any day except Saturday Sunday and bank or other public holidays in England and **"Working Day"** shall be construed accordingly.

1.2 In this Deed:

- 1.2.1 the clause headings and contents list do not affect its interpretation;
- 1.2.2 unless otherwise indicated, references to clauses, Schedules and Appendices are to clauses of, Schedules to and Appendices to this Deed and references in a Schedule to a Part or paragraph are to a Part or paragraph of that Schedule;
- 1.2.3 references to any statute or statutory provision include references to:
 - 1.2.3.1 all Acts of Parliament and all other legislation having legal effect in the United Kingdom as directly or indirectly amended, consolidated, extended, replaced or re-enacted by any subsequent legislation; and
 - 1.2.3.2 any orders, regulations, instruments or other subordinate legislation made under that statute or statutory provision;
- 1.2.4 references to the Site include any part of it;
- 1.2.5 references to any Party include the successors in title of that Party and in the case of the Council include any successor local authority;
- 1.2.6 any covenant by the Owner not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing;
- 1.2.7 where two or more people form a party to this Deed, the obligations they undertake may be enforced against them all jointly or against each of them individually; and
- 1.2.8 if any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of the Deed is to be unaffected.

1.3 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.

1.4 The Parties agree to act reasonably, properly and diligently in exercising its discretion and discharging its functions under this Deed. In particular where any notice, consent, approval, authorisation, agreement or other similar affirmation is required under the terms of the Deed the Parties will not unreasonably withhold or delay such notice, consent, approval, authorisation, agreement or other similar affirmation.

2. **EFFECT OF THIS DEED**

2.1 This Deed is a planning obligation made in pursuance of section 106 of the 1990 Act and may be enforced by the Council as a local planning authority and further to the extent that the covenants in this Deed are not made under section 106 of the 1990 Act they are made under section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and all other powers so enabling.

- 2.2 Nothing in this Deed restricts or is intended to restrict the proper exercise at any time by the Council of any of its statutory powers, functions or discretions in relation to the Site or otherwise.
- 2.3 This Deed is conditional (save for any obligations arising prior to the Commencement of Development) upon:
- 2.3.1 the grant of the Planning Permission; and
- 2.3.2 the Commencement of Development.
- 2.4 This Deed will be registered as a local land charge by the Council.
- 2.5 No statutory undertaker shall be bound by any obligations, rights and duties contained in this Deed or be liable for any breach of a covenant or obligation contained in this Deed in respect of any part of the Site used only as an electricity substation, gas governor or pumping station.
- 2.6 If any payment due under any of the provisions of this Deed is not made on or before the date upon which it is due the party from whom it was due shall at the same time as making the payment to the other party pay interest at 3% above the Interest Rate as at the due date for the period starting with the due date and ending with the date on which payment of the sum on which interest is payable is received.
- 2.7 Nothing in this Deed prohibits or limits 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, whether or not pursuant to an appeal.

3. OBLIGATIONS OF THE PARTIES

- 3.1 The Owner agrees with the Council to comply with the obligations set out in Schedules 1 and 2 in relation to the Development.
- 3.2 The Council shall within 10 working days of the completion of this Deed grant the Planning Permission save that the Council shall not be in breach of this obligation if it shall be prevented from issuing the Planning Permission by a court order.
- 3.3 The Council agrees with the Owner to comply with the obligations set out in Schedules 1 and 2.
- 3.4 No person will be liable for any breach of the terms of this Deed occurring after parting with their interest in the Site or the part of the Site in respect of which such breach occurs but they will remain liable for any breaches of this Deed occurring before that date. Neither the reservation of any rights or the inclusion of any covenants or restrictions over the Site in any transfer of the Site will constitute an interest for the purposes of this clause 3.4.

4. TERMINATION OF PLANNING OBLIGATIONS

- 4.1 This Deed will cease to have effect (insofar only as it has not already been complied with) if:
- 4.1.1 the Planning Permission is quashed, revoked in accordance with Sections 97 to 100 inclusive of the 1990 Act without the consent of the Owner or otherwise withdrawn at any time so as to render this Deed or any part of it irrelevant, impractical or unviable;
- 4.1.2 the Planning Permission expires within the meaning of Sections 91, 92 and 93 of the 1990 Act before the Commencement of Development without having been implemented; or
- 4.1.3 without the consent of the Owner it is modified by any statutory procedure.

4.2 Where the Deed comes to an end under **clause 4.1:**

4.2.1 the Council is upon request to vacate or cancel the entry made in the Local Land Charges register in relation to this Deed or otherwise to record the fact that it has come to an end and no longer affects the Site.

4.3 Where the Deed is released in part by a future agreement, the Council will place a note against the entry made in the Local Land Charges Register stating which obligations no longer have effect.

4.4 If the Owner makes a request in writing for the Council to place a note against the entry made in the Local Land Charges Register stating which obligations under this Deed have been discharged and complied with and where the Council reasonably agrees it will place such a note against the entry.

5. **COSTS OF THIS DEED**

5.1 Upon completion of this Deed the Owner shall pay to the Council its reasonable and proper legal costs not to exceed £1,000 in connection with the preparation, negotiation and completion of this Deed.

6. **NOTICES**

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 dispatched by first class letter or pre-paid or recorded delivery 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 (or to such other address as the Party to whom the notices, requests, demands or other written communication is to be given or made shall from time to time notify in writing to the other Parties as its address for the purposes of this **clause 7**):-

6.1.1 to the Council to the Chief Planner at the address set out at the beginning of this Deed; and

6.1.2 to the Owner at its address shown at the beginning of this Deed.

6.2 Unless the time of actual receipt is proved, a notice, demand or communication sent by the following means is treated as having been served:

6.2.1 if sent by post, on the second working day after posting; or

6.2.2 if sent by pre-paid or recorded delivery, at the time delivery was signed for.

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.

7. **DETERMINATION OF DISPUTES**

7.1 Any dispute or difference arising between the Owner and the Council with regard to their respective rights and obligations as to any matter or thing in any way arising out of or connected with the Deed will, except as otherwise expressly provided, be referred to the decision of a single arbitrator to be agreed by the Owner and the Council or failing agreement between them to be nominated by the President for the time being of the Royal Institute of Chartered Surveyors as the case may be and any such reference will be deemed to be a submission to arbitration within the meaning of the Arbitration Act 1996 or any modification or re-enactment for the time being in force.

8. **JURISDICTION**

8.1 This Deed is to be governed by and interpreted in accordance with the law of England.

8.2 The courts of England are to have jurisdiction in relation to any disputes between the parties arising out of or related to this Deed.

9. **EXECUTION**

The Parties have executed this Deed as a deed and it is delivered on the date set out above.

SCHEDULE 1

Travel Plan

1. The Owner covenants with the Council as follows:-
 - 1.1 Not to Occupy or permit Occupation of the Development without having first paid the Travel Plan Monitoring Fee to the Council and;
 - 1.2 To notify the Council that payment of the Travel Plan Monitoring Fee has been made to the Council in accordance with paragraph 1.1 of this Schedule within 14 days of such payment being made.
2. **The Council's Obligations**
 - 2.1 The Council covenants with the Owner as follows:-
 - 2.1.1 To use the Travel Plan Monitoring Fee solely in connection with the Travel Plan.

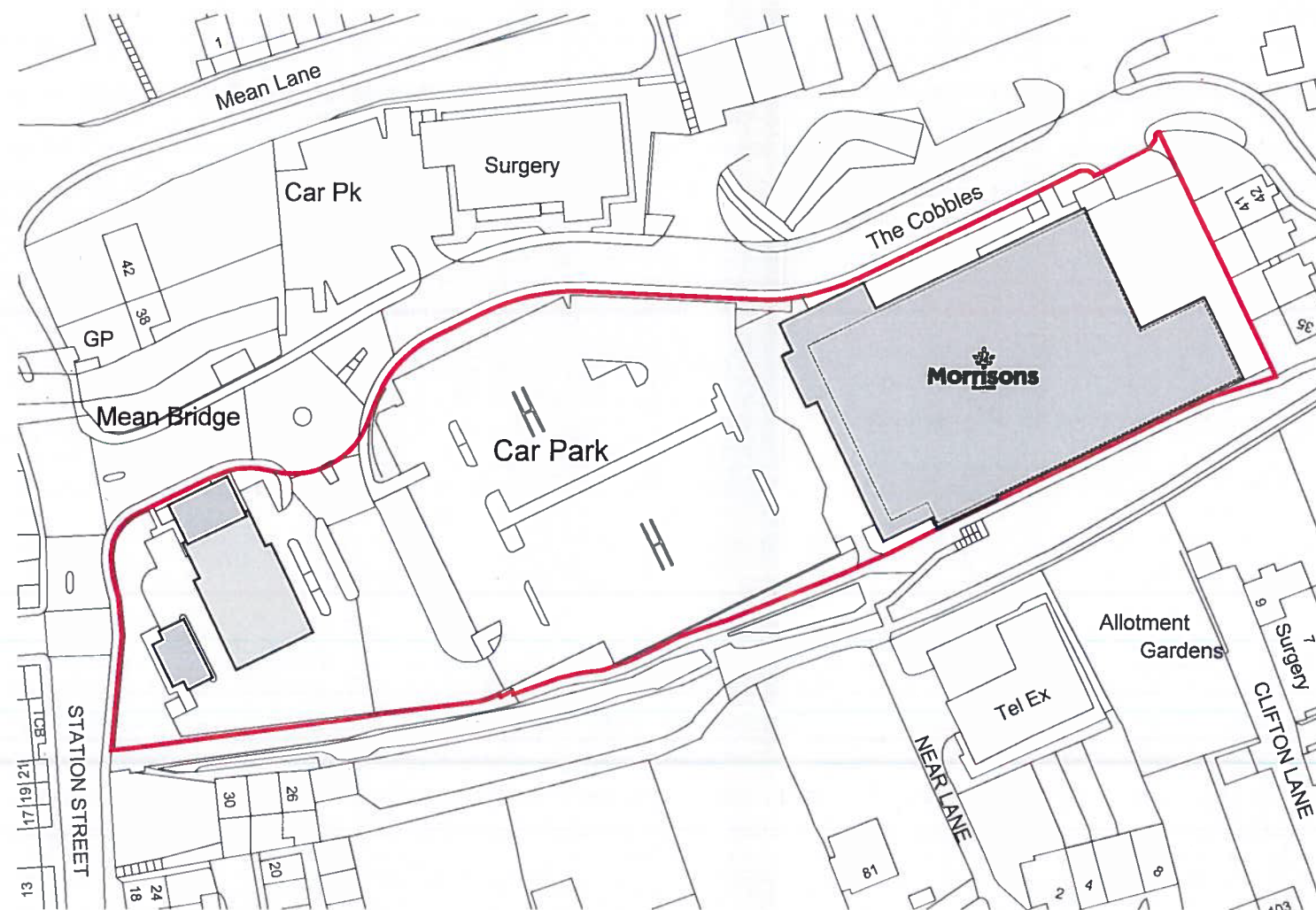
SCHEDULE 2

Meltham Greenway Contribution

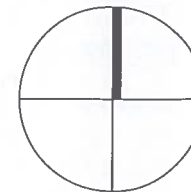
1. The Owner covenants with the Council as follows:-
 - 1.1 Not to Occupy or permit Occupation of the Development without having first paid the Meltham Greenway Contribution to the Council and;
 - 1.2 To notify the Council that payment of the Meltham Greenway Contribution has been made to the Council in accordance with paragraph 1.1 of this Schedule within 14 days of such payment being made.
2. **The Council's Obligations**
 - 2.1 The Council covenants with the Owner as follows:-
 - 2.1.1 To use the Meltham Greenway Contribution solely in connection the Meltham Greenway Enhancement.

APPENDIX 1

Plan 1



Ordnance Survey, (c) Crown Copyright 2019. All rights reserved. Licence number 100022432



014100

1/2/21

REV	DATE	DESCRIPTION	CW	AS
-	20.12.19	FIRST ISSUE: Issued for Information	DR	CH

INFORMATION

darntonB₃
ARCHITECTURE
LEEDS

The Coach House, Monk Fryston Hall, Monk Fryston, Leeds, LS25 5DU
T: 01977 581 001 www.darntonb3.com

CLIENT
Morrisons

PROJECT
Fresh Look Refurbishment
#227 MELTHAM

TITLE
General Arrangement
Location Plan

CREATION DATE	SCALE @ A3	DRN	CHK	STATUS
December 2019	1:1250	CW	AS	S-

SHEET NO	REVISION
13302-DB3-227-GF-DR-A-90_50	-

PROJECT NO: 13302-DB3-227-GF-DR-A-90_50
© COPYRIGHT: ALL RIGHTS RESERVED.
THIS DRAWING MUST BE READ IN CONJUNCTION WITH ALL OTHER RELEVANT DRAWINGS AND INFORMATION.
ANY DISCREPANCIES MUST BE REPORTED TO DARNTONB3 IMMEDIATELY.
THIS DRAWING OR INFORMATION MUST NOT BE USED FOR CONSTRUCTION UNLESS EXPRESSLY ISSUED FOR CONSTRUCTION.
DO NOT SCALE FROM THIS DRAWING. USE DISPLAYED DIMENSIONS.

1 LOCATION PLAN

1:1250 @ A3



THE COMMON SEAL of
KIRKLEES COUNCIL
was affixed in the presence of:

)



014100

Authorised Signatory

Executed as a deed by
as attorney for
SAFeway STORES LIMITED
in the presence of:

)

)

)

)

Witness signature:

Name:

Address: