

DATED

28 February

2023

PLANNING OBLIGATION BY WAY OF UNILATERAL UNDERTAKING UNDER SECTION 106
OF THE TOWN & COUNTRY PLANNING ACT 1990
RELATING TO
LAND AT THE SOUTH SIDE OF SCOTT LANE CLECKHEATON

D & M MIDDLETON LIMITED

To

THE COUNCIL OF THE BOROUGH OF KIRKLEES COUNCIL

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This DEED is dated 28 February 2023 and is an undertaking given by

1. **D & M MIDDLETON LIMITED** incorporated and registered in England and Wales with company number 07015565 whose registered office is at The Willow Suite 6 Rawfolds Industrial Estate Bradford Road, Cleckheaton, West Yorkshire BD19 5LT (**Developer**).

 **THE COUNCIL OF THE BOROUGH OF KIRKLEES** of the Town Hall, Ramsden Street, Huddersfield, West Yorkshire, HD1 2TA

BACKGROUND

- (A) The Council is the local planning authority for the purposes of the TCPA 1990 for the area in which the Property is situated.
- (B) The Developer has made the Planning Application and is proposing to carry out the Development.
- (C) The Developer intends to develop the site pursuant to the Planning Permission and has an interest in the land shown on plan 2 and registered at HM Land Registry under title number WYK620920. The Developer has entered into a sale contract conditional on planning permission which interest is registered at HM Land Registry against Title number WYK821158 (shown on plan 3)
- (D) The Council would not have been willing to grant the planning permission but for the securing of a financial contribution towards off site measures to achieve biodiversity net gain.

AGREED TERMS

1. INTERPRETATION

The following definitions and rules of interpretation apply in this deed.

1.1 Definitions:

Base Rate: the base rate from time to time of Barclays Bank plc.

Commencement of Development: the carrying out in relation to the Development of any material operation as defined by section 56(4) of the TCPA 1990 but disregarding for the purposes of this deed and for no other purpose, the following operations: demolition works; site clearance; ground investigations; site survey works; temporary access construction works; archaeological investigation; and erection of any fences and hoardings around the Property.

Commenced and Commences shall be construed accordingly.

Commencement Date: the date of Commencement of Development.

Contribution: the sum of £30,130 towards the cost of biodiversity net gain works.

Council: The Council of the Borough of Kirklees of the Town Hall, Ramsden Street, Huddersfield West Yorkshire HD1 2TA.

Default Interest Rate: 4% per annum above the Base Rate.

Development: the development of the Site described in the Planning Application.

Index Linked: increased in accordance with the following formula:

Amount payable = the Contribution x (A/B) where:

A= the figure for the Retail Prices Index (All Items) that applied immediately preceding the date of actual payment.

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

Plan 1: the plan attached to this deed

Plan 2: the plan marked plan 2 attached to this deed

Plan3: the plan marked plan 3 attached to this deed.

Property: the freehold land being land on the south side of Scott Lane Cleckheaton West Yorkshire shown edged red on the Plan being part of the land registered at HM Land Registry with absolute title under title number WYK821158.

Planning Application: means the application for planning permission for the development which is has been allocated Ref 2020/91747 by the council.

Planning Permission: the planning permission to be granted by the Council in respect of the Planning Application.

Site - means the land adjacent to 60 Northgate, Cleckheaton, BD19 3NB shown edged red on plan 1.

TCPA 1990: Town and Country Planning Act 1990.

Working Day: any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England.

- 1.2 Clause headings shall not affect the interpretation of this deed.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.5 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.6 A reference to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.7 A reference to the Council shall include the successors to its respective statutory functions.
- 1.8 Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

- 1.9 Unless the context otherwise requires, a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.10 A reference to **writing** or **written** excludes faxes and e-mail.
- 1.11 A reference to **this deed** or to any other deed or document referred to in this deed is a reference to this deed or such other deed or document as varied or novated (in each case, other than in breach of the provisions of this deed) from time to time.
- 1.12 References to clauses are to the clauses of this deed.
- 1.13 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.14 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.

2. **STATUTORY PROVISIONS**

- 2.1 This deed constitutes a planning obligation for the purposes of section 106 of the TCPA 1990, section 111 of the Local Government Act 1972 and any other enabling powers.
- 2.2 The obligations contained in clause 3 of this deed are planning obligations for the purposes of section 106 of the TCPA 1990 and are entered into by the Developer with the intention that they bind the interests held in the Property and their respective successors and assigns.

2.3 This deed shall come into effect on the date of grant of the Planning Permission.

2.4 The obligations contained in clause 3 of this deed are enforceable by the Council in accordance with section 106 of the TCPA 1990.

3. COVENANTS WITH THE COUNCIL

The Developer covenants with the Council:

(a) to pay the Contribution to the Council on or before the Commencement Date.

(b) to give at least 5 Working Days written notice to the Council of the Commencement Date.

4. INDEXATION OF CONTRIBUTION

4.1 All financial contributions payable to the Council shall be Index Linked.

4.2 Where reference is made to an index and that index ceases to exist or is replaced or rebased then it shall include reference to any index which replaces it or any rebased index (applied in a fair and reasonable manner to the periods before and after rebasing under this deed) or in the event the index is not replaced, to an alternative reasonably comparable basis or index as the Council shall advise the Developer in writing.

5. RELEASE

No person shall be liable for any breach of an obligation, restriction or covenant contained in this deed after parting with all of its interest in the Property, except in respect of any breach subsisting prior to parting with such interest.

6. DETERMINATION OF DEED

This deed shall be determined and have no further effect if the Planning Permission:

- (a) expires before the Commencement of Development;
- (b) is varied or revoked other than at the request of the Developer; or
- (c) is quashed following a successful legal challenge.

7. LOCAL LAND CHARGE

This deed is a local land charge and shall be registered as such by the Council.

8. INTEREST ON LATE PAYMENT

If the Contribution has not been paid to the Council prior to or on the Commencement Date, the Developer shall pay the Council interest on the Contribution at the Default Interest Rate (both before and after any judgment). Such interest shall accrue on a daily basis for the period from the Commencement Date to and including the date of payment.

9. COUNCIL'S COSTS

The Developer shall pay to the Council on the date of this deed:

The legal fees of £500 in the preparation, completion and registration of this undertaking.

10. NOTICES

10.1 A notice or other communication to be given under or in connection with this deed must be in writing and must be:

- (a) delivered by hand; or

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

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

- (a) to the Council at: the Town Hall Huddersfield West Yorkshire HD1 2TA marked for the attention of Callum Harrison;
- (b) to the Developer at: The Willows, Suite 6, Rawfolds Industrial Estate, Bradford Road, Cleckheaton, West Yorkshire BD19 5LT marked for the attention of Chris Middleton;

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

10.3 Any notice or other communication given in accordance with clause 10.1 and clause 10.2 will be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice 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;
- (b) 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.

10.4 A notice or other communication given under this deed shall not be validly given if sent by e-mail.

10.5 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.

11. THIRD PARTY RIGHTS

A person who is not a party to this deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this deed.

12. GOVERNING LAW

This deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Executed as a deed by **D & M**

MIDDLETON LIMITED

acting by **Christopher**

Middleton, a director, in the
presence of:

.....

Director

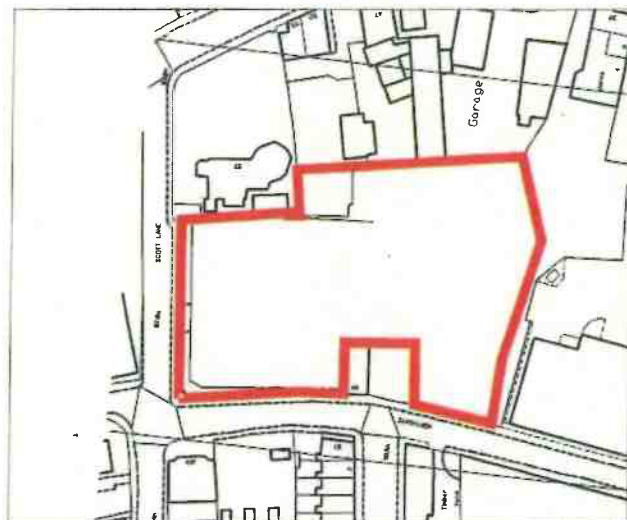
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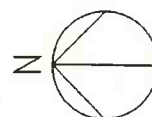
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ADDRESS

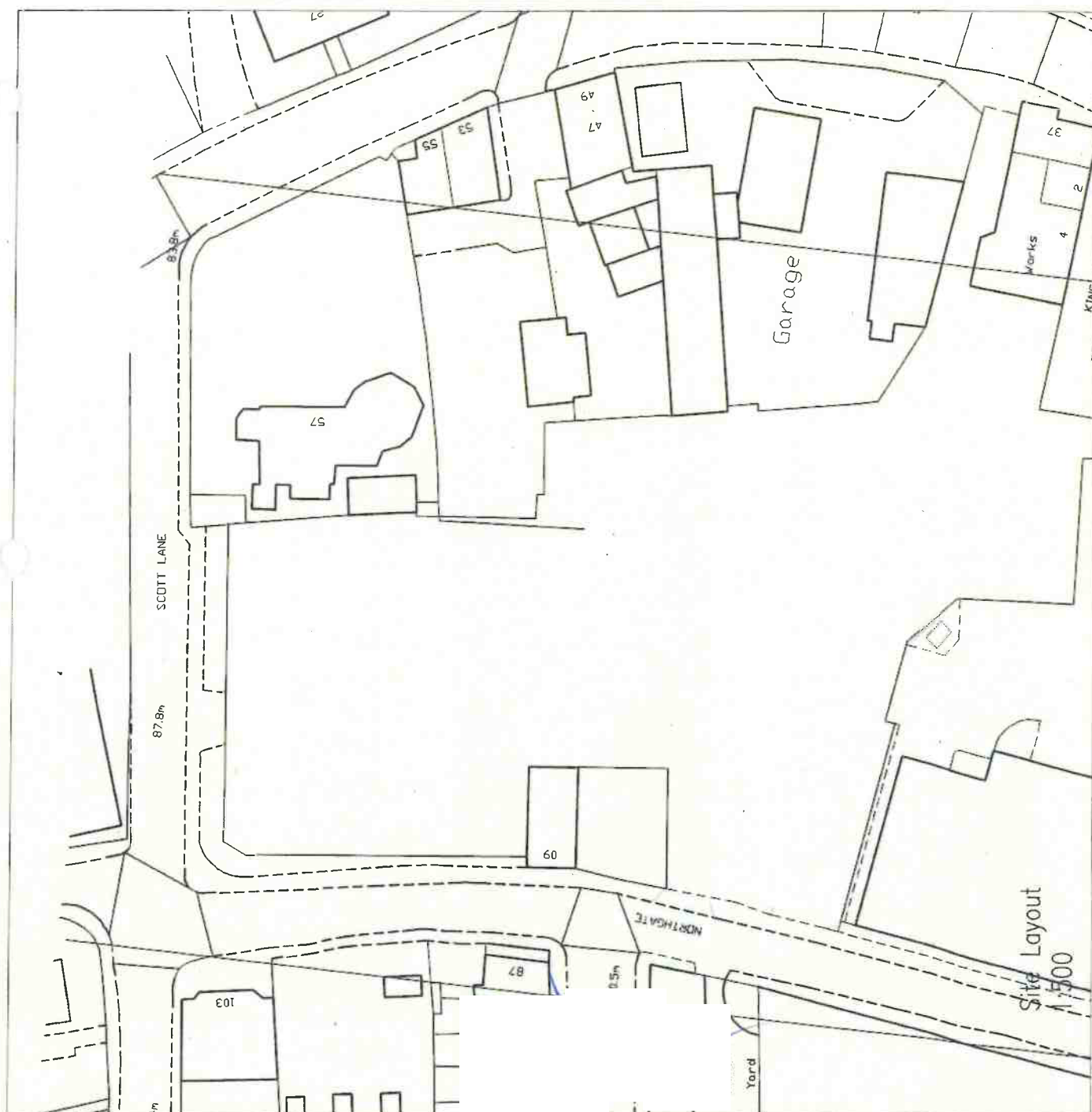
OCCUPATION

[illegible]

Site Location
1:1250

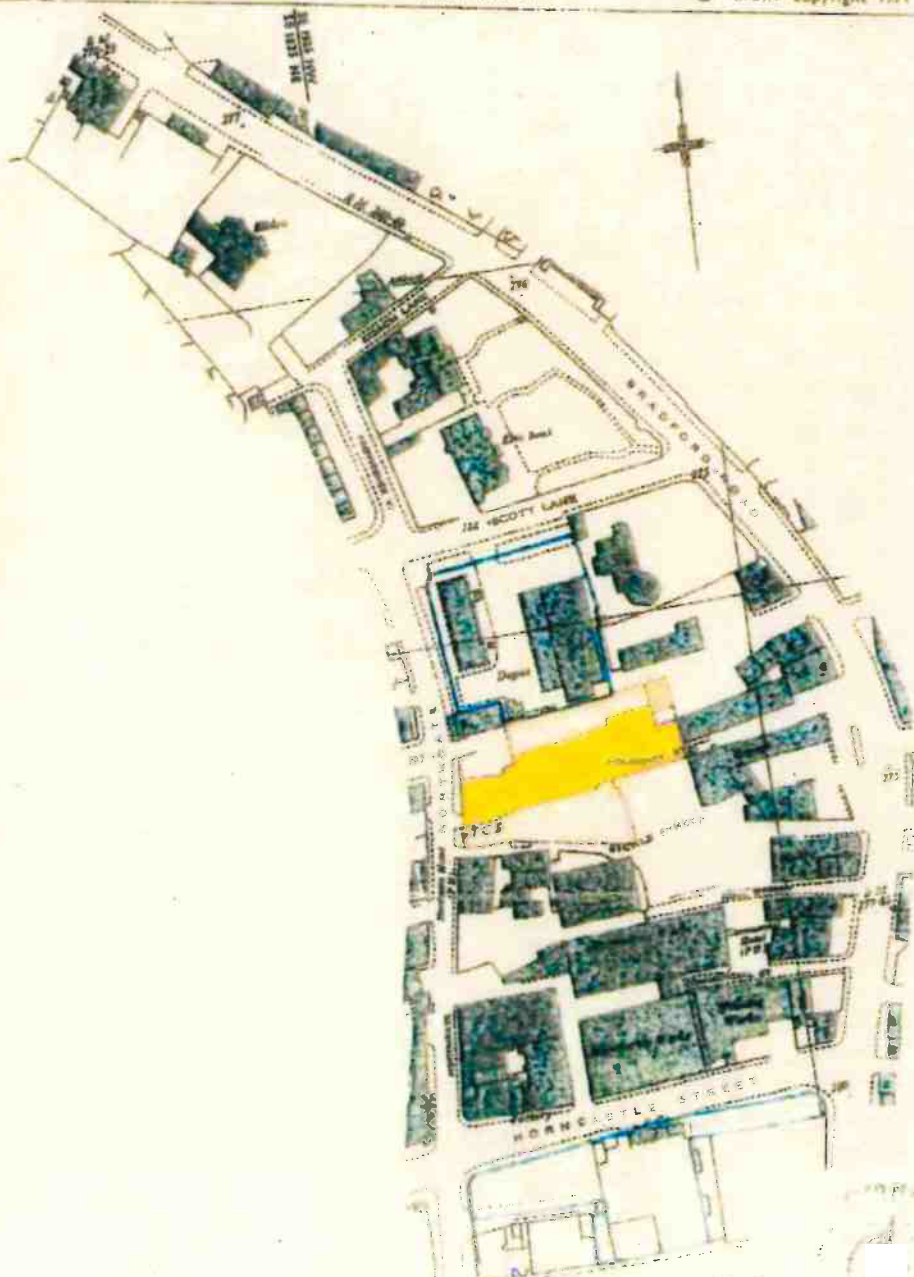


Project	Phase	Client	
Northgate, Clackheaton, BD19 3BN	Design	D & M Middleton	ARCHITECTURE & DESIGN One, Colgate, Valley Road, Melling near Farncliffe, WF15 9DU E: info@foxandmoss.co.uk W: www.foxandmoss.co.uk
Existing Site Layout & Location	Date:	May 2020	1:500, 1:1250 @ A3
Drainage No:	18/16/100		



PLAN 2

H.M. LAND REGISTRY		TITLE NUMBER WYK620920	
ORDNANCE SURVEY	COUNTY	SHEET	NATIONAL GRID
PLAN REFERENCE	WEST YORKSHIRE		SE 1825
Scale: 1/1250		© Crown copyright 1971	



HM Land Registry
Official copy of
title plan

Title number **WYK821158**
Ordnance Survey map reference **SE1925NW**
Scale **1:1250**
Administrative area **West Yorkshire :**
Kirklees



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