WB/08/0851

DATED 9th June 2010

COF

CANTIUM (DURRINGTON) LIMITED and
PAVF SECOND NOMINEES 10 LIMITED
(as Owner)

TO

WORTHING BOROUGH COUNCIL

UNILATERAL UNDERTAKING
relating to the development of land at
The Causeway, Durrington,
Worthing, West Sussex

Wedlake Bell

52 Bedford Row
London
WC1R 4LR

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Direct Fax 020 7406 1602

Direct Email dearl@wedlakebell.com
Ref DME/87436/WB1-3390143-2

THIS UNDERTAKING is given by **DEED** on 9th June 2010

BY

CANTIUM (DURRINGTON) LIMITED and **PAVF SECOND NOMINEES 10 LIMITED** both of Time & Life Building One Bruton Street London W1J 6TL (**"the Owner"**)

TO **WORTHING BOROUGH COUNCIL** of Portland House Richmond Road Worthing West Sussex BN11 1LF (**"the Council"**)

WHEREAS

1. The Council is the local planning authority for the purpose of the Act for the Borough of Worthing in which the Application Site (as hereinafter defined) is situated

2. The Owner is the freehold owner of the Application Site

3. On 11 August 2008 the Owner made the Planning Application (as hereinafter defined) to the Council

4. The Council has allocated reference 08/0851/FULL to the Planning Application

5. The obligations created by this Deed are conditional upon the Council issuing the Planning Permission (as hereinafter defined)

NOW THIS DEED WITNESSES as follows:

1. DEFINITIONS AND INTERPRETATION

In this Deed the following words and expressions shall where the context so requires or admits have the following meanings:-

1.1 **"the Act"** means the Town and Country Planning Act 1990

1.2 **"the Application Site"** means the ground floor premises shown for identification purposes only edged red on Plan 1 forming part of the freehold land at The Causeway, Durrington, Worthing registered at the Land Registry with title number SX31904

1.3 **"Commencement of Development"** means the carrying out on the Application Site of a material operation pursuant to the Planning Permission as defined in Section 56(4) of the Act save that for the purpose of determining whether or not a material operation has been carried out there should be disregarded such operations as ground surveys, fencing, archaeological investigations, the erection of temporary fencing and hoarding or such similar preparatory works including demolition works and "commence" and "commencement" shall be construed accordingly

1.4 **"the Development"** means the development authorised by the Planning Permission

1.5 **"Discount Retailer"** means Aldi, Lidl, or Netto or any similar operator the identity of which shall be approved by the Council, such approval not to be unreasonably withheld or delayed.

1.6 **"Occupation"** means physically occupied for trade or business and "Occupy" shall be construed accordingly

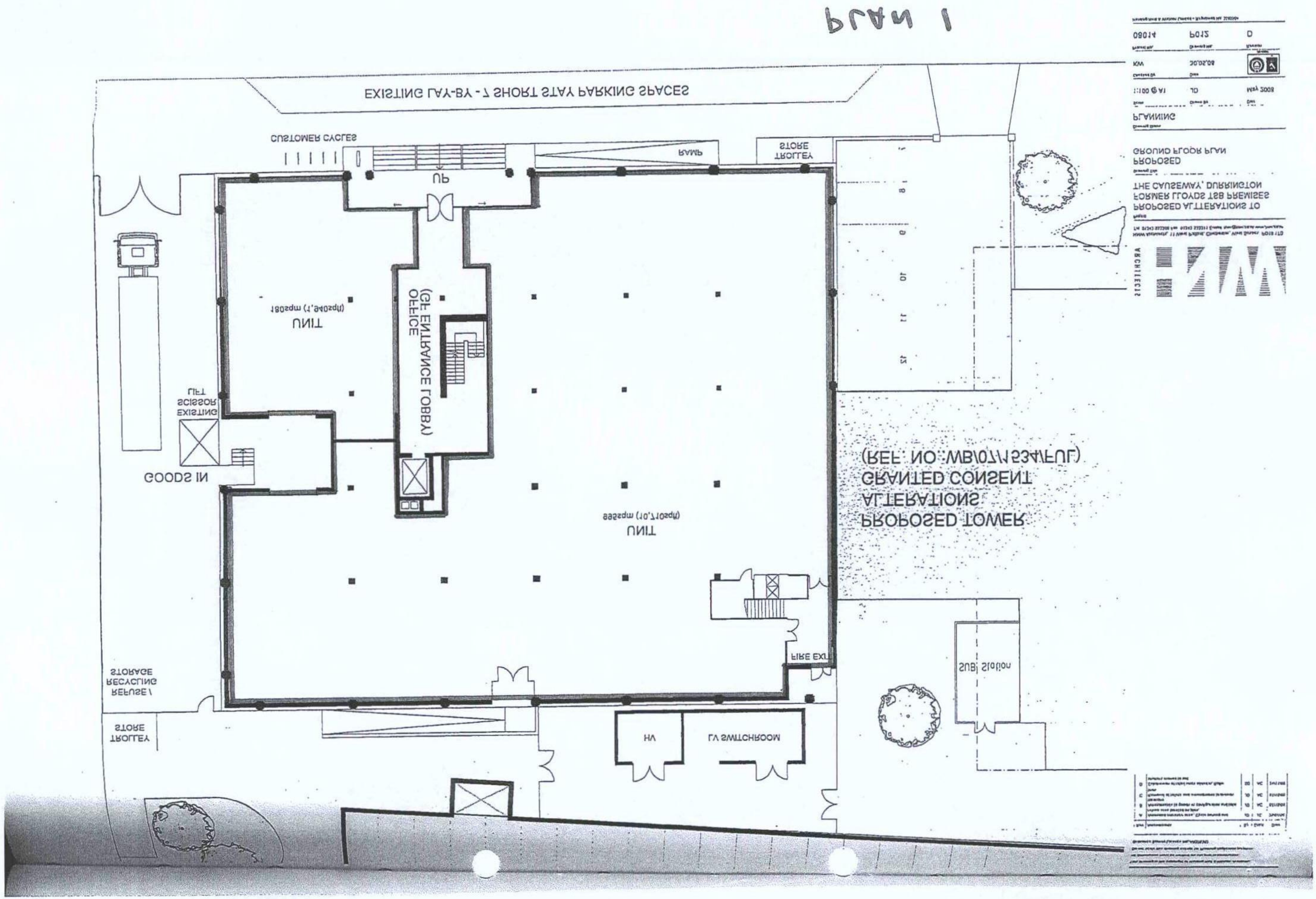
1.7 **"the Planning Application"** means the application dated 11 August 2008 for planning permission to be granted under the Act permitting the change of use of the Application Site from office accommodation to Class A1 (retail), or Class A1 (retail) with Class A3 (restaurant/café) and/or Class A5 (hot food takeaway) of the Use Classes Order together with refurbishment and alterations to external elevations (including new shopfronts) incorporating separate entrances to the first floor office accommodation

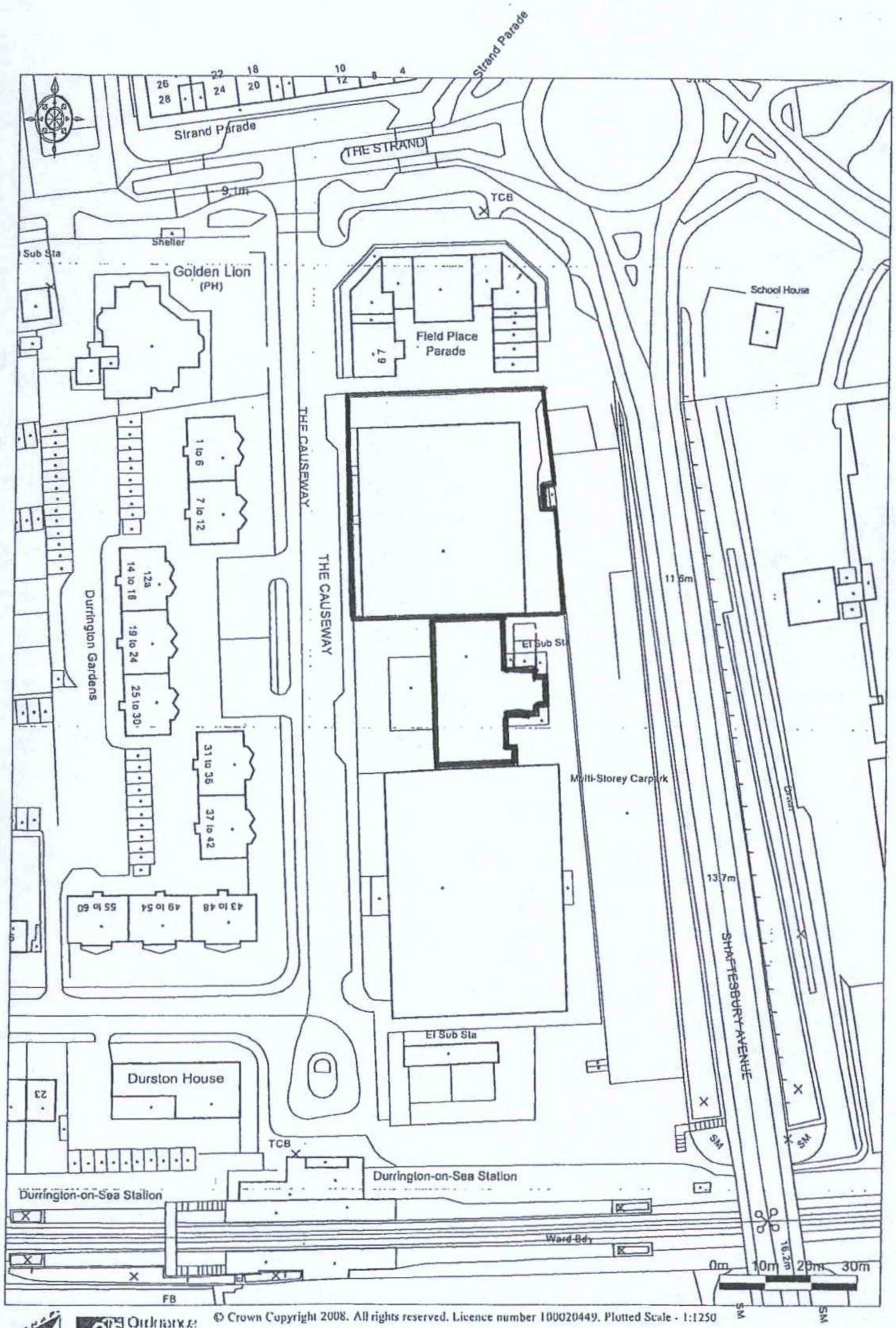
1.8 **"Plan 1"** means the plan annexed to this Deed marked 'Plan 1'

1.9 **"Plan 2"** means the plan annexed to this Deed marked 'Plan 2'

1.10 **"the Planning Permission"** means a planning permission granted pursuant to the Planning Application

1.11 **"the Tower"** means the building the location of which is shown edged blue on Plan 2


PLAN 1
EXISTING LAY-BY - 7 SHORT STAY PARKING SPACES
CUSTOMER CYCLES
PU
RAMP
STORE
TROLLEY
UNIT
(GF ENTRANCE LOBBY)
OFFICE
EXISTING
SCISSOR
LIFT
GOODS IN
UNIT
FIRE EXIT
SUB Station
LV SWITCHROOM
HV
STORAGE
RECYCLING
REFUSE /
STORE
TROLLEY
PROPOSED TOWER
ALTERATIONS
GRANTED CONSENT
(REF. NO. WB/07/1534/FUL)
PLANNING
GROUND FLOOR PLAN
PROPOSED
THE CAUSEWAY, DURRINGTON
FORMER LLOYDS TSB PREMISES
PROPOSED ALTERATIONS TO
ARCHITECTS



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PROPOSED RETAIL USE OF GROUND FLOOR
AT THE CAUSEWAY, DURRINGTON
LOCATION PLAN - RHPC 002

PLAN 2

1.12 **"the Use Classes Order"** means the Town and Country Planning (Use Classes) Order 1987 (as amended since originally enacted)

1.13 the references to the parties named in this Deed include their successors in title and assigns and in the case of the Council shall include any successor in function

2. STATUTORY PROVISIONS

2.1 This Deed is made under Section 106 of the Act and the undertaking in this Deed is given by the Owner subject to the provisions hereinafter contained

2.2 In this Deed the covenants by the Owner as the freehold owner of the Application Site are in favour of the Council and constitute planning obligations for the purposes of Section 106 of the Act and shall be enforceable by the Council as the local planning authority in accordance with the provisions of Section 106 against the Owner and any person deriving title from the Owner

2.3 The obligations contained in and created by this Deed shall not take effect unless and until the Planning Permission shall have been issued and Commencement of Development shall have taken place

2.4 The obligations on the part of the Owner shall bind the Application Site and every part thereof

2.5 No party shall be liable for breach of covenant or obligation contained in this Deed after the party has parted with all the party's interest in the Application Site or the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach of covenant or obligation arising prior to that party parting with such interest

2.6 No person who is not a party to this Deed ("third party") has or shall have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term under this Deed and no consent of any third party shall be required under that Act to any cancellation or variations of this Deed

2.7 In the event that the Planning Permission shall expire before Commencement of Development or shall at any time be revoked then the

undertaking contained in this Deed shall be deemed to be discharged and have no further effect

2.8 This Deed shall be registrable by the Council as a local land charge

2.9 The Owner shall pay to the Council on completion of this Deed the reasonable legal costs incurred by the Council in checking the Owner's title and approving the Deed

3. COVENANTS BY THE OWNER

The Owner covenants with the Council that:-

3.1 notwithstanding the grant of the Planning Permission any part of the Application Site permitted to be used for retail purposes under Class A1 of the Use Classes Order will not be Occupied by any trade or business other than by a Discount Retailer

3.2 it will serve written notice on the Council within 7 days after the relevant date to inform it of the date of the Occupation of the Application Site by a retailer permitted to trade from the Application Site by virtue of the provisions of clause 3.1 of this Deed

3.3 it will advertise and market the Tower as being available for letting or purchase for business purposes or use (within the meaning of Class B1(A) of the Use Classes Order) for a period of twelve months from the date of the issue by the Council of the written decision notice constituting the grant of the Planning Permission

3.4 in the event of a letting of the majority of the floorspace within the Tower it will undertake to commence as soon as reasonably practicable after the exchange or completion (as the case may be) of the documentation securing such letting a refurbishment of such part or parts of the Tower as is necessary in order to facilitate such letting

3.5 the Discount Retailer permitted to Occupy the Application Site pursuant to clause 3.1 of this Deed shall not provide the following at the Application Site:-

3.5.1 the sale of newspapers or magazines;

3.5.2 a fresh meat counter;

3.5.3 a fresh fish counter;

3.5.4 a bakery;

3.5.5 a delicatessen;

3.5.6 a pharmacy; or

3.5.7 lottery sales

4. PROVISO

For the avoidance of doubt none of the provisions of clause 3.1 or clause 3.5 of this Deed shall prohibit or restrict the sale of meat products, fish products, delicatessen items (including cheese and other savoury foods), bakery items and pharmaceutical products from general shelving, refrigerators or frozen or other display units within the Application Site.

IN WITNESS whereof the parties have duly executed this instrument as a Deed the day and year first before written

EXECUTED as a **DEED** (and delivered))
by **CANTIUM (DURRINGTON) LIMITED**)
acting by:-)

Director

Director

EXECUTED as a **DEED** (and delivered))
by **PAVF SECOND NOMINEES 10 LIMITED**)
acting by:-)

Director

Director