

Dated

2025

THE COUNCIL OF THE BOROUGH OF KIRKLEES

and

LIDL GREAT BRITAIN LIMITED

**Deed of Variation made pursuant to Section 106A of
the Town and Country Planning Act 1990 in relation
to land at Bankwood Way, Birstall Retail Park,
Birstall, Batley, WF17 9DT**

Application Ref: 2024/91591

Contents

| Clause | | Page |
|---------------|-------------------------------------|-------------|
| 2. | DEFINITIONS AND INTERPRETATION..... | 2 |
| 3. | STATUTORY BASIS | 3 |
| 4. | VARIATION | 3 |
| 5. | REGISTRATION..... | 3 |
| 6. | SEVERABILITY | 4 |
| 7. | THIRD PARTY RIGHTS | 4 |
| 8. | COSTS..... | 4 |
| 9. | JURISDICTION | 4 |

BETWEEN

- (1) **THE COUNCIL OF THE BOROUGH OF KIRKLEES** of The Town Hall, Huddersfield, West Yorkshire (**the Council**); and
- (2) **LIDL GREAT BRITAIN LIMITED** (CRN: 02816429) of Lidl House, 14 Kingston Road, Surbiton, KT5 9NU (**the Owner**)

BACKGROUND

- (A) For the purposes of the 1990 Act the Council is the local planning authority for the area in which the Site is situated.
- (B) The Owner is the registered freehold proprietor of the Site which is registered at HM Land Registry under Title Number YY192195.
- (C) The Owner has submitted the Variation Application to the Council.
- (D) On 13 November 2023 the Council and the Bank of New York Mellon (International) Limited and the Owner entered into the Original Agreement in respect of the Site.
- (E) The Owner is the person against whom the obligations in the Original Agreement are enforceable.
- (F) The parties hereby enter into this Deed in order to vary the terms of the Original Agreement as set out in this Deed.

OPERATIVE PROVISIONS

1. DEFINITIONS AND INTERPRETATION

- 1.1. The words and expressions in this Deed shall where the context so requires or admits and except as otherwise provided or required by this Deed have the meanings as given to them in the Original Agreement.
- 1.2. In this Deed the following expressions have the following meanings:

| | |
|-------------------------------------|---|
| Original Agreement | the agreement made under Section 106 of the Town and Country Planning Act 1990 entered into on 13 November 2023 by the Council and the Bank of New York Mellon (International) Limited and the Owner. |
| Original Planning Permission | the planning permission relating to the Site issued by the Council under reference number 2021/62/92528/E on 21 November 2023. |
| Site | as defined in the Original Agreement. |
| Variation Application | the application validated by the Council on 2 July 2024 with reference 2024/91591 to vary the Original Planning Permission. |

Variation Permission

the planning permission that may be granted pursuant to the Variation Application.

2. STATUTORY BASIS

- 2.1. This Deed is made pursuant to Section 106 and Section 106A of the 1990 Act and binds the Site and as such is enforceable pursuant to section 106(3) of the 1990 Act against the Owner and any person claiming or deriving title to the Site (or any part or parts thereof) through or under the Owner as if that person had been an original covenanting party to this Deed.
- 2.2. Save as varied by Clause 3 below the Original Agreement remains enforceable pursuant to Section 106(3) of the 1990 Act against the Owner and any person claiming or deriving title to the Site (or any part or parts thereof) through or under the Owner as if that person had been an original covenanting party to the Original Agreement.
- 2.3. To the extent that the covenants, restrictions and requirements in this Deed 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.

3. VARIATION

- 3.1. The parties hereby agree that the Original Agreement shall from the date that this Deed comes into effect be read and construed and observed and performed subject to the following variations:
 - 3.1.1. The definition of "Planning Permission" in Clause 1 of the Original Agreement shall be deleted and replaced with the following definition:

"the planning permission to be granted by the Council pursuant to the Application or the Variation Permission (as applicable);"
 - 3.1.2. The following definitions shall be added to the list of defined terms in Clause 1 of the Original Agreement:

Variation Application: *the application validated by the Council on 2 July 2024 with reference 2024/91591;*

Variation Permission: *the planning permission that may be granted pursuant to the Variation Application;*
 - 3.1.3. The definition of "Development" contained in Clause 1 of the Original Agreement shall be amended by the addition of the following wording:

"...or the development permitted by the Variation Permission;"
 - 3.1.4. The definition of Off-Site Biodiversity Contribution in Clause 1 of the Original Agreement shall be deleted and replaced with the following definition:

"the sum of £32,108 (thirty two thousand one hundred and eight pounds) to be paid by the Owner to the Council towards off-site biodiversity works the need for which arises from the Development and are required to mitigate its impact by delivering a minimum of 10% biodiversity net gain by means of the off-site creation, restoration, enhancement and long-term management (for a minimum of 30 years) of wildlife habitats within Kirklees, The Off-Site Biodiversity Contribution is in accordance with the Council's general duties under the provisions of the Kirklees Local Plan, the Town and Country Planning Act 1990 and s102 Environment Act 2021 to conserve and enhance biodiversity. Once completed the required Off-Site Biodiversity Contribution will be included in the forthcoming 'Register of Biodiversity Net Gain' in accordance with the provisions of Section 103 of the Environment Act 2021".

4. REGISTRATION

4.1. This Deed is a local land charge and may be registered as such by the Council.

5. SEVERABILITY

5.1. If any provision in this Deed shall in whole or in part be held to be invalid, illegal or unenforceable under any enactment or rule of law such provisions shall to the extent required be severed from this Deed and shall not affect the validity or enforceability of the remaining provisions of this Deed.

6. THIRD PARTY RIGHTS

6.1. 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 including successors in title to the Site.

7. COSTS

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

8. JURISDICTION

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

THE PARTIES HEREBY WITNESS that 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

(but not delivered until the date hereof) by

..... as attorney for

LIDL GREAT BRITAIN LIMITED

under a power of attorney dated

.....

Attorney

in the presence of:

.....

SIGNATURE OF WITNESS

.....

NAME OF WITNESS

.....

.....

.....

ADDRESS OF WITNESS

.....

OCCUPATION OF WITNESS

Executed as a Deed (but not delivered

Until the date of it) by the affixing of

THE COMMON SEAL of

THE COUNCIL OF THE BOROUGH

OF KIRKLEES

Authorised Sealing Officer

(A permanent Officer of the Council)