



# Memorandum

From: Mr K A Winship, Head of Legal Services  
To: Senior Elections and Land Charges Officer ✓  
cc Head of Planning Services, FAO Paul Simpson

Rec'd - Reg'd  
3/2/2000 SJ

RE: See Below

Date: 01 February 2000

Our Ref: AH/FEB00/LF631

**Planning Application Number: 99/00123/FUL**  
**Section 106 Agreement Town & Country Planning Act 1990**  
**Development at Safeway Stores, Castlegate, Malton**

A Section 106 Agreement dated 28th January 2000 has been made between the Council (1), Safeway Stores plc (2), BLU Property Management Limited (3) and North Yorkshire County Council (4).

A copy of the Agreement (with draft decision notice) is attached for your records.

Notice of planning permission can therefore now be issued to the applicants, owners of the above property for the development.

K A Winship  
Solicitor  
Head of Legal Services

Ryedale District Council	
Electoral/Land Charges	
- 3 FEB 2000	
Copy to-	
Reply Sent-	

**THIS DEED** is made the 28<sup>th</sup> day of January 2000  
~~1999~~  
**BETWEEN**

- 1 **THE RYEDALE DISTRICT COUNCIL** whose principal office is at Ryedale House Malton in the County of North Yorkshire YO17 7HH ("the Council")
- 2 **SAFWAY STORES plc** whose registered office is at 6 Millington Road Hayes in the County of Middlesex UB3 4AY ("the First Owner and Applicant")
- 3 **BLU PROPERTY MANAGEMENT LIMITED** whose registered office is at 10 Cornwall Terrace Regents Park London NW1 ("the Second Owner")
- 4 **NORTH YORKSHIRE COUNTY COUNCIL** of County Hall Northallerton in the County of North Yorkshire ("the County Council")

**RECITALS**

- (1) The Council is the Local Planning Authority for the purposes of this Agreement for the area within which the First Property and the Second Property respectively described in Part I and Part II of the First Schedule are situated
- (2) The County Council is the Highway Authority for North Yorkshire
- (3) The First Owner and Applicant is the owner in fee simple in possession of the First Property free from encumbrances
- (4) The Second Owner is the owner in fee simple of the Second Property subject to the Lease in favour of the First Owner and Applicant next mentioned but otherwise <sup>free</sup> from encumbrances
- (5) The First Owner and Applicant occupies the Second Property as tenant by virtue of a Lease dated the 2nd day of December 1992 made between Control Securities Limited (1) and the First Owner and Applicant (2) for a term of 25 years from the 24th day of June 1984
- (6) The First Owner and Applicant has applied to the Council for permission to develop parts of the First Property and the Second Property being the Development Site in the manner and for the uses set out in Second Schedule hereto ("the Proposed Development")

*As per before  
M  
KRW*

(7) The Council is satisfied that the performance by the First Owner and Applicant of the covenants herein will remove certain arguments against or objections to the Proposed Development which would without the execution of this Agreement have led to the refusal of consent for the Planning Application

(8) The First Owner and Applicant and the Second Owner have agreed to enter into this Agreement with the Council and the County Council and be bound by and observe and perform the covenants agreements conditions and stipulations hereinafter contained and on their parts to be observed and performed

**NOW THIS DEED WITNESSES** as follows:-

1 **THIS** Agreement is made pursuant to Section 106 of the Town & Country Planning Act 1990 as amended ("the 1990 Act") Section 111 of the Local Government Act 1972 and all other powers the parties hereunto enabling and the covenants in this Agreement are planning obligations for the purpose of the 1990 Act which are enforceable by the Council

2 **THE** First Owner and Applicant and the Second Owner covenant with the Council and the County Council that the Property shall be permanently subject to the restrictions and provisions regulating the Proposed Development and use thereof specified in the Third Schedule hereto

3 **THE** First Owner and Applicant covenants with the Council and the County Council in the terms set out in the Fourth Schedule

4 **THE** County Council covenants with the Council and the First Owner and Applicant that it shall observe and perform the stipulation set out in the Fifth Schedule

5 **THE** Council covenants with the First Owner and Applicant that it will issue the planning permission in the form of the draft attached hereto within 7 days of the date hereof

6 **IT** is agreed and declared as follows:-

6.1 The expressions "the Council" "the County Council" "the First Owner and Applicant" and "the Second Owner" shall include their respective successors in title and assigns

6.2 The First Owner and Applicant agrees that when the Proposed Development is implemented it will be used in strict accordance with this Agreement and not otherwise

6.3 For the purpose of such parts of this Agreement as may be subject to the Rule Against Perpetuities that part of the Agreement shall remain in force for the period of eighty years from the date hereof

6.4 The First Owner and Applicant shall on execution of this Agreement pay to the Council a fee to cover the Council's legal costs

6.5 The First Owner and Applicant shall indemnify and keep indemnified the Council against all damages costs charges losses demands expenses or action sustained by the Council arising from any breach of this Agreement by the First Owner and Applicant

6.6 In this Agreement words importing the masculine gender shall include the feminine gender and vice versa and words importing the singular number shall include the plural number and where there are two or more persons included in the expression "the Owner" covenants expressed to be made by or with the Owner shall be deemed joint and several

6.7 For the purpose of avoidance of doubt and subject to clause 6.8 hereof the requirements of this Agreement shall bind the First Property and the Second Property and remain in full force and effect until formally varied by agreement of the parties or by the Secretary of State notwithstanding that the Planning Application and any plans submitted with the same shall have lapsed or shall have been amended superseded renewed or resubmitted

6.8 This Agreement is a local land charge and shall be registered as such and shall come into full force and effect when the Proposed Development is commenced and not otherwise

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

**THE FIRST SCHEDULE**

**Part I**

[the First Property]

ALL THAT piece of land TOGETHER WITH buildings erected thereon situate at Castlegate Malton in the County of North Yorkshire and for identification purposes only shown edged red on Plan No. 1 attached hereto ("Plan No. 1")

**Part II**  
[the Second Property]

ALL THAT piece of land TOGETHER WITH the buildings erected thereon situate at Castlegate Malton aforesaid and for identification purposes only shown edged blue on Plan No. 1

**THE SECOND SCHEDULE**  
[Particulars of the Proposed Development]

Erection of extensions and alterations to supermarket to include additional sales area, storage/loading/staff/preparation facilities, plant room, additional car parking and formation of new service access from Railway Street Malton aforesaid on parts of the First Property and the Second Property All of which is shown edged green on Plan No. 2 attached hereto ("the Development Site")

**THE THIRD SCHEDULE**

The First Owner and Applicant with the consent of the Second Owner covenants that no heavy commercial vehicles exceeding 7.5 tons visiting the Safeway Supermarket at Malton which belong to the First Owner and Applicant and its suppliers shall use either Wells Lane or that part of Carpenters Yard shown cross-hatched in brown on Plan No. 1 for access to or egress from the Development Site

**THE FOURTH SCHEDULE**

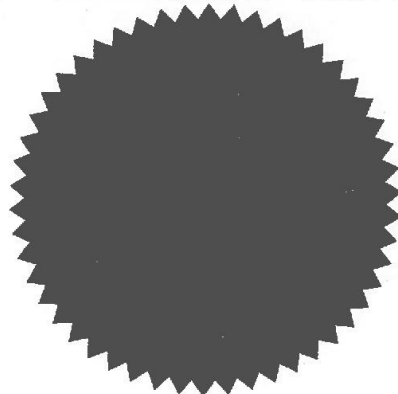
The First Owner and Applicant shall pay the following amounts to the County Council within 28 days of the date hereof:

- (i) the sum of Seven Thousand Pounds (£7,000) for the purpose of improvements to the traffic signals at Butcher Corner Malton and
- (ii) the sum of Five Thousand Pounds (£5,000) for the purpose of installing a local traffic safety scheme along Castlegate Malton and Church Street and Commercial Street Norton

**THE FIFTH SCHEDULE**

The County Council covenants that in the event that the sums of money stipulated in the Fourth Schedule (or any part thereof) have not been expended by the County Council within 5 years of the date of payment it will repay the said sum or sums to the First Owner and Applicant

THE COMMON SEAL of THE )  
RYEDALE DISTRICT COUNCIL )  
was hereunto affixed and )  
is authenticated by: )



*[Signature]*  
Chairman

*[Signature]*  
Head of Legal Services

Minute CP 23/99

Reg No. 4705

Initials *[Signature]*

THE COMMON SEAL of )  
SAFEGWAY STORES PLC )  
was hereunto affixed )  
in the presence of: )

Director

*[Signature]*

Deputy  
Secretary

*[Signature]*

EXECUTED AS A DEED by )  
BLU PROPERTY MANAGEMENT )  
LIMITED acting by: )

Director

*[Signature]*

Secretary

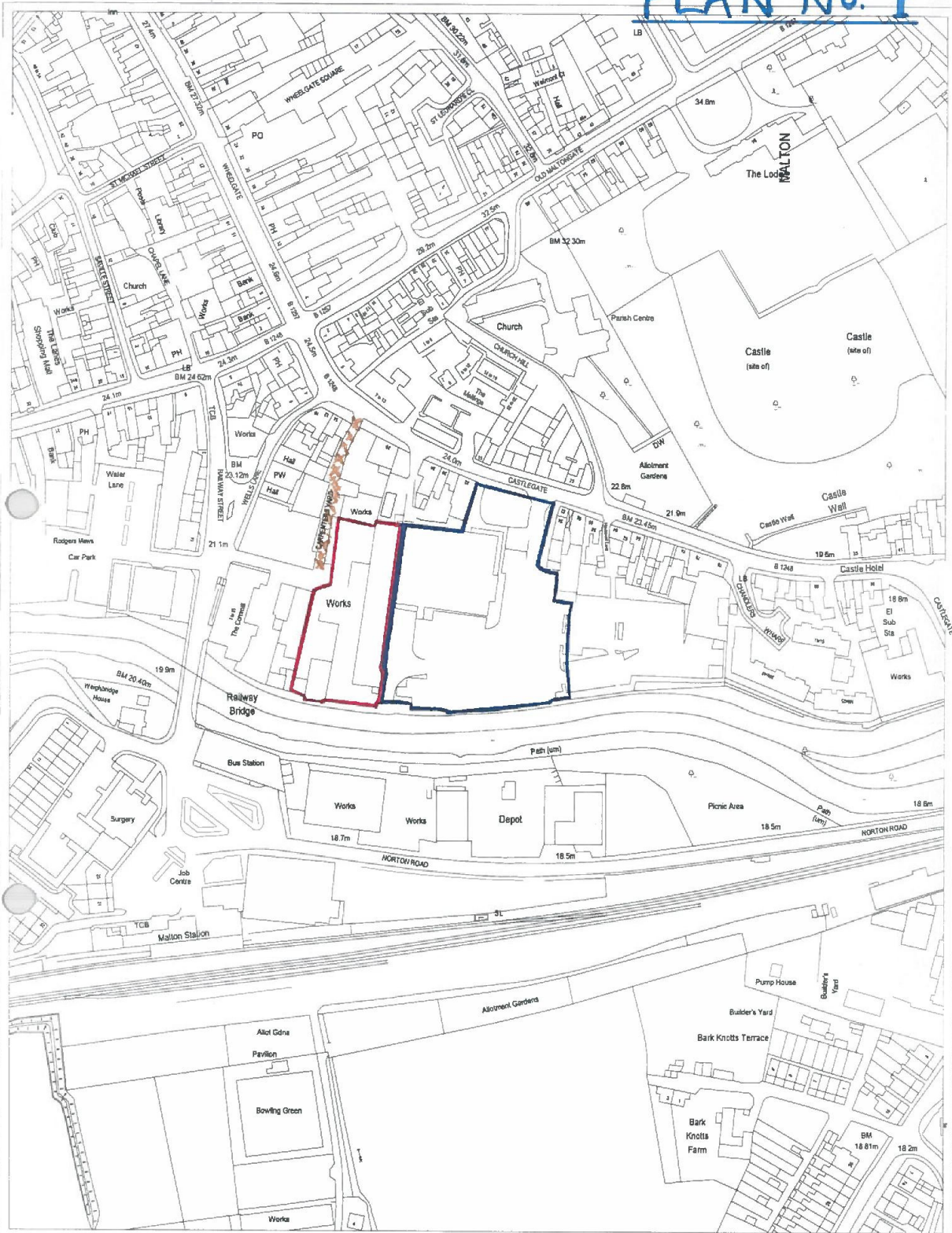
*[Signature]*

THE COMMON SEAL of )  
NORTH YORKSHIRE COUNTY )  
COUNCIL was hereunto affixed )  
in the presence of: )

28471



*Alison M. Baddy*  
Senior Solicitor

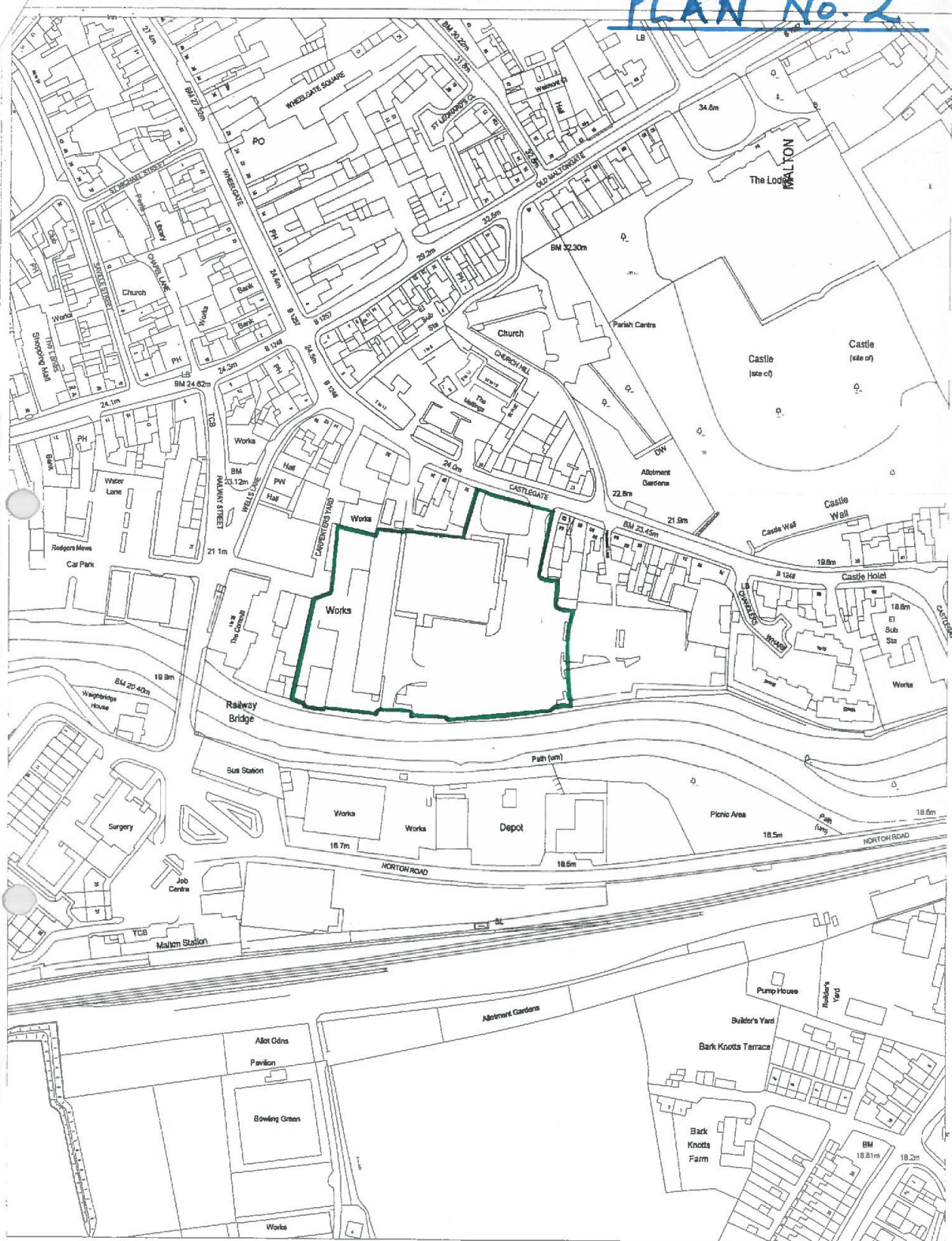


SCALE 1:2500	DRAWN BY	DATE 26th July 1999
Department Planning Services		Drawing No.

Ryedale House, Malton  
North Yorkshire, YO17 7HH



PLAN No. 2



SCALE 1:2500	DRAWN BY	DATE 26th July 1999
Department Planning Services		Drawing No.

Ryedale House, Malton  
North Yorkshire, YO17 7HH

© Crown copyright. All rights reserved. Ryedale District Council. Licence No. 079219. 26th July 1999

DATED

28<sup>th</sup> January

2000  
~~1999~~

THE RYEDALE DISTRICT COUNCIL

and

SAFEWAY STORES PLC

and

BLU PROPERTY MANAGEMENT LIMITED

and

NORTH YORKSHIRE COUNTY COUNCIL

AGREEMENT

pursuant to Section 106 of the  
Town and Country Planning Act 1990 as amended  
and Section 111 of the Local Government Act 1972  
in respect of Safeway Supermarket Castlegate Malton  
in the County of North Yorkshire

K A Winship  
Solicitor  
Head of Legal Services  
MALTON

# DRAFT DECISION NOTICE

## RYEDALE DISTRICT COUNCIL

### TOWN & COUNTRY PLANNING ACT 1990

#### FULL APPLICATION FOR PERMISSION TO CARRY OUT DEVELOPMENT

RYEDALE DISTRICT COUNCIL, THE LOCAL PLANNING AUTHORITY, HAS CONSIDERED THIS APPLICATION AND HAS DECIDED IT SHOULD BE APPROVED SUBJECT TO THE CONDITIONS STATED BELOW:

**Application No:** 99/00123/FUL

**Proposal:** Erection of extensions and alterations to supermarket to include additional sales area, storage/loading/staff/preparation facilities, plant room, additional car parking and formation of new service access from Railway Street

**at:** Safeway Stores Plc Castlegate Malton North Yorkshire YO17 0DT

**for:** Safeway Stores PLC

**Decision Date:** 23 July 1999

#### CONDITIONS AND ASSOCIATED REASONS

- 01 The development hereby permitted shall be begun on or before 22 July 2004.
- Reason:- To ensure compliance with Sections 91 to 95 and Section 56 of the Town & Country Planning Act 1990.
- 02 There shall be no sale of food or drink for consumption on the premises by members of the public.
- Reason: In the interests of the retail vitality and viability of Malton Town Centre.

Safeway Stores PLC  
c/o Dennis Lister & Associates  
58 Albert Road  
Middlesborough  
Cleveland  
TS1 1QD

- 03 Before any part of the development hereby approved commences, plans showing details of a landscaping and planting scheme to include upgrading of existing landscaping, shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall provide for the planting of trees and shrubs and show areas to be grass seeded or turfed. The submitted plans and/or accompanying schedules shall indicate numbers, species, heights on planting, and positions of all trees and shrubs including existing items to be retained. All planting seeding and/or turfing comprised in the above scheme shall be carried out during the first planting season following the commencement of the development, or such longer period as may be agreed in writing by the Local Planning Authority. Any trees or shrubs which, within a period of five years from being planted, die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar sizes and species, unless the Local Planning Authority gives written consent to any variation.

Reason: To enhance the appearance of the development hereby approved.

- 04 No development or other operation shall commence on site until a scheme (herein after called the Method Statement for Arborticultural Works) which provides for the retention and protection of trees, shrubs and hedges growing on or adjacent to the site has been submitted to and approved in writing by the Local Planning Authority. No development or other operations shall take place except in complete accordance with the Method Statement. In relating to that Statement:

- (a) No operations shall commence on site in connection with the development hereby permitted (including any tree felling, tree pruning, demolition works, soil moving, temporary access construction and/or widening, or any other operation involving the use of motorised vehicles or construction machinery) until the tree protection works required by the Method Statement are in place on site.
- (b) No excavations for services, storage of materials, or machinery, parking of vehicles, deposit or excavation of soil or rubble, lighting of fires or disposal of liquids shall take place inside or within 10m of an area fenced off or otherwise protected in the Method Statement.
- (c) The fencing or other works which are part of the Method Statement shall not be moved or removed, until all works including external works, have been completed and all equipment, machinery and surplus materials removed from the site, without the prior written approval of the Local Planning Authority.

Reason:- To secure the protection, throughout the time that the development is being carried out, of trees, shrubs or hedges growing within or adjacent to the site which are of amenity value to the area.

Safeway Stores PLC  
c/o Dennis Lister & Associates  
58 Albert Road  
Middlesborough  
Cleveland  
TS1 1QD

- 05 Before the development hereby permitted is commenced, details and samples of the materials to be used on the exterior of the proposed building(s) shall be submitted to and approved in writing by the Local Planning Authority. No variation of the approved materials shall be undertaken without the express consent in writing of the Local Planning Authority.

Reason:- To ensure a satisfactory external appearance.

- 06 No development shall take place within the application site until the developer has secured the implementation of a programme of archaeological works in accordance with a written scheme of investigation submitted by the applicant and approved in writing by the Local Planning Authority.

Reason:- The site is of archaeological interest.

- 07 There shall be no raising of ground levels or storage of materials, including soil, within that part of the site liable to flood as delineated on the attached plan.

Reason:- To ensure that there will be no increased risk of flooding to other land/properties due to the impidence of flood flows and/or reduction of flood storage capacity.

- 08 Notwithstanding the provision of Schedule 2, Part 4, Class A of the Town & Country Planning General Development Order 1995 (or any Order revoking or enacting that Order) no temporary buildings or storage containers shall be erected within that part of the site liable to flood as delineated on the attached plan.

Reason:- To ensure that there will be no increased risk of flooding to other land/properties due to the impidence of flood flows and/or reduction of flood storage capacity.

- 09 Prior to being discharged into any watercourse, surface water sewer or soakaway system, all surface water drainage from parking areas and hardstandings shall be passed through trapped gullies with an overall capacity compatible with the site being drained.

Reason:- To prevent pollution of the water environment.

- 10 Unless otherwise agreed in writing by the Local Planning Authority, no building or other obstruction shall be located over or within 3.0 metres of the line of the sewer, which crosses the site.

Reason:- In order to allow sufficient access for maintenance and repair work at all times.

Safeway Stores PLC  
c/o Dennis Lister & Associates  
58 Albert Road  
Middlesborough  
Cleveland  
TS1 1QD

- 11 The site shall be developed with separate systems of drainage for foul and surface water.  
Reason:- In the interest of satisfactory drainage.
- 12 Prior to the commencement of the development details of external lighting shall be submitted to and approved in writing by the Local Planning Authority.  
Reason:- In the interests of visual amenity.
- 13 All deliveries to the store shall be limited to between 0600 hrs and 2200 hrs. The number of delivery vehicles shall be limited to one Safeway company vehicle between the hours of 0600 and 0700 and one Safeway company vehicle between the hours of 2000 and 2200. The Safeway company vehicles delivering to the site shall switch off any refrigeration units prior to accessing the site, reversing beepers shall be switched off during manoeuvring and the engine shall be switched off as soon as manoeuvring is completed. Other vehicle deliveries to the store during the permitted hours shall switch off refrigeration units prior to accessing the site and switch off engines after manoeuvring.  
Reason:- In the interests of residential amenity.
- 14 Prior to the commencement of the development, details of the pallet trucks to be used in association with the unloading of produce at the store shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the only approved pallet trucks shall be used for unloading purposes.  
Reason:- In the interests of residential amenity.
- 15 Details of ventilation and refrigeration shall be submitted to and agreed in writing by the Local Planning Authority prior to the commencement of development.  
Reason:- In the interests of residential amenity.
- 16 Prior to the commencement of the development, detailed construction drawings shall be submitted and approved in writing by the Local Planning Authority for the improvement to the site access with Castlegate as indicated on Drawing No 4549/001 Rev B. The approved details to be completed to the reasonable satisfaction of the Local Planning Authority before the extended store is brought into use.  
Reason:- To secure implementation of the approved access arrangements, in the interests of highway safety and the convenience of vehicles and pedestrians visiting the site.

Safeway Stores PLC  
c/o Dennis Lister & Associates  
58 Albert Road  
Middlesborough  
Cleveland  
TS1 1QD

- 17 Prior to the commencement of the development, detailed construction drawings for the service yard access and footpath link junction with Carpenters Way shall be submitted to and approved in writing by the Local Planning Authority. The approved details to be completed to the reasonable satisfaction of the Local Planning Authority before the service yard and footpath are brought into use.

Reason:- To secure implementation of the approved access arrangements, in the interests of highway safety and the convenience of vehicles and pedestrians visiting the site.

- 18 The development shall not be commenced until full details of the construction, surfacing, lighting, surface water drainage and marking out of the car park, cycle park, recycling areas and service yard indicated on Drawing No A906/SK5 Rev E has been submitted to and approved in writing by the Local Planning Authority. The approved details shall be completed to the reasonable satisfaction of the Local Planning Authority before the extended store is brought into use.

Reason:- To secure implementation of the approved access arrangements, in the interests of highway safety and the convenience of vehicles and pedestrians visiting the site.

- 19 The existing public right of way shall be protected and kept clear of any obstruction at all times.

Reason:- To ensure a satisfactory means of access to the site from the public highway, in the interests of vehicle and pedestrian safety and convenience.

- 20 Prior to the commencement of the development, details shall be submitted to and approved in writing by the Local Planning Authority for the access and parking for construction traffic associated with the building of the extended store.

Reason:- To secure implementation of the approved access arrangements, in the interests of highway safety and the convenience of vehicles and pedestrians visiting the site.

- 21 Details of the precautions to be taken to prevent the deposit of mud on public highways by vehicles travelling from the site during the construction of the store shall be submitted to and approved in writing by the Local Planning Authority. These facilities shall include the provision of wheel washing facilities where considered necessary by the Local Planning Authority. The approved precautions shall be made available before the development commences on the site and shall be kept available and in full working order until such time as the Local Planning Authority agree in writing to their withdrawal.

Reason:- To ensure that no mud or other debris is deposited on the carriageway in the interests of highway safety.

Safeway Stores PLC  
c/o Dennis Lister & Associates  
58 Albert Road  
Middlesborough  
Cleveland  
TS1 1QD

- 22 Details of any gates, barriers or other means of enclosure at the boundary of the service yard and the public highway shall be submitted to and approved, in writing by the Local Planning Authority prior to the commencement of development. Thereafter the access shall remain open to vehicular traffic between the hours of 0600 and 2200.

Reason:- To ensure a satisfactory means of access to the site from the public highway, in the interests of vehicle and pedestrian safety and convenience.

- 23 Provision shall be made to prevent surface water from the site discharging onto the public highway.

Reason:- To ensure a satisfactory arrangement of highway drainage, in the interests of the amenity of the area.

- 24 Prior to the commencement of the development a car parking management plan shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the car parking regime on site shall be managed in accordance with the approved plan.

Reason:- To ensure the maximum utilisation of the car park.

**INFORMATIVE:**

In association with Conditions 17 and 18 consideration should be given to a gated access for emergency vehicles at the southern end of the service yard following consultation with the emergency services.

---

NO CONSENT OR APPROVAL HEREBY GIVEN REMOVES ANY REQUIREMENT TO SERVE NOTICES OR SEEK APPROVAL FROM THE DISTRICT COUNCIL WHERE SUCH ACTION IS REQUIRED BY THE BUILDING ACT 1984 OR OF ANY OTHER STATUTORY PROVISION. NO PART OF THE PROPOSED DEVELOPMENT SHOULD BE STARTED WITHOUT COMPLYING WITH SUCH REQUIREMENT.

---

HEAD OF PLANNING SERVICES

Safeway Stores PLC  
c/o Dennis Lister & Associates  
58 Albert Road  
Middlesborough  
Cleveland  
TS1 1QD