

DATED 31st July 2025

THE COUNCIL OF THE BOROUGH OF KIRKLEES (1)

-and-

LIDL GREAT BRITAIN LIMITED (2)

AGREEMENT

under Section 106 of the Town and Country Planning Act 1990 (as amended)

relating to land at

former St Luke's Hospital, Blackmoorfoot Road, Crosland Moor, Huddersfield

Kirklees Council
Town Hall
Huddersfield
HD1 2TA

THIS AGREEMENT is made on the *Thirtieth* day of *July* 2025

BETWEEN

- (1) **THE COUNCIL OF THE BOROUGH OF KIRKLEES** of Town Hall, Huddersfield, West Yorkshire HD1 2TA (the "**Council**");
- (2) **LIDL GREAT BRITAIN LIMITED** (company registration number 02816429) whose registered office is at Lidl House, 14 Kingston Road, Surbiton, KT5 9NU (the "**Owner**").

BACKGROUND

- (A) The Council is the local planning authority for the purposes of the 1990 Act for the area in which the Land is situated and is the local planning authority by whom the planning obligations contained in this Agreement are enforceable.
- (B) The Owner is the registered proprietor of the Land registered at HM Land Registry under title number WYK696805.
- (C) The Application has been submitted to the Council and the Council has resolved to grant the Planning Permission subject to the completion of this Agreement.
- (D) The Parties by entering into this Agreement do so to create planning obligations in respect of the Land pursuant to section 106 of the 1990 Act and agree to be bound by and to observe and perform the covenants agreements conditions and stipulations hereinafter contained.

IT IS AGREED:

1. Definitions and Interpretation

1.1 In this Agreement unless the context otherwise requires the following terms shall have the following meanings:

"1990 Act" means the Town and Country Planning Act 1990 as amended;

"Application" means the application for full planning permission validated on 18 January 2024 and submitted to the Council for the Development of the Land and allocated reference number 2023/62/91405/W;

"Commencement of Development" means the date on which any material operation (as defined in Section 56(4) of the 1990 Act) forming part of the Development begins to be carried out on the Land pursuant to the Planning Permission other than (for the purposes of this Agreement 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 the erection of any contractors work compound or site office and **"Commence Development"**, **"Commencement"** and

"Commence" shall be construed accordingly;

"Default Interest Rate"

means 4% per annum above the base rate from time to time of the Bank of England;

"Development"

means the erection of a foodstore (Use Class E) with associated access, parking, servicing area and landscaping in accordance with the Planning Permission;

"Ecology Contribution"

means the sum of £37,030.00 (Thirty Seven Thousand and Thirty Pounds) (Index Linked) to be paid by the Owner to the Council as a contribution towards off-site ecological habitat enhancement;

"Expert"

means a person appointed in accordance with Clause 11 to determine a dispute;

"Head of Planning and Development"

means the Council's Head of Planning and Development for the time being or such other officer of the Council nominated by him for the purposes of this Agreement

"Index"

means the BCIS All-in Tender Price Index issued by the Royal Institute of Chartered Surveyors or any successor organisation;

"Index Linked"

means an increase in accordance with the following formula:

Amount payable = the figure specified in this Agreement x (A/B) where:

A = the figure for the Index that applied immediately preceding the date the payment is due or is paid if earlier (or prior to the date of calculation where this Agreement provides

for a figure to be calculated at a later point in time); and

B = the figure for the Index that applied when that index was last published prior to the date of the Planning Permission;

"Land"

means land known as Newhaven, St Lukes Hospital, Blackmoorfoot Road, Crosland Road, Huddersfield registered with title absolute at the Land Registry under title number WYK696805 shown edged red on the location plan attached at Schedule 3;

"Occupation"

means occupation for the purposes permitted by the Planning Permission but not including occupation by any personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and **"Occupy"** and **"Occupied"** shall be construed accordingly;

"Plan"

means the plan attached to this Agreement at Schedule 3;

"Planning Permission"

means the planning permission to be granted by the Council pursuant to the Application;

"Working Day"

means a day other than a Saturday or Sunday or public holiday in England.

- 1.2 Where in this Agreement 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 Agreement.

- 1.3 References to any party to this Agreement shall include the successors in title and assigns of that party and in the case of the Council shall include any successor local planning authority exercising planning powers under the 1990 Act.
- 1.4 Where a party includes more than one person any obligations of that party shall be joint and several unless there is an express provision otherwise.
- 1.5 Any covenant by the Owner not to knowingly do any act or thing shall be deemed to include a covenant not to cause permit or suffer the doing of that act or thing.
- 1.6 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.
- 1.7 References to clauses paragraphs and schedules are references to clauses paragraphs and schedules to this Agreement and are for reference only and shall not affect the construction of this Agreement.
- 1.8 In this Agreement clause headings are for reference only and shall not affect the construction of this Agreement.

2. Legal Basis

- 2.1 This Agreement is made pursuant to Section 106 of the 1990 Act and to the extent that the covenants in this Agreement are not made under Section 106 of the 1990 Act they are made under Section 1 of the Localism Act 2011 and Section 111 of the Local Government Act 1972 and all other powers so enabling.
- 2.2 The covenants, restrictions and requirements imposed upon the Owner under this Agreement create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council as local planning authority against the Owner and its successors in title and assigns of its interests in the Land.

3. Conditionality

All provisions of this Agreement with the exception of this clause 3 are conditional upon the Council granting the Planning Permission pursuant to the Application and Commencement of Development having taken place.

4. Covenants

4.1 Subject to clause 3 and clause 5 the Owner hereby covenants with the Council to perform, observe and comply with the covenants, restrictions, limitations and requirements contained in Schedule 1.

4.2 Subject to clause 3 the Council covenants with the Owner to perform, observe and comply with the covenants, restrictions, limitations and requirements contained in Schedule 2.

5. Release and Lapse

5.1 No person shall be liable for any breach of the planning obligations or other provisions of this Agreement after it shall have parted with all of its interests in the Land or the part in respect of which the breach arises (as the case may be) but without prejudice to liability for any subsisting breach of obligation prior to parting with such interest.

5.2 This Agreement shall terminate and be of no further effect if:

- (a) the Planning Permission expires prior to the Commencement of Development;
- (b) the Planning Permission is quashed following a successful legal challenge; or
- (c) the Planning Permission is revoked or varied without the consent of the Owner.

and the Council shall on request remove this Agreement from the register of Local Land Charges.

5.3 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Agreement.

5.4 This Agreement shall not be binding on any statutory undertaker to the extent that the statutory undertaker has or acquires an interest in the Land for the purpose of the supply of water, drainage, electricity, gas, telephone, television, telecommunications or such other undertaking as authorised by statute.

6. Local Land Charge

6.1 The obligations hereby created shall be registered as a local land charge by the Council.

6.2 Following the performance and satisfaction of all of the obligations contained within this Agreement the Council shall on request cancel all entries made in the register of local land charges in respect of this Agreement.

7. No Fetter on Discretion

7.1 Nothing in this Agreement shall be construed as restricting the exercise by the Council of any power or discretion exercisable by it under the 1990 Act or under any other Act of Parliament nor prejudicing or affecting the Council's rights, powers, duties, and obligations in its capacity as local planning authority.

8. Notices

8.1 Any notices required to be served by one party on another under this Agreement shall be in writing and delivered by hand or sent by special or recorded delivered post in the following manner:

- (a) on the Council at Civic Centre, 1 High Street, Huddersfield HD1 2NF marked for the attention of the Head of Planning and Development and quoting the Application reference number;

- (b) on the Owner at its registered address marked for the attention of Jack Charlton – Senior Acquisitions Manager.

9. Severability

Insofar as any clause or clauses of this Agreement 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 Agreement.

10. Waiver

No waiver (whether expressed or implied) by the Council of any breach or default in performing or observing any of the covenants terms or conditions of this Agreement 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 from acting upon any subsequent breach or default.

11. Disputes

11.1 Any dispute or disagreement arising under this Agreement which has been identified by notice in writing by one party to the other(s) and which has not been resolved within 20 Working Days (or such lesser period as may be agreed) of the date of receipt by the other party(s) of such written notice may be referred at the instance of any party for determination by an Expert whose decision (except in cases of manifest error or fraud) shall be final and binding on the parties.

11.2 The following provisions and terms of appointment shall apply to such disputes or disagreements:-

- (a) the Expert shall be agreed between the parties or, in default of agreement within 10 Working Days of receipt of the notice in Clause 11.1 above, shall be appointed or identified on application by any party by the following persons:

- (i) in the case of disputes relating to land or valuation matters the President of the Royal Institution of Chartered Surveyors;

- (ii) in the case of disputes relating to planning or design matters the President of the Royal Town Planning Institute; or
 - (iii) in the case of any other dispute the President of the Bar Council;
- (b) the Expert shall act as an expert and not as an arbitrator;
- (c) the Expert shall be required to give notice of their appointment to each of the parties (**Expert's Notice**) and thereafter:
 - (i) the parties to the dispute shall make written submissions to the Expert and the other parties within 20 Working Days of receipt of the Expert's Notice;
 - (ii) the parties shall have 20 Working Days from the receipt of original written submissions (or such extended period as the Expert shall allow) to respond;
 - (iii) the Expert shall disregard any representations made out of this time;
 - (iv) the Expert may request further information or documentation and the parties shall comply with any requests by the Expert for further information or documentation within a reasonable time; and
 - (v) to the extent not provided for by this clause the Expert may in their reasonable discretion determine such other procedures to assist with the conduct of the determination as they consider just or appropriate including (to the extent considered necessary) instructing professional advisers to assist them in reaching their determination;
- (d) the Expert shall make his decision within 20 Working Days of the close of the period for submissions of written representations;

- (e) the Expert's decision shall be in writing and shall give reasons for the decision; and
 - (f) each party shall bear its own costs and the Expert's costs will be payable in the determination of the Expert.
- 11.3 The decision of the Expert shall be binding on the parties save in the case of manifest error and/or fraud.
- 11.4 If the Expert dies or becomes unwilling or incapable of acting, or does not deliver the decision within the time required by this clause then:
- (a) either party may apply to the relevant body as per Clause 11.2(a) to discharge the Expert and appoint a replacement Expert with the required expertise; and
 - (b) Clause 11.2 shall apply to the new Expert as if they were the first Expert appointed.

12. Future Permissions

- 12.1 In the event that an application is made pursuant to section 73 or section 73B of the 1990 Act for an amendment to the Planning Permission and planning permission is granted by the Council in respect of that application then:
- (a) references to "Application", "Planning Permission" and "Development" in this Agreement shall thereafter be deemed to include the application made pursuant to sections 73 or 73B, the new planning permission granted pursuant to section 73 or 73B of the 1990 Act and the development permitted by that permission respectively; and
 - (b) this Agreement shall apply to and remain in full force in respect of both the Planning Permission and that new planning permission without the need for a further agreement to be entered into pursuant to section 106 of the 1990 Act unless required to do so by the Council.

in each case PROVIDED THAT:

- (c) nothing in this Clause 11 shall fetter the discretion of the Council in determining any application(s) under Section 73 or 73B of the 1990 Act or in requiring new or varied planning obligations whether by way of a new or supplemental deed pursuant to Section 106 and/or Section 106A of the 1990 Act; and
- (d) to the extent that any of the planning obligations have been discharged in respect of the original Planning Permission nothing shall require the Owner to comply with that obligation again in respect of a planning permission granted under Section 73 or 73B of the 1990 Act.

13. Interest on Late Payments

- 13.1 Any amount due from the Owner to the Council under the terms of this Agreement which is not paid on or prior to the due date shall accrue interest at the Default Interest Rate accruing from the date such payment was due to the date of actual payment.

14. Costs

- 14.1 The Council acknowledges that the Owner has prior to the date of this Agreement paid the reasonable legal costs of the Council incurred in the preparation, negotiation and completion of this Agreement.

15. Third Party Rights

- 15.1 No person who is not a party to this Agreement 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 Agreement has been lawfully assigned or becomes vested in law including successors in title to the Land.

16. Jurisdiction

This Agreement is governed by and interpreted in accordance with the law of England and Wales.

IN WITNESS whereof this Agreement has been duly executed as a deed and delivered on the day and year first before written.

SCHEDULE 1

The Owner's Covenants

The Owner hereby covenants with the Council:

1. Notification

1.1 To notify the Council of the date of Commencement of Development within 5 Working Days thereof.

1.2 To notify the Council of the date of Occupation of the Development within 5 Working Days thereof.

2. Ecology Contribution

2.1 To pay the Ecology Contribution to the Council prior to Commencement of Development and not to Commence Development until the Ecology Contribution has been paid to the Council.

SCHEDULE 2

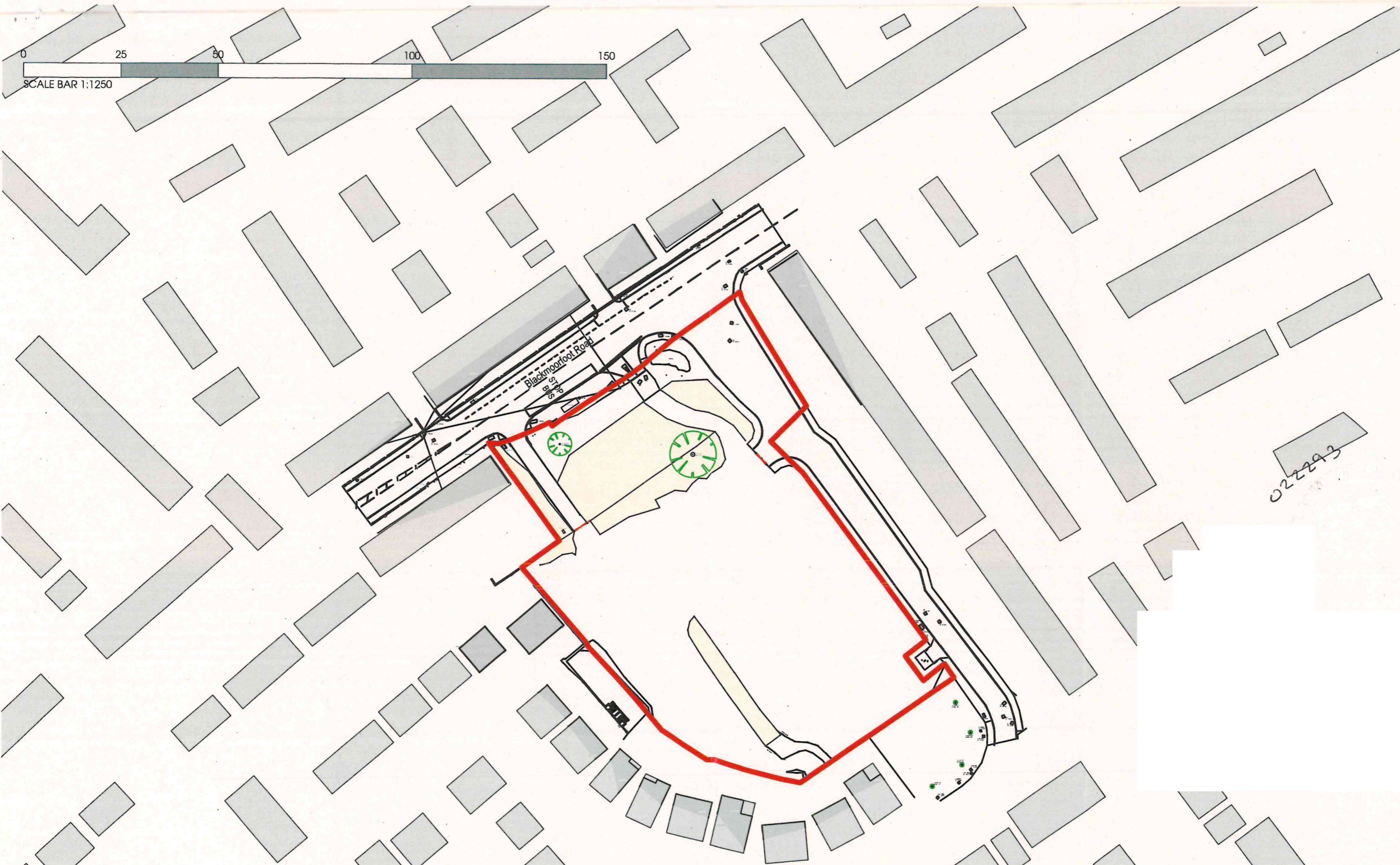
The Council's Covenants

The Council hereby covenants with the Owner:

1. To issue separate receipts on request for any sum paid to the Council under this Agreement.

SCHEDULE 3

The Location Drawing



htcarchitects

York Place Studio
8 Britannia Street
Leeds
LS1 2DZ
T: (0113) 244 3457
W: www.htcarchitects.co.uk
E: info@htcarchitects.co.uk

client
Lidl GB Ltd.



project
Blackmoorfoot Road
Huddersfield
drawing title
Site Location Plan

date August 2023
status Planning
scale 1:1250 @ A4
drawn KA checked BM
job no. 2783 dwg no. P410 rev.

Rev.	Date	Description	Drawn

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

THE COMMON SEAL of

**THE COUNCIL OF THE BOROUGH
OF KIRKLEES**

was hereunto affixed in the presence of: -

Name:

Signature:

Job Title:



EXECUTED as a **DEED** by

LIDL GREAT BRITAIN LIMITED

acting by its attorney,

in the presence of:

.....
Witness Signature

Name:

Address:

Occupation: