

DATE: 2nd July 2019

LIDL GREAT BRITAIN LIMITED
M. J. BARRETT (DEVELOPMENTS) LIMITED
LLOYDS BANK PLC
EAST STAFFORDSHIRE BOROUGH COUNCIL
AND
STAFFORDSHIRE COUNTY COUNCIL

AGREEMENT
SECTION 106
TOWN AND COUNTRY PLANNING ACT 1990

RELATING TO:
Land off Brookside Road, Uttoxeter
STAFFORDSHIRE

Planning Application Ref. P/2018/00530

County Legal Ref. ZIPX17304

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THIS AGREEMENT is made as a deed the day of 2019

1 PARTIES

LIDL GREAT BRITAN LIMITED whose registered office is situate at 19 Worple Road, Wimbledon, London SW19 4JS (Company Registration Number 02816429) **Purchaser**”).

1.1 **M. J. BARRETT (DEVELOPMENTS) LIMITED** whose registered office is at Brookside Business Park, Brookside Road, Uttoxeter, Staffordshire ST14 8AT (company number 03594003) (**“the Owner”**).

1.2 **LLOYDS BANK PLC** of Dept.No.3282 of Pendeford Securities Centre, Pendeford Business Park, Wobaston Road, Wolverhampton WV9 5HZ (Company Registration Number 2065) (**“the Chargee”**).

1.3 **EAST STAFFORDSHIRE BOROUGH COUNCIL** whose principal office is at The Maltsters Wetmore Road Burton upon Trent Staffordshire DE14 1LS (**“the Council”**).

1.4 **STAFFORDSHIRE COUNTY COUNCIL** whose principal office is at 1 Staffordshire Place, Tipping Street, Stafford, ST16 2DH (**“the County”**).

2 DEFINITIONS

In this Agreement (except where the context otherwise requires):

2.1 **“1980 Act”** means the **Highway Act 1980, as amended**

2.2 **“the Act”** means the Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991).

2.3 **“the Application”** means planning application number P/2018/00530

2.4 **“the Charge”** means the Legal Charge dated 4 May 2017 made between the Owner and the Chargee by which the land is charged with payment of certain monies to the Chargee

2.5 **“Commencement of the Development”** means the earliest date upon which any material operations are begun in accordance with the provisions of Section 56(4) of the Act save for the purposes of this Agreement none of the following operations shall constitute a material operation:

2.5.1 site clearance works;

2.5.2 archaeological investigations;

2.5.3 investigations for the purpose of assessing ground conditions;

2.5.4 remedial work in respect of any contamination or other adverse ground conditions;

2.5.5 diversion and laying of services ;

2.5.6 erection of any temporary means of enclosure;

2.5.7 temporary display of site notices or advertisements;

and **“Commence the Development”** shall be construed accordingly.

2.6 **“the Development”** means the development authorised by the Planning Permission.

2.7 **“the Due Date”** means the date of this Agreement

2.8 **“the Head of Regulatory Services ”** means the person the Council shall appoint as the Head of the Department responsible for Planning Services for the time being.

2.9 **“the Index”** means the All Items Group (item reference CHAW) of the Retail Prices Index published by H M 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.

2.10 **“Index Linked”** means increased (if applicable) in proportion to movements in the Index between the date of this Agreement and the date the particular payment is made.

2.11 **“the Land”** means the Land shown for the purposes of identification only edged red on Plan Number TP-001 known as Land off Brookside Road, Uttoxeter.

2.12 **“Occupation of the Development”** means beneficial occupation of any part of the Development for any purpose other than the carrying out of the Development and **“Occupy the Development”** shall be construed accordingly.

2.13 **“Plan Number”** means the plan annexed to this Agreement of that number.

2.14 **“Planning Permission”** means the planning permission to be granted by the Council pursuant to the Application in substantially the form of the draft annexed to this Agreement.

2.15 **“Satisfaction of the Council”** means to the normal standards of the Council applied elsewhere within their administrative area in respect of similar matters.

2.16 **“Satisfaction of the County”** means to the normal standards of the County applied elsewhere within their administrative area in respect of similar matters.

3 INTERPRETATION

3.1 References to the masculine, feminine and neuter genders shall include the other genders.

3.2 References to the singular include the plural and vice versa unless the contrary intention is expressed.

3.3 References to natural persons are to include corporations and vice versa.

3.4 Headings in this Agreement are for reference purposes only and shall not be taken into account in its construction or interpretation.

3.5 The expressions “the Owner”, “the Chargee”, “the County” and “the Council” shall include their respective successors in title and assigns and in the case of “the County” and “the Council” the successors to their respective statutory functions.

3.6 A reference to a Clause, Paragraph or Schedule is (unless the context otherwise requires) a reference to a Clause, Paragraph or Schedule of this Agreement.

3.7 Words denoting an obligation on a party to do any act or thing include an obligation to procure that it be done and words placing a party under a restriction include an obligation not to cause, permit or suffer any infringement of such restriction.

3.8 Where in this Agreement a party includes more than one person any obligations of that party shall be joint and several.

3.9 Any reference in this Agreement to any statute, or to any section of a statute, includes any statutory re-enactment or modification of it and any reference to any statutory instrument includes any amendment or consolidation of it from time to time and for the time being in force.

4 INFORMATION

4.1 The Owner currently owns the freehold interest in the Land and is entitled to be registered as proprietor of it with Title Absolute at H M Land Registry free from incumbrances other than those matters contained or referred to in the Property and Charges Registers of Title Number SF507947 (part), SF615976 (part) and the whole of SF415322 at the date of this Agreement.

4.2 The Council is the local planning authority for the purposes of the Act for the Land.

4.3 The County is the Local Highway Authority for the purposes of the Highways Act 1980 (and considers that the Development will necessitate the highway obligations contained in this Agreement).

4.4 The Purchaser has by the Application applied to the Council to carry out development on the Land.

4.5 The Council is satisfied that the Development is such as may be approved by the Council under the Act and planning permission granted (subject to conditions) subject to the Owner covenanting in the terms of this Agreement.

4.6 The parties to this Agreement have given due consideration to the provisions of Regulation 122 of the (Community Infrastructure Levy Regulations 2010 S1 2010 No. 948 (to the

extent relevant to the obligations in this Agreement) and the advice set out at Paragraph 204 of the NPPF and agree that the planning obligations it contains are:

- a. necessary to make the development acceptable in planning terms;
- b. directly related to the development; and
- c. fairly and reasonably in scale and kind to the development

5 STATUTORY AUTHORITY AND LEGAL EFFECT

5.1 This Agreement is made pursuant to:

5.1.1 Section 106 of the Act; and

5.1.2 Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011

and all other enabling powers and enactments which may be relevant for the purpose of giving validity to this Agreement.

5.2 The obligations of the Owner in this Agreement are planning obligations for the purposes of Section 106 of the Act and are enforceable by the Council as local planning authority.

5.3 Subject to clause 5.4, the Owner and the Purchaser hereby covenant with the Council to the intent that this Agreement shall be enforceable without limit of time (other than as expressly mentioned in this Agreement) against them and any person deriving title through or under them it to the Land or any part or parts of it as if that person had also been an original covenanting party in respect of the interest or estate for the time being held by that person.

5.4 No person shall be bound by any obligations, rights and duties contained in this Agreement and/or be liable for any breach of a covenant and/or obligation contained in this Agreement after they shall have parted with all interest in the Land or the part in respect of which such obligation relates or such breach occurs PROVIDED THAT they shall remain liable for any subsisting breach of covenant prior to parting with their interest.

5.5 No statutory undertaker shall be bound by any obligations, rights and duties contained in this Agreement and/or be liable for any breach of a covenant and/or obligation contained in

this Agreement in respect of any site used only as an electricity substation, gas governor or pumping station.

- 5.6 If the Planning Permission expires (within the meaning of Sections 91, 92 or 93 of the Act) or is revoked or otherwise withdrawn before Commencement of the Development, this Agreement shall forthwith determine and cease to have effect.
- 5.7 Nothing in this Agreement shall be construed as prohibiting or limiting any 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.
- 5.8 Nothing in this Agreement shall be construed as restricting the exercise by the Council or the County of any powers exercisable by it/them under the Act or under any other Act or any statutory instrument, order or byelaw in the exercise of their functions as a local authority.

6 WAIVER

No waiver (whether expressed or implied) by the Council (or the County) 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 County) from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

7 CONDITION PRECEDENT

The planning obligations contained in the Schedules to this Agreement shall not be enforceable by the Council until the grant of the Planning Permission by the Council and the Commencement of the Development.

8 OBLIGATIONS

- 8.1 The Owner, the County and the Council further covenant, agree and declare as set out in this Agreement and the Schedules.

8.2 The Council agrees with the Owner to grant the Planning Permission as soon as is reasonably practicable after completion of this Agreement.

9 COSTS

9.1 The Purchaser agrees to pay to the Council and the County on the signing of this Agreement their reasonable costs and disbursements of and incidental to the preparation and execution of this Agreement.

10 THE CHARGE

The Chargee for itself and its successors in title consents to the Owner entering into this Agreement and covenants with the Council (and the County) that in the event that the Chargee takes possession of the Land or any part of it and/or exercising its power of sale under the provisions of the Charge then the Chargee and its successors in title will observe and perform and be bound by the terms and conditions of this Agreement so far as the same remain to be observed and performed.

11 LATE PAYMENT

If any payment due under any of the provisions of this Agreement 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 Barclays Bank Base 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

12 SECTION 73 VARIATION

In the event that the Council shall at any time hereafter grant a planning permission pursuant to an application made under Section 73 of the Act in respect of conditions attached to the Planning Permission, save and in so far as this Agreement has been amended by way of a deed of variation prior to the grant of such planning permission, references in this Agreement to the Application and the Planning Permission shall (save for the purposes of the definition of Planning Permission in Clause 2.14) be deemed to include any such subsequent planning applications and planning permissions as aforesaid and this Agreement shall henceforth take effect and be read and construed accordingly.

13 INVALIDITY

It is agreed and declared that if any clause or sub-clause of this Agreement shall be deemed to be unenforceable or ultra vires the remainder of this Agreement shall remain in full force and effect provided severance from this Agreement is possible.

14 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

Nothing contained in this Agreement shall give, or be construed as giving, any rights, privileges, powers or enforceability other than to the Council, the County and to the specific person executing this Agreement as the Owner and its successors (if any) as defined in this Agreement and the provisions of the Contracts (Rights of Third Parties) Act 1999 and any benefits or rights which could arise from it are expressly excluded to the intent that no other third party within the meaning of that Act shall have any rights of enforcement in respect of any matter contained in this Agreement.

15 INDEMNITY

The Purchaser shall indemnify The Owner against all liabilities, costs, expenses, damages and losses suffered or incurred by the Owner arising out of or in connection with the breach or non-performance by the Purchaser of any of the obligations contained in this Agreement.

In the event of a breach by the Owner of any obligations contained in this Agreement the Owner shall keep the Council (and the County) fully indemnified against all liability, proceedings, costs, claims, demands and expenses incurred or arising under this Agreement.

16 OTHER MATTERS

The provisions of Section 196 of the Law of Property Act 1925 (as amended) shall apply to any notice or approval to be served under or in connection with this Agreement and any such notice or approval shall be in writing and shall specifically refer to the name, date and parties to this Agreement and shall cite the number and clause of this Agreement to which it relates.

Payment of any money under this Agreement shall be made by the Owner sending the full amount payable in the form of a Banker's Draft or Solicitors' client account cheque within the time specified in this Agreement together with a letter specifically referring to the name, date and parties to this Agreement and citing the number and clause of this Agreement to which the relevant sum relates and identifying which portion of the amount relates to any sum calculated to take account of Index Linking.

This Agreement shall be registered as a Local Land Charge.

I N W I T N E S S of which the Parties have executed this Agreement as a deed and have delivered it upon dating the day and year first before written.

SCHEDULE 1

General Obligations

The Owner covenants with the Council and the County with the intent that these are planning obligations for the purposes of Section 106 of the Act:

1. To permit the Head of Regulatory Services and any person or persons authorised by him access to the Land or any part of it at all reasonable times, on reasonable notice and in compliance with the Owner's reasonable requirements, and to permit him or them to inspect the Development and all materials intended for use in it.
2. To give the Council and the County notice in writing no later than 7 days prior to the anticipated Commencement of the Development.
3. To give the Council and the County notice in writing of the Commencement of the Development within 7 days of Commencement of the Development.
4. To give the Council and the County notice in writing no later than 7 days prior to the anticipated Occupation of the Development.
5. To give the Council and the County notice in writing of the Occupation of the Development within 7 days of Occupation of the Development.

SCHEDULE 2

Travel Plan Framework

1. DEFINITIONS

- 1.1 **“Annual Performance Report”** shall mean the annual report, to be submitted on the first, second, third, fourth and fifth anniversaries (respectively) of the baseline travel survey as a minimum and thereafter to be agreed between the Owner and the County, indicating how the Travel Plan has been performing and if appropriate the proposals and/or remedies to improve performance of the Travel Plan to meet the agreed objectives and targets described in the Travel Plan
- 1.2 **“Travel Plan”** shall mean the Travel Plan(s) to be submitted to and approved in writing by the County Council pursuant to the Travel Plan Framework.
- 1.3 **“Travel Plan Framework”** shall mean the Travel Plan Framework appended to this Agreement.
- 1.4 **“Travel Plan Sum”** means the sum of £11,900.00 (Eleven Thousand Nine Hundred Pounds) Index Linked to be paid for the monitoring and review of the Travel Plan.

2. PLANNING OBLIGATIONS

The Owner covenants with the Council and the County with the intent that these are planning obligations for the purposes of Section 106 of the Act as follows:-

- 2.1 Not to permit the opening of the store without having first paid the Travel Plan Sum to the County and further to notify the Council that such payment has been made within 14 days of such payment.
- 2.2 To submit and obtain the approval in writing of the County to a Travel Plan in relation to the Development and each part thereof no later than 6 months after the date that the Development (or any part thereof) first opens, in accordance with the Travel Plan Framework.

- 2.3 In the event that the County declines to approve any Travel Plan to submit a revised Travel Plan to the County within a further period of one month from receipt by the Owner of the County's notification of the Travel Plan not being acceptable and the revised Travel Plan shall address the County's reasons for refusal. This process shall be repeated as often as necessary until the Travel Plan is approved in writing by the County.
- 2.4 Not to open a Lidl store on the Land without having first appointed and funded a suitably qualified Travel Plan co-ordinator(s) at least 3 months before Lidl store opening with the responsibilities and duties set out in the Travel Plan Framework in accordance with the Travel Plan Framework.
- 2.5 To ensure that the Travel Plan co-ordinator(s) is identified to the County immediately following their nomination and that any changes in this nomination or responsibilities or duties are notified to the County.
- 2.6 To implement the Travel Plan Framework and each Travel Plan in accordance with the proposals, targets, measures and programme of implementation set out within them.
- 2.7 To produce and submit to the County an Annual Performance Report (which shall include, as appropriate, the proposals and/or remedies required as set out in the Travel Plan Framework and each Travel Plan) for approval in writing in respect of all or each part of the Development in accordance with the Travel Plan Framework and Travel Plan. In the event that an Annual Performance Report is submitted which does not in the opinion of the County achieve the objectives and/or targets of the Travel Plan Framework and Travel Plan to submit proposals and/or remedies in accordance with the Travel Plan Framework and Travel Plan to the County for its approval in writing. This process shall be repeated as often as necessary until such revised proposals and/or remedies to the Travel Plan Framework and/or Travel Plan are approved in writing by the County.
- 2.8 To implement the Travel Plan Framework and each Travel Plan and any modifications arising from an Annual Performance Report approved by the County.
- 2.9 To submit a copy of any modified Travel Plan Framework and/or Travel Plan (following Annual Performance Report or otherwise) approved by the County to the Council.
- 2.10 To meet with the County on request and within three weeks of the request being made.

3 THE COUNTY'S OBLIGATIONS

The County covenants with the Owner as follows:-

- 3.1 To undertake with the Travel Plan co-ordinator the on-ongoing monitoring and review of any Travel Plan in accordance with the requirements therein.
- 3.2 To provide support and advice to the Travel Plan co-ordinator in implementing the Travel Plan.
- 3.3 To respond to the Owner's Travel Plan for all or each part of the Development and associated Annual Performance Reports within three weeks of receipt with either approval or in the event of the Travel Plan and/or Annual Performance Report being unacceptable to the County the reasons (which shall be reasonable) to explain to the Owner why a revised Travel Plan and/or revised proposals and/or remedies will need to be submitted for approval in writing by the County of the Travel Plan and/or Annual Performance Report in accordance with the Travel Plan Framework and Travel Plan.
- 3.4 To advise the Council of instances where the Owner has not complied with the Travel Plan Framework and/or Travel Plan and/or modified Travel Plan Framework and/or modified Travel Plan (following Annual Performance Reports or otherwise) in order for the Council to consider whether enforcement proceedings are necessary.
- 3.5 To use the Travel Plan Sum solely in connection with the Travel Plan Framework and the Travel Plan.

SCHEDULE 3

Traffic Regulation Order Contribution

1. DEFINITIONS

- 1.1 "the Traffic Regulation Order" means the traffic regulation order or orders or any other measures available to the County which in the sole opinion of the County are required for the purposes of addressing the occurrence of informal parking on the south side of Brookside Road in order to ensure the free flow of customer and / or delivery vehicles to the Land (for which the Owner shall submit details of a scheme to the County for approval in accordance with the Planning Permission)
- 1.2 "TRO Contribution" means the sum of £6,000 (Six Thousand Pounds) Index Linked payable for the purposes of the Traffic Regulation Order and any associated costs including works costs.

2. PLANNING OBLIGATIONS

The Owner covenants with the Council and as a separate covenant with the County with the intent that this is a planning obligation for the purposes of Section 106 of the Act:

- 2.1 Not to Commence the Development without having first paid the TRO Contribution to the County and further to notify the Council that such payment has been made within 7 days of such payment.
- 2.2 That no further development of any kind on any part of the Land shall be carried out, commenced and/or continued until the TRO Contribution has been paid to the County.

3. COUNTY'S OBLIGATIONS

- 3.1 The County covenants with the Owner that the County shall only apply the TRO Contribution for the Traffic Regulation Order.
- 3.2 The County covenants with the Owner that in the event that any part of the TRO Contribution has not been expended for its purposes within 10 years of receipt of that sum then the County shall return the said unexpended part to the person who paid the TRO Contribution together with interest credited at the Local Authority 7 day Offer Rate in force from time to time (as published in the Financial Times) such interest to be calculated from the date of receipt of the payment by the County to the date of its repayment.

4. DECLARATIONS

- 4.1 The parties hereby agree and declare as follows:-
- 4.1.1 The Owner shall comply with the obligations in paragraph 2.1 of this Schedule 3 notwithstanding that at the date for payment of the TRO Contribution the County may have already commenced, carried out and/or completed the purpose for which the TRO Contribution is payable; and

4.1.2 For the purposes of paragraph 3.2 of this Schedule 3

4.1.2.1 The County shall be deemed to have expended the TRO Contribution (or any part thereof) if it has incurred and met expenditure for the purpose for which the TRO Contribution is to be used prior to that amount actually being received or due under this Agreement; and

4.1.2.2 Any part of the TRO Contribution which has not yet been paid out by the County but has been committed to be paid by a contract prior to the expiry of the 10 year period shall be deemed to have been expended.

EXECUTED as a deed by)

LIDL GREAT BRITAIN

LIMITED R. BEAUMONT)

acting by)

O. MCGUINNESS

Director

Director / Secretary

EXECUTED as a deed by

M.J. Barrett (Developments) Limited

acting by a director and its

secretary or two directors:

Director

Director/Secretary

EXECUTED as a deed by)
LLOYDS BANK PLC

THE COMMON SEAL of EAST)
STAFFORDSHIRE BOROUGH)
COUNCIL was affixed to this)
deed in the presence of:)

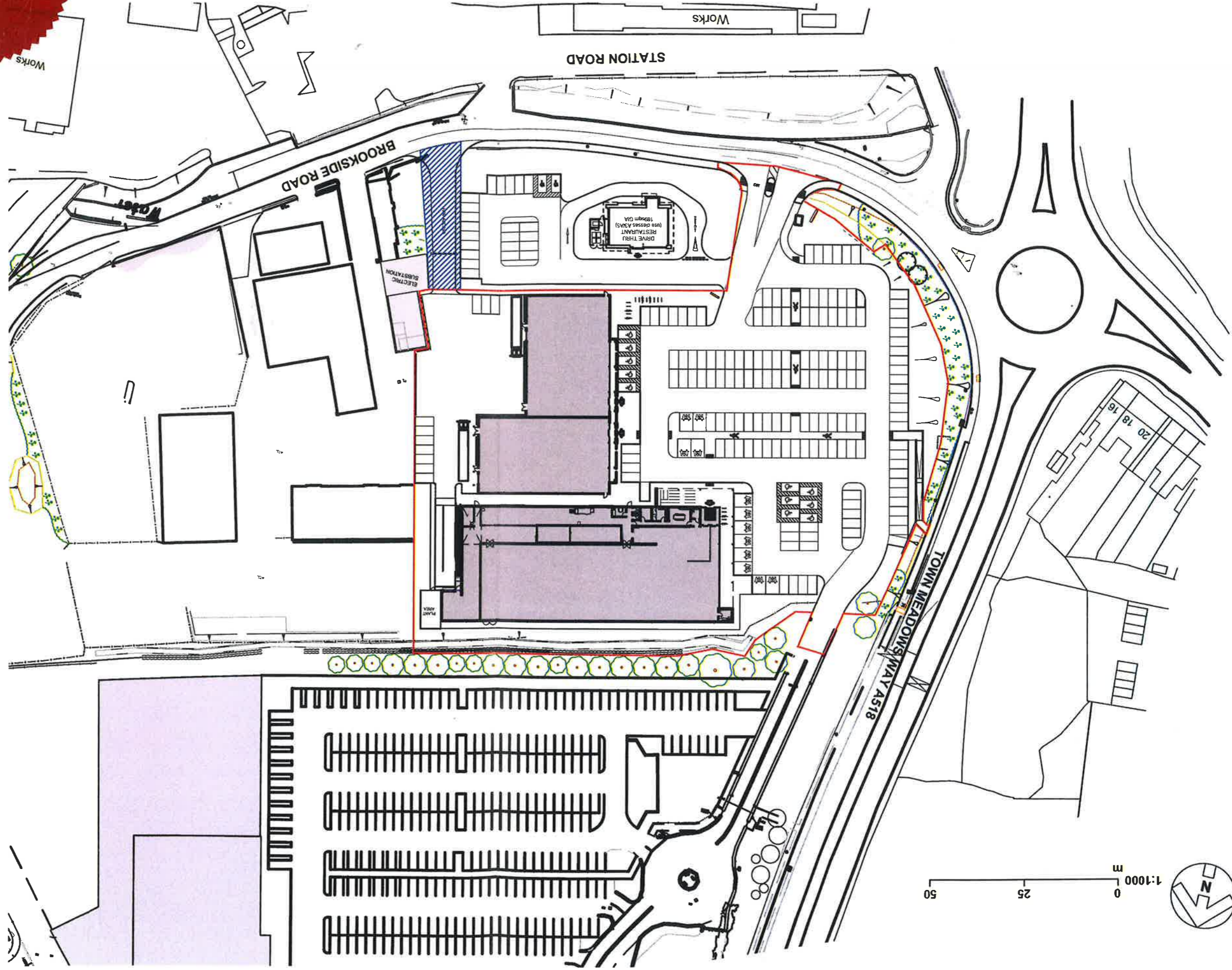


Authorised Signatory

THE COMMON SEAL of)
STAFFORDSHIRE COUNTY)
COUNCIL was affixed to this)
deed in the presence of:)



Authorised Signatory



Handwritten notes and signatures:

19/1/338

Stephan Keab

MJB um at

[Signature]

[Signature]

THIS DRAWING CONSISTS OF THE FOLLOWING THIRD PARTY INFORMATION & DRAWINGS:-

CAD information received via email on 27/07/2017 direct from Lidl, included;

Site Context

Ordnance Survey as per above.

Utilities Survey Required, e.g. Type A

Topographical Survey received from Lidl on 27/07/2017, Greenhatch, 3no. drgs. 15541a_OCL (3 Frame Digs), dated 10.03.12

