

DATED

5 MARCH

5
2014

Gordons LLP

(1) **OPTIMISATION DEVELOPMENTS LIMITED**

and

(2) **WM MORRISON SUPERMARKETS PLC**

given to

(3) **ARUN DISTRICT COUNCIL**

UNILATERAL UNDERTAKING

pursuant to Section 106 of the Town and Country Planning Act 1990 relating to land at former
Bodyshop Offices, Courtwick Lane, Littlehampton



Leeds and Bradford
Ref: MSB/OPT12/127

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This Undertaking is dated

5 MARCH

5
2014

Copy to LU

Given by

- (1) **OPTIMISATION DEVELOPMENTS LIMITED** (the **Freeholder**) of Hilmore House, Gain Lane, Bradford, West Yorkshire BD3 7DL registered in England and Wales with company number 06653349
- (2) **Wm MORRISON SUPERMARKETS PLC** (the **Leaseholder**) of Hilmore House, Gain Lane, Bradford, West Yorkshire BD3 7DL registered in England and Wales with company number 358949

To

- (3) **ARUN DISTRICT COUNCIL** of Arun Civic Centre, Maltravers Road, Littlehampton, West Sussex BN17 5LF (the **District Council**) the Local Planning Authority for the area of the Development and which is the Local Authority with power to enforce this Undertaking

Recitals

- A. The District Council is the local planning authority for the purposes of Section 106 of the Act for the area within which the Application Site is situated.
- B. The Freeholder and Leaseholder are the registered proprietors of the land comprised within title numbers WSX185272 and WSX356491 respectively.
- C. The Application for Planning Permission has been made to the District Council to develop the Application Site and given reference number LU/118/14/PL.
- D. The Freeholder and the Leaseholder are willing to give this Undertaking in connection with the use of that part of the building comprised in the permission dated 24 April 2012 given reference LU/271/11 which is not the subject of the Application for Planning Permission and which is for identification purposes only shown edged blue on the Plan.

It is agreed:

1. Definitions

In this Deed the following expressions shall apply:

Act means the Town and Country Planning Act 1990 (as amended).

Application for Planning Permission means the application seeking permission for development as described in Schedule 5 on the Application Site and given reference number LU/118/14/PL.

Application Site means the site the subject of the Application for Planning Permission more particularly described in Schedule 1 of this Deed.

Commencement of the Development means the carrying out of a Material Operation.

Development means the development the subject of the Application for Planning Permission.

Enterprise Hub means the land and building which is for identification purposes only shown edged blue on the Plan excluding the land and building shown edged red on the Plan.

Material Operation means a material operation pursuant to the Planning Permission on the Application Site the subject of this deed pursuant to Section 56(4)(a)-(e) of the Act provided that for the avoidance of doubt a Material Operation shall be deemed not to have taken place for the purposes of this Deed by any surveying, ground investigation,

archaeological investigation site clearance, demolition and decontamination works site preparation (including earth moving laying of sewers and services the erection of fences and hoardings and the creation of a site compound).

NPPF means the National Planning Policy Framework.

Occupation means the beneficial use of the Development once open to customers and excludes the fitting out of the Development or the provision of security services.

Parties means (1) the Freeholder (2) the Leaseholder.

Plan means the plan annexed at Schedule 2.

Planning Permission means a planning permission for the Development granted pursuant to the Application for Planning Permission.

2. Statutory Authorities

- 2.1 The obligations contained in Clause 4 and Schedule 3 of this Deed are planning obligations for the purposes of Section 106 of the Act and are enforceable by the District Council.
- 2.2 The obligations contained in Clause 4 and Schedule 3 of this Deed are entered into by the Parties with the intention that these provisions should bind their respective interests in the Enterprise Hub as provided by Section 106 of the Act.
- 2.3 Save where otherwise indicated and where possible pursuant to the relevant statutory provision the covenants in this Deed shall be binding on the Parties and their successors in title to the land stated to be bound.

3. Conditionality

- 3.1 The obligations contained in Clause 4 and Schedule 3 of this Deed will not have effect unless:
 - 3.1.1 the Planning Permission has been granted and
 - 3.1.2 a Material Operation or a material change in the use of any building pursuant to the Planning Permission occurs.
- 3.2 If the Planning Permission shall expire prior to the carrying out of a Material Operation or a material change in the use of any building pursuant to the Planning Permission or shall at any time be revoked or modified without agreement this Deed shall forthwith determine and cease to have effect.
- 3.3 If the Planning Permission is quashed before the carrying out of a Material Operation or a material change in the use of any building pursuant to the Planning Permission then this Deed shall absolutely determine and become null and void.

4. Planning Obligations

The Freeholder and the Leaseholder undertake to the District Council that they shall comply with the planning obligations set out herein and in Schedule 3 of this Deed.

5. Obligations after Disposal of Whole or Part

- 5.1 The Parties shall cease to have any obligation or liability under the terms of this Deed in relation to the Enterprise Hub or any part thereof once it shall have parted with all its interest in the Enterprise Hub or the relevant part thereof but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest.
- 5.2 Notwithstanding the foregoing sub-clause the obligations under this Deed shall not be enforceable against any statutory undertaker or public authority which acquires any part of

the Enterprise Hub or any interest in it for the purposes of its statutory undertaking or functions.

6. General

- 6.1 The headings appearing in this Deed are for ease of reference only and shall not affect the construction of this Deed.
- 6.2 For the avoidance of doubt the provisions of this Deed (other than those contained in this sub-clause) shall not have any effect until this document has been signed and dated.
- 6.3 Any covenant in this Deed by which the relevant Party is not to do an act shall be construed as if it were a covenant not to do or permit or suffer to be done such act.
- 6.4 Any covenant contained herein whereby the relevant Party is not to omit to do an act or thing shall be construed as if it were a covenant not to omit or permit or suffer such act to be omitted.
- 6.5 References to statutes by-laws regulations orders and delegated legislation shall include any statute by-law regulation order or delegated legislation re-enacting or made pursuant to the same.
- 6.6 References to the Freeholder and the Leaseholder include references to their successors in title as owners of the Enterprise Hub or any part thereof and this Deed shall bind such successors in title of the Enterprise Hub or any part thereof.
- 6.7 Within seven days of Commencement of the Development the Parties shall give the District Council written notice of that event in the Form of the Notice in Schedule 6.
- 6.8 The parties hereto undertake to the District Council to :-
- (a) pay the sums set out in the table below
- (b) at the time or times set out in the table below and
- (c) for the purposes set out in the table below

Payee	Time for Payment	Amount	Purpose
The District Council	Before completion of this Deed	£200	The District Council's Legal Fees
The District Council	On Commencement of the Development for the purposes of the Planning Permission	£150	Monitoring of compliance with the Deed by the District Council

7. Local Land Charges

This Deed is a Local Land Charge and shall be registered as such by the District Council in the Local Land Charges Register provided that if the Planning Permission expires unimplemented, or is revoked, or if all obligations under this Deed have been discharged then the registered charge shall be treated as having ceased to have effect under rule 8 of the Local Land Charges Rules 1977 or any statutory re-enactment thereof and the registration shall be cancelled.

8. Contracts (Rights of Third Parties) Act 1999

The Parties do not intend that the provisions of this Deed shall be enforceable solely by virtue of the Contracts (Right of Third Parties) Act 1999 by any person who is not party to this Deed.

9. Arbitration:

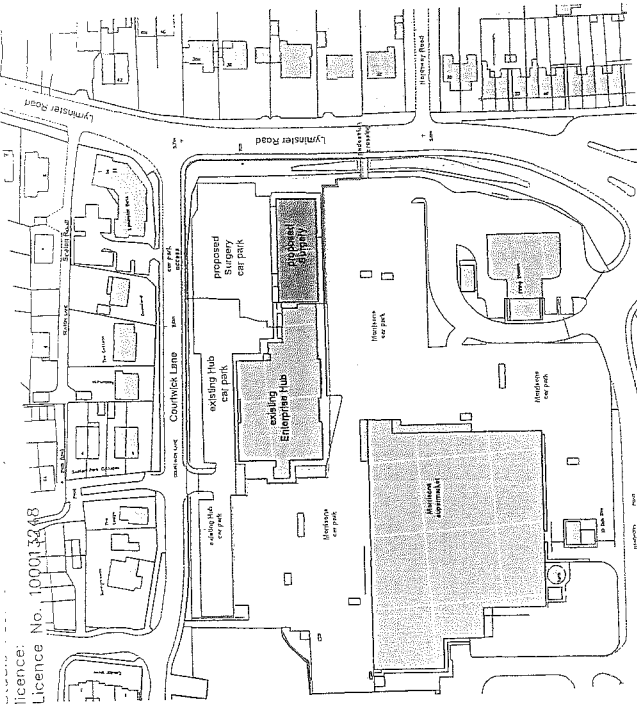
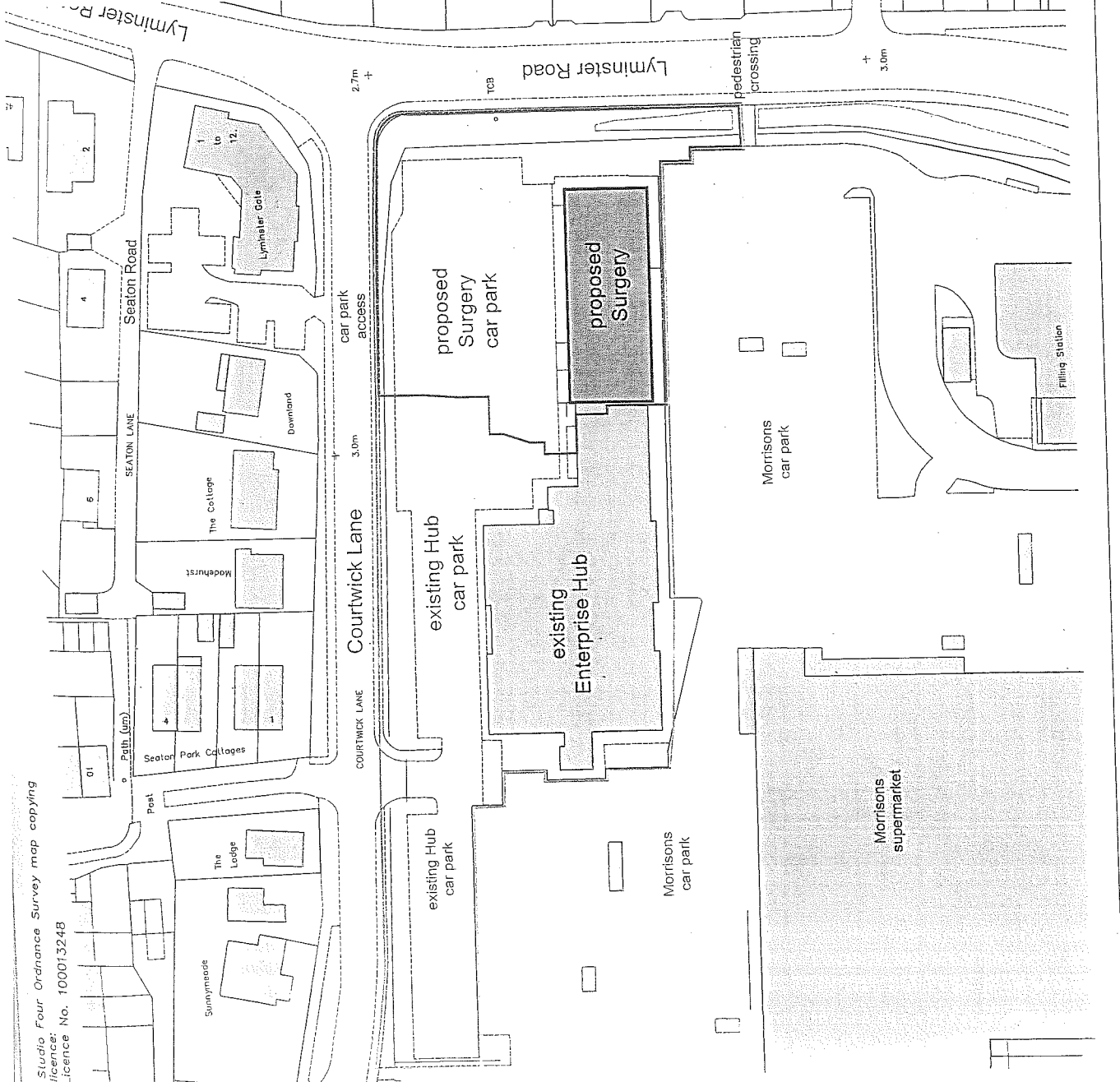
The parties undertake that any dispute or difference arising between the Parties and the District Council with regard to their respective rights and obligations as to any matter or thing arising out of or connected with this Deed shall be referred to the decision of a single arbitrator (acting as an expert and not as an arbitrator) to be agreed by the Parties and the District Council or failing agreement between them to be nominated by the President for the time being of the Royal Institution of Chartered Surveyors and any such reference shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 1996 or any statutory modification or re-enactment for the time being in force.

Schedule 1

The Application Site

All that piece or parcel of land and buildings on the south side of Courtwick Lane, Wick, Littlehampton, West Sussex as more particularly outlined red for identification purposes only on the Plan being land over which the Application for Planning Permission is made.

Schedule 2
The Plan
(Drawing No 01 Revision D)



PLANNING

D 07/07/14 By: [redacted] checked: SVR
 E 04/04/14 By: [redacted] checked: SVR
 A 03/04/14 By: [redacted] checked: SVR
 B 25/03/14 By: [redacted] checked: SVR

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 architects ltd

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client: Community Solutions
 Coastal West Sussex CCG
 project: New GP Surgery, Littlehampton
 East Wing 'Enterprise Hub'
 title: Location Plan / Block Plan

date	scale	paper	down	checked
Feb 2014	1:1250	A2	SVR	SVR

job no.	drawn	revision
33157	01	D

file 33157 01D location plan

Schedule 3
Planning Obligations

The Parties shall:-

- (a) not further subdivide the Enterprise Hub and
- (b) not use the Enterprise Hub for a use or uses other than those uses falling within Class B1 of the Town and Country Planning (Use Classes) Order 1987 or as the same may be amended without first seeking and obtaining the prior written consent of the District Council (notwithstanding any rights under the Town and Country Planning (General Permitted Development) Order 1995 as amended or successor legislation thereto
- (c) market the Enterprise Hub in accordance with the following marketing programme unless otherwise agreed in writing with the District Council:
 - 1. Within 2 months of Commencement of the Development the Parties shall provide a draft marketing strategy for the District Council to review and approve.
 - 2. The marketing strategy will include the methods to be adopted in marketing the premises for lease e.g. on site advertisements, online advertising, newspaper advertising and brochures.
 - 3. Within 2 months of the District Council approving the marketing strategy, the Parties shall implement the approved marketing strategy.
 - 4. The Enterprise Hub shall be marketed for a period of 12 months and the Parties shall monitor and record all enquiries received from prospective tenants. Details of such enquires will be shared with the District Council upon request.
 - 5. Upon successful letting of the Enterprise Hub, and prior to its occupation, details of the management arrangements for the use of the building and the proposed date of occupation shall be provided to the District Council.

Schedule 4

The Freeholder and the Leaseholder

Name:	Optimisation Developments Limited
Address:	Hilmore House, Gain Lane, Bradford, West Yorkshire BD3 7DL
Company number (if applicable):	06653349
Land Registry Title Number:	WSX185272
Name:	Wm Morrison Supermarkets plc
Address:	Hilmore House, Gain Lane, Bradford, West Yorkshire BD3 7DL
Company number (if applicable):	358949
Land Registry Title Number:	WSX356491

SCHEDULE 5

The Planning Application

1. The application for planning permission for change of use and extension of part of former office buildings to a GP Practice with associated parking, landscaping and highway works at the former Bodyshop Offices, Courtwick Lane, Littlehampton.

SCHEDULE 6

Commencement Notice

Pursuant to Clause 6.7 in Planning Obligation Described Below

Failure to use this form may prejudice your ability to prove compliance with the planning obligation.

I advise you that the Development described below was commenced on the Start Date stated in this Notice.

Dated this _____ day of _____ 20

Signed _____

On Behalf Of: _____

TO:	[1] Head of Planning Services, Arun District Council, Arun Civic Centre, Maltravers Road, Littlehampton, West Sussex BN17 5LF (DX: 57406 Littlehampton)
FROM:	
DEVELOPMENT AT:	
NATURE OF DEVELOPMENT:	
PLANNING PERMISSION DATE & REFERENCE	
PLANNING OBLIGATION DATE & PARTIES	
START DATE:	

CHARLES McKENDRICK

Executed as a deed by ^ as attorney
for Optimisation Developments Limited under a
power of attorney dated ^ in the presence
of: 8 NOVEMBER 2014

as attorney for Optimisation
Developments Limited

CHARLES McKENDRICK

Executed as a deed by ^ as attorney
for Wm Morrison Supermarkets plc under a power
of attorney dated ^ in the presence of:
8 NOVEMBER 2014

as attorney for Wm Morrison
Supermarkets plc

Our Ref: MSB/LXB/OPT12/127
Your Ref:
Date: 05/03/15



SPECIAL DELIVERY

Delwyn Jones
Planning Solicitor
Legal Services
Arun District Council
First Floor, Arun Civic Centre
Maltravers Road
Littlehampton
BN17 5LF

Dear Delwyn

S106 UNILATERAL UNDERTAKING – FORMER BODYSHOP OFFICES, COURTWICK LANE, LITTLEHAMPTON

Further to the above please find enclosed signed and dated Section 106 Unilateral Undertaking executed by my client. Please would you kindly acknowledge receipt.

Yours sincerely

[Redacted signature]

Mark Blackburn
Solicitor

[Redacted text]

