

ashurst

Planning Obligation by
Deed of Undertaking

by

Tesco Stores Limited

with the consent of

BDW Trading Limited

to

Ryedale District Council

relating to the development of land at Ings Lane
and New Road, Kirkbymoorside

10 JANUARY 2013

DEED OF UNDERTAKING DATED

10 JANUARY

2013

BY

- (1) **TESCO STORES LIMITED** (Company No. 00519500) of Tesco House, Delamare Road, Cheshunt, Hertfordshire, EN8 9SL ("**Developer**")

WITH THE CONSENT OF

- (2) **BDW TRADING LIMITED** (Company No. 03018173) of Barratt House, Cartwright Way, Forest Business Park, Bardon Hill, Coalville, Leicestershire LE67 1UF ("**Owner**")

TO

- (3) **RYEDALE DISTRICT COUNCIL** of Ryedale House, Malton, North Yorkshire, YO17 7HH ("**Council**")

RECITALS

- (A) The Developer intends to carry out the Development of the Site
- (B) The Owner consents to the Site being bound by the covenants in this Deed of Undertaking
- (C) The Council is the local planning authority for the area in which the Site is located
- (D) The Development will bring parked cars into close proximity to the Trees and the Council wishes to ensure that reasonable steps are taken in order to avoid the need for future lopping or felling of the Trees and the Developer and the Owner enter into this Deed in order to provide that assurance
- (E) The Council intends to grant the Planning Permission for the Development subject to first securing the covenants set out in this Deed of Undertaking

1. **INTERPRETATION**

- 1.1 In this Deed of Undertaking the following terms and phrases have the following meanings:

"Development" means the erection of a new A1 foodstore with ATM, associated car parking, landscaping and access works pursuant to a planning permission granted in respect of an application for planning permission given reference number 11/01203/MFUL

"Necessary Consent" means any consent approval or authorisation (including without limitation planning permission, conservation area consent and tree works consent) required to be given by any statutory authority from time to time for carrying out works anticipated by this Deed of Undertaking

"Planning Permission" means planning permission reference 11/01203/MFUL

"Site"	means land bounded by Ings Lane and New Road, Kirkbymoorside as shown for identification purposes edged red on the Site Plan
"Site Plan"	means the drawing labelled as such and attached to this Deed of Undertaking
"Trees"	means three Horse Chestnut trees standing along the eastern boundary of the Site and identified by red outlines on the Tree Plan
"Tree Plan"	means drawing labelled as such and attached to this Deed of Undertaking

2. STATUTORY BASIS

- 2.1 This deed of undertaking is entered into to create planning obligations under section 106 of the Town and Country Planning Act 1990. It is binding upon the Owner's interest in the Site registered under title number NYK378430 and on the Developer's beneficial interest pursuant to an option to purchase the Site and is enforceable by the Council as local planning authority against both the Developer and its successors in title to those interests
- 2.2 No person shall be liable for any breach of the covenants restrictions or obligations contained in this deed of undertaking:
- (a) to the extent that such breach relates to any part of the Site in which that person has no interest and/or
 - (b) which occurs after he has parted with his interest in the Site or if it be part only that part in respect of which such breach occurs save for any prior breach for which he shall continue to be liable
- 2.3 If the Planning Permission is quashed or modified without the Developer's consent or is revoked or if it expires or lapses without the Development having been begun this deed of undertaking shall cease to have effect

3. OWNER'S CONSENT AND COVENANT

- 3.1 The Owner consents to its interest in the Site being bound by the Developer's covenant in clause 4
- 3.2 The Owner covenants with the Council not to implement the Planning Permission or permit or suffer implementation of the Planning Permission by any party not bound by this Deed of Undertaking or by another deed enforceable by the Council and imposing covenants in substantially the form of clause 4

4. DEVELOPER'S COVENANT


- 4.1 The Developer covenants to use its reasonable endeavours to ensure that, subject to the grant of any Necessary Consent, the likelihood of nuisance caused by the Trees shall be minimised and any actual nuisance remedied by means other than lopping or felling including by:
- (a) appropriate survey and maintenance by a suitably qualified arboriculturist

- (b) the use of flexible restraint systems, ridged bracing and propping systems
- (c) the installation of a canopy structure above any affected car parking spaces

Provided That nothing in this Deed of Undertaking shall limit the Developer's ability to take any steps reasonably necessary to address urgent issues of safety or to take appropriate action in the event that any of the Trees are found to be dead or dying

EXECUTED AS A DEED by the Developer and delivered on the day and year first hereinbefore appearing

Signed as a deed by **MARCUS VINNICOMBE**)
 as attorney for **TESCO STORES LIMITED**)
 in the presence of:)



Signature of Witness



Name (in BLOCK CAPITALS)

DAVID BURNEY

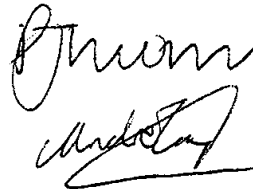
Address

2 PRINCIPLES COURT, WIMBORNE, DORSET

Occupation

CHARITABLE TRUSTEE

Executed as a deed (but not delivered until the date hereof) by **BDW TRADING LIMITED** acting by its attorneys **PETER MORRIS** and **ANDREW TAYLOR** in the presence of:



Signature of Witness



Name (in BLOCK CAPITALS)

KELLY MASTERSON

Address

**71 Broome Close, Hunnington,
 York, YO32 9RH**

Occupation

Secretary