

Dated **1 JUNE** 2023

DANDARA LIVING HOLDINGS LIMITED

TESCO STORES LIMITED

MANCHESTER CITY COUNCIL

UNILATERAL UNDERTAKING

**Under section 106 Town and
Country Planning Act 1990
relating to land on the junction
of Parrs Wood Lane,
Manchester, M20 5AA
Planning Application
Reference 133746/FO/2022**

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From

- (1) **Dandara Living Holdings Limited** (Isle of Man Company Registration No. 129125C) of Dandara Group Head Office, Isle Of Man Business Park, Cooil Road, Braddan, IM2 2SA, Isle of Man (**Developer**);
- (2) **Tesco Stores Limited** (Company Registration No. 519500) of Tesco House, Shire Park, Kestrel Way, Welwyn Garden City, AL7 1GA (**Landowner**);

To

- (3) **Manchester City Council** of Manchester Town Hall, Albert Square, Manchester (**Council**).

Whereas

- (A) For the purposes of the 1990 Act, the Council is the local planning authority for the area within which the Site is located and the person who is entitled to enforce the obligations contained in this Undertaking.
- (B) The Council is also the local highway authority for the purposes of the 1980 Act, the education authority, the social care authority and the libraries authority for the area within which the Site is located.
- (C) The Landowner is the freehold owner of the Site.
- (D) The Developer has entered into an agreement with the Landowner to purchase the Site following the grant of the Planning Permission.
- (E) Pursuant to the Planning Application the Developer applied to the Council for full planning permission for the Development.
- (F) On 28 July 2022 the Council's planning committee resolved to refuse the Planning Application. The decision notice dated 2 August 2022 states the Planning Application was refused on grounds of:
 - 1) The proposal is for a high-density form of residential development outside of an identified district centre that does not address the housing needs of the area;
 - 2) The proposals fail to provide an adequate level of on-site car parking to serve the proposed residential units; and
 - 3) The applicant has failed to demonstrate that the proposed development would not give rise to unacceptable impacts to congestion on the highway network.

This decision has been appealed, and this Undertaking assists in addressing grounds 1, 2 and 3 for refusal.

- (G) The Landowner and the Developer are satisfied that the restrictions and provisions in this Undertaking are for the purposes of regulation 122 of the Community Infrastructure Levy Regulations 2010:

- (a) necessary to make the Development acceptable in planning terms;
 - (b) directly related to the Development; and
 - (c) fairly and reasonably related in scale and kind to the Development.
- (H) The Landowner and Developer has given this Undertaking with the intention that, subject to clauses 2.4 – 2.8 (exclusions from liability), the obligations contained in this Undertaking may be enforced by the Council against the Developer and Landowner and its successors in title.

It is agreed

1 Interpretation

- 1.1 In this Undertaking, the following words and expressions have the following meanings:

1980 Act means the Highways Act 1980

1990 Act means the Town and Country Planning Act 1990

Affordable Housing means housing provided by a Registered Provider for people who are unable to meet their housing needs in the local housing market because of the relationship between housing cost and income including Affordable Rented Units

Affordable Housing Unit means as defined in paragraph 3 of the Schedule.

Affordable Rented Units means Affordable Housing to be let at an affordable rent being up to 80% of the open market rental value (including any service charge) paid in Didsbury for the unit type, such rent to be in accordance with guidance issued by the Homes and Communities Agency (or any successor agency) from time to time and the National Planning Policy Framework 2021 (or equivalent policy and/or guidance).

Appeal means the planning appeal against the refusal of the Planning Application which has been allocated the reference number APP/ B4215/W/23/3314646

Commencement Date means the date on which the Development is Commenced

Commenced means the implementation of the Development in accordance with section 56(4) of the 1990 Act but for the purposes of this Undertaking the following shall not constitute implementation:

- (a) site investigations or surveys
- (b) site decontamination
- (c) the demolition of any existing buildings or structures or hardstanding on the Site
- (d) the clearance or regrading of the Site
- (e) works connected with infilling
- (f) construction or boundary fencing or hoardings
- (g) construction of temporary accesses and/or highway works
- (h) landscaping works

- (i) laying of sewers and other services
- (j) creation of site compounds and any noise attenuation works

Development means the erection of a 6-storey residential building (Use Class C3) comprising 75 no. apartments together with ground floor residential amenity space, cycle parking and car parking, as well as, landscaping, highways and other associated works, as more particularly described in the Planning Application

Housing Unit(s) means any dwelling to be erected on the Site pursuant to the Planning Permission including, for the avoidance of doubt, any flats, maisonettes or apartments

Interest means interest at the base lending rate of the National Westminster Bank plc from time to time

Market Units means the Housing Units which are not Affordable Housing Units

Mortgagee means any mortgagee or chargee of the Affordable Housing or any receiver or manager (including an administrative receiver (howsoever appointed) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator

New Permission means a planning permission authorising the redevelopment of the Site in a manner which would, if such redevelopment were completed, cause the Landowner and or Developer to be in breach of any or all of the provisions contained in this Undertaking

Occupation means the beneficial occupation of Housing Units other than occupation for the purposes of construction and fitting out, security, marketing, staff training or repair and **Occupied** shall be construed accordingly

Plan means the plan attached to this Undertaking showing for identification purposes only the Site marked 'Site Location Plan L(--)-900'

Planning Application means an application for planning permission for the Development more specifically described in the application made by the Developer to the Council and given reference number 133746/FO/2022

Planning Permission means planning permission granted pursuant to the Appeal for the Development and including any renewal, and/or the variation of the same (including its conditions)

Registered Provider means

- (a) any person, body or entity which is registered as a provider of social housing in accordance with section 80(2) and chapter 3 of the Housing and Regeneration Act 2008 and any body defined by subsequent legislation as having a similar role or
- (b) an approved development partner of the Homes and Communities Agency (or any successor agency) which is eligible to obtain grant funding or
- (c) any person, body or entity which is managing the BtR Units.

Site means part of the freehold property known as land at the junction of Parrs Wood Lane, Manchester, M20 5AA included in the land registered at HM Land Registry under the title number GM263533 and shown for identification edged red on the Plan

Working Day means any day from Monday to Friday inclusive which is not Christmas Day, Good Friday, a statutory holiday or a day between Christmas Day and New Year's Day

In this Undertaking:

- (a) the clause headings do not affect its interpretation;
- (b) unless otherwise indicated, references to clauses and schedules are to clauses of and schedules to this Undertaking and references in a schedule to a part or paragraph are to a part or paragraph of that schedule;
- (c) references to any statute or statutory provision include references to:
 - (i) all Acts of Parliament and all other legislation having legal effect in the United Kingdom as directly or indirectly amended, consolidated, extended, replaced or re-enacted by any subsequent legislation; and
 - (ii) any orders, regulations, instruments or other subordinate legislation made under that statute or statutory provision;
- (d) references to the Site include any part of it;
- (e) references to any party in this Undertaking include the successors in title of that party. In addition, references to the Council include any successor local planning authority exercising planning powers under the 1990 Act and the 1980 Act;
- (f) **including** means "including, without limitation";
- (g) any covenant by the Landowner and Developer not to do any act or thing includes a covenant not to knowingly permit or allow the doing of that act or thing;
- (h) where two or more people form a party to this Undertaking, the obligations they undertake may be enforced against them all jointly or against each of them individually

2 Effect of this Undertaking

- 2.1 This Undertaking is made pursuant to section 106 of the 1990 Act and to the extent that they fall within the terms of section 106 of the 1990 Act, the obligations contained in this Undertaking are planning obligations for the purposes of section 106 of the 1990 Act and are enforceable by the Council and are binding on the Site.
- 2.2 To the extent that any of the obligations contained in this Undertaking are not planning obligations within the meaning of the 1990 Act, they are entered into pursuant to the powers contained in section 111 Local Government Act 1972, section 1 Localism Act 2011 and all other enabling powers.
- 2.3 Nothing in this Undertaking prohibits or limits the right to develop any part of the Site in accordance with a planning permission, other than the Planning Permission, granted after the date of this Undertaking, whether or not pursuant to an appeal.

- 2.4 The obligations in this Undertaking will not be enforceable against a statutory undertaker carrying out its statutory functions including after any transfer of the statutory apparatus, and any land upon or in which the statutory apparatus is situated, by the Landowner to that statutory undertaker.
- 2.5 The obligations in this Undertaking will not be enforceable against any persons who purchase or occupy a completed Housing Unit or their mortgagee, save for paragraph 2 of the Schedule (affordable housing provisions) to which such individuals are bound in so far as the obligations relate to the relevant individual's Housing Unit.
- 2.6 The obligations in this Undertaking will not be enforceable against any party acquiring an interest in the Site solely by way of registered legal charge or mortgage, including, for the avoidance of doubt, a Mortgagee, unless that party takes possession of the Site, in which case they will be bound (as an owner) by the obligations of this Undertaking which apply in relation to any parts of the Site over which it has a legal charge but not further or otherwise.
- 2.7 No person will be liable for any breach of the terms of this Undertaking relating to a part of the Site over which they have no legal interest or any breach occurring after the date on which they part with their interest in the Site or their interest in the part of the Site in respect of which such breach occurs, but they will remain liable for any breaches of this Undertaking occurring before that date. Neither the reservation of any rights or the inclusion of any covenants or restrictions over the Site in any transfer of the Site will constitute an interest for the purposes of this clause 2.7, and, for the avoidance of doubt, Registered Providers shall only be liable for the terms of this Undertaking relating to the Affordable Housing, set out in paragraph 3 of the Schedule.
- 2.8 If the Planning Permission is commenced by a party other than Dandara Living Holdings Limited, or on behalf of Dandara Living Holdings Limited, then Dandara Living Holdings Limited shall be released from all obligations, rights of duties to the Council under the terms of this Undertaking in its capacity as Developer, provided that, in the event that Dandara Living Holdings Limited acquires or owns an interest in any part of the Site, Dandara Living Holdings Limited shall continue to be bound by all obligations, rights and duties to the Council, under the terms of this Undertaking in its capacity as the owner of such interest whilst it retains such an interest.
- 2.9 Save for clauses 2.4 – 2.8 (exclusions of liability), it is not intended that this Undertaking will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.
- 2.10 If it is adjudged by the Planning Inspectorate, any Court or other tribunal of competent jurisdiction that any obligation within this Undertaking is not compliant with the Community Infrastructure Levy Regulations 2010 then any clauses relating to such obligations shall cease to have legal effect and that part of the Undertaking shall be construed as severable from the remainder of this Undertaking to the effect that the Undertaking shall be construed and be enforceable as if the said part was never included in this Undertaking.

3 Commencement Date

The obligations contained in clause 4 and the schedule referred to in that clause do not come into effect until the implementation of the Development in accordance with section 56(4) of the 1990 Act, the remainder of this Undertaking shall take effect immediately on the date of this Undertaking.

4 Obligations of the Landowner

The Landowner and Developer covenants to the Council to comply with the obligations set out in the Schedule.

5 Termination of this Undertaking

- 5.1 Subject to clause 5.2 this Undertaking will come to an end if the Planning Permission is quashed, expires, is revoked or otherwise withdrawn at any time or the Planning Permission is not granted pursuant to the Appeal so as to render this Undertaking or any part of it irrelevant, impractical or unviable; or
- 5.2 If the Council agrees following an application under section 73 or S73A of the 1990 Act to the variation or release of any condition contained in the Planning Permission or if a condition is varied or released following an appeal under section 78 of the 1990 Act, it is intended by the Landowner and Developer that the covenants or provisions of this Undertaking shall bind the varied permission and will apply in equal terms to the new planning permission provided that such covenants or provisions are deemed appropriate to the varied permission and unless the Council in determining the application for the new planning permission indicate that consequential amendments are required to this Undertaking to reflect the impact of the section 73 or section 73A application, when a separate deed under section 106 of the 1990 Act will be required to secure relevant planning obligations relating to the new planning permission.

6 Notices

- 6.1 Any notice, approval, consent, certificate, direction, authority, agreement, action, expression of satisfaction or other similar communication to be given under this Undertaking must be in writing SAVE THAT the Council, the Developer and or the Landowner may by written notice notify each other of an alternative address for the service of subsequent notices or other written communications in which case those details shall be substituted for the details provided below:

The Council: Manchester City Council

Address: The Head of Planning Services
Manchester Town Hall
Albert Square
Manchester

Reference 133746/FO/2022 Parrs Wood

The Landowner: Tesco Stores Limited

Address: Tesco House
Shire Park
Kestrel Way
Welwyn Garden City
AL7 1GA

Reference 133746/FO/2022 Parrs Wood

The Developer: Joanne Eisen

Address: Isle of Man Business Park
Cooil Road
Braddan
Isle of Man
IM2 2SA

Reference 133746/FO/2022 Parrs Wood

6.2 Any notice or request by the Developer and/or Landowner for approval, consent, certificate, direction, authority, agreement, action, expression of satisfaction, or other similar communication required pursuant to this Undertaking shall cite the clause or paragraph of this Undertaking to which such notice or request relates.

6.3 This clause does not apply to the service of any proceedings or other documents in any legal action or where applicable any arbitration or other method of dispute resolution.

7 Interest

If any payment due under this Undertaking is paid late, Interest will be payable from the date payment is due to the date of payment.

8 Council's costs

The Developer shall pay to the Council within 10 Working Days of demand the Council's reasonable and proper legal costs together with all disbursements incurred in connection with the negotiation, completion and registration of this Undertaking.

9 Jurisdiction

9.1 This Undertaking is to be governed by and interpreted in accordance with the law of England.

9.2 The courts of England and Wales are to have jurisdiction in relation to any disputes between the parties arising out of or related to this Undertaking.

10 Execution

The Landowner and the Developer have executed this Undertaking as a deed, and it is delivered on the date set out above.

The Schedule
Landowner and Developer's Obligations

The Landowner and the Developer covenants with the Council that it shall comply with the obligations set out below:

1 Notices

To provide the Council with no less than ten (10) Working Days prior notice of:

- (a) the intended Commencement Date and the Developer and Landowner shall subsequently notify the Council promptly (and in any event within five (5) Working Days) of the actual Commencement Date;
- (b) the intended date of first Occupation; and
- (c) the intended date of Occupation of the 50th Housing Unit.

2 Affordable Housing

- 2.1 To provide 15 Housing Units (being 20% of the total within the Development) as Affordable Housing ("**Affordable Housing Units**").
- 2.2 The size and tenure mix of the Affordable Housing Units will be as below, unless otherwise agreed in writing with the Council:
 - (a) 5 one-bedroom apartments to be provided as Affordable Rented Units;
 - (b) 8 two-bedroom apartments to be provided as Affordable Rented Units; and
 - (c) 2 three-bedroom apartments to be provided as Affordable Rented Units.
- 2.3 Not to cause or permit the Occupation of more than 80% of the Market Units until all the Affordable Housing Units have been completed and are ready for Occupation.
- 2.4 Save in circumstances where the Landowner is also the Registered Provider meaning no freehold transfer or leasehold grant is required, not to cause or permit the Occupation of more than 80% of the Market Units, until a freehold interest, or a leasehold interest of at least 125 years of the Affordable Housing Units on a full repairing and insuring basis, has been transferred or granted to a Registered Provider.
- 2.5 The Affordable Housing Units may not be Occupied, otherwise than by a person who is in need of Affordable Housing.
- 2.6 The restrictions affecting the Affordable Housing Units in this Undertaking shall not apply to any owner of an Affordable Housing Unit (or their successors in title) who has exercised a right to buy or right to acquire their unit.
- 2.7 The affordable housing provisions in paragraph 2 of this Schedule shall not be binding on a Mortgagee of the whole or any part of the Affordable Housing Units or any persons or bodies deriving title through such Mortgagee provided that:
 - (a) such Mortgagee shall first give written notice to the Council of its intention to dispose of the Affordable Housing Unit(s) and shall have used reasonable endeavours over a period of 3 months from the date of the written notice, to complete a disposal of the

Affordable Housing Unit(s) to a Registered Provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and

- (b) if such disposal has not completed within the 3-month period, the Mortgagee, shall be entitled to dispose of the Affordable Housing Unit(s) free from the affordable housing restrictions in paragraph 2 of this Schedule of this Undertaking which provisions shall determine absolutely.

3 Car Club and Highway works

3.1 In this paragraph the following definitions apply:

Car Club means a car hire scheme run in the vicinity of the Development by Enterprise Car Club or an equivalent organisation **Car Parking Management Plan** means a plan setting out marketing and management principles relating to the car parking spaces within the Development for the Housing Units which shall incorporate the following requirements, unless otherwise agreed in writing with the Council and for the avoidance of doubt the Car Parking Management Plan shall only apply to the spaces for the Housing Units in the Development and shall not apply to the car parking for the adjacent Tesco superstore:

- (a) 1 space is to be retained for the Car Club;
- (b) 2 spaces are to be allocated for visitor parking, such spaces to be booked in advance by residents who are expecting visitors;
- (c) the remaining spaces will be allocated on a first come first serve basis to residents of the Housing Units that have confirmed they require a car parking space; and
- (d) marketing materials for the Development will be clear that parking on the Site is restricted to only 33 private car parking spaces which are allocated to residents on a first come first serve basis;
- (e) if there are multiple, equally suitable, applicants for a Housing Unit, applicants that do not require a parking space will be prioritised.

On-site Highway Works means, the following works as shown on the On-site Highway Works Plans, unless otherwise agreed with the Council in writing:

- (a) Continuous 2m wide footways along the Site access road to provide access to the Development and improved access to the existing Tesco superstore;
- (b) An uncontrolled pedestrian crossing, with dropped kerbs and tactile paving;
- (c) Belisha beacons to be added to the existing Zebra crossing; and
- (d) Existing dropped kerbs to be extended and tactile paving to be improved at the existing Zebra crossing.

On-site Highway Works Plans means Curtins Drawing Ref. 076118-CUR-XX-00-D-TP-75001-P08 attached as Appendix 3 or any variations of the same agreed in writing with the Council

TRO Contribution means the sum of ten thousand pounds (£10,000) payable by the Landowner or the Developer to the Council to be spent on a Traffic Regulation Order.

Traffic Regulation Order means an order made by the Council under section 2 of the Road Traffic Regulation Act 1984 to promote an appropriate order within 400m of the Development

Highway Works

- 3.2 The Landowner and Developer covenant to carry out the On-site Highway Works as part of the Development such works to be practically completed prior to first Occupation of the Housing Units.

Car Club

- 3.3 The Landowner or Developer will provide (i) free membership to a Car Club for a period of one year; and (ii) £25 credit for car hire drive time, for the first occupier of each Housing Unit.
- 3.4 The Landowner or Developer will provide a free public transport voucher of a value of £90 to the first occupier of each Housing Unit.

Car Parking Management Plan

- 3.5 The Landowner or Developer will provide to the Council a Car Parking Management Plan for the Council's approval prior to the marketing of the Development.
- 3.6 The Landowner and Developer will comply with the terms of the Car Parking Management Plan for the lifetime of the Development.

TRO Contribution

- 3.7 The Landowner or Developer will pay the TRO Contribution to the Council in the event that the Council shall serve notice of their intention to make a Traffic Regulation Order within 5 years from the Commencement Date.

In witness whereof the Landowner and Developer has executed this Undertaking as a deed on the day and year first before written

Executed as a deed by
Dandara Living Holdings Limited
acting by two directors or by a director and its
secretary

) [Redacted]
) Director
) [Redacted]
)
) Director/Secretary

Executed as a deed by *Maia Vinnicambe*
as attorney for **TESCO STORES LIMITED**
under a power of attorney in the presence of:

[Redacted]

Attorney for
TESCO STORES LIMITED

Name of witness

[Redacted]

Signature of witness:

[Signature]

Address:

[Redacted]

Occupation:

Joint Venture Partner

Appendix 1 - Site Plan



hodder+partners
SGI Studios
1 Kelsco Place
Manchester M15 4LE

t: +44(0)161 832 9842
e: mail@hodderandpartners.com
w: www.hodderandpartners.com

DO NOT SCALE
Work to annotated dimensions only.
Read drawing in conjunction with relevant specification,
Structural Engineers' and Services Engineers' drawings.
Confirm all dimensions before commencement of any
work on site or fabrication.

revisions + notes:



client: DANDARA	date: SEPTEMBER 2021	
project: TESCO PARRS WOOD, DIDSBURY	scale: 1:1250 at A3	drawn by: NW
title: Site Location Plan	drawing number: L(—)900	
status: PLANNING	job number: 0629	revision: —

hodder+partners

Appendix 2 – On-site Highway Works Plans



GENERAL NOTES:

1. THIS DRAWING IS TO BE READ IN CONJUNCTION WITH ALL RELEVANT ARCHITECTS AND ENGINEERS DRAWINGS AND SPECIFICATIONS.
2. DO NOT SCALE THIS DRAWING. ANY AMBIGUITIES, OMISSIONS AND ERRORS ON DRAWINGS SHALL BE BROUGHT TO THE ENGINEERS ATTENTION IMMEDIATELY. ALL DIMENSIONS MUST BE CHECKED / VERIFIED ON SITE.
3. ALL DIMENSIONS ARE IN METRES UNLESS NOTED OTHERWISE.
4. FOR GENERAL NOTES REFER TO DRAWING.
5. THE CONTENT OF THIS DRAWING IS FOR INDICATIVE INFORMATION ONLY AND NOT SUITABLE FOR CONSTRUCTION PURPOSES.
6. BASED ON HODDER & PARTNERS' LAYOUT: 'L(-)000_Ground Floor Plan-P1'.
7. LANDSCAPE LAYOUT BASED ON LAYER STUDIOS' LAYOUT: '262-LYR-XX-ZZ-DWG-L-1001'.
8. BACKGROUND BASED ON LAND SURVEY PROVIDED BY HODDER & PARTNERS.

KEY:	—	PLANNING BOUNDARY
	—	PROPOSED RAISED KERB
	---	PROPOSED ROAD MARKINGS
	---	INDICATIVE LANE CENTRELINES
	---	PROPOSED VISIBILITY SPLAYS (20mph)
	---	PROPOSED VISIBILITY SPLAYS (30mph)
	---	PROPOSED FORWARD VISIBILITY (10mph)
		PUBLIC HIGHWAY EXTENTS (FROM PUBLIC RECORDS)

P08	Tactile paving updated	17/05/22	DD	CP
P07	Access arrangement updated following Stage 1 RSA	13/05/22	DD	CP
P06	Layout updated	05/05/22	DD	CP
P05	Layout updated	26/04/22	DD	CP
P04	Layout updated	01/04/22	DD	CP
P03	Layout updated	08/12/21	DD	DD
P02	Layout updated	25/11/21	DD	CP

Rev:	Description:	Date:	By:	Chkd:
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Civils & Structures • Transport Planning • Environmental • Infrastructure • Geotechnical • Conservation & Heritage • Principal Designer
Birmingham • Bristol • Cambridge • Cardiff • Douglas • Dublin • Edinburgh • Glasgow • Harrogate • Leeds • Liverpool • London • Manchester • Nottingham

Status: [REDACTED]

FOR PLANNING

Project: [REDACTED]

TESCO PARRS WOOD
MANCHESTER

Orig Title: [REDACTED]

PROPOSED ACCESS ARRANGEMENT

Size:	Date:	Drawn By:	Designed By:	Checked By:			
A1	02/11/21	DD	DD	CP			
Scale: 1:250							
Project No:	Originator:	Volume:	Level:	Type:	Role:	Category / Number:	Rev:

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