

Certificate of Lawful Existing Use or Development

Dear Sir/Madam,

Application for Certificate of Lawfulness of Existing Use or Development (CLEUD)

Land at St Andrews Square, Manchester M1 2NS

On behalf of the Applicant, Eden Planning submits this application to Manchester City Council for a Certificate of Lawfulness for an Existing Use or Development (CLEUD) under Section 191 (1) of the Town and Country Planning Act (as amended) and Section 39 of the Development Management Procedure Order 2015.

The application relates to land at Travis Street/St Andrews Square, Manchester M1 2NS. A Site Location Plan supports this application.

Background

With an area of approximately 0.25ha, evidence is provided within this application to demonstrate that, on the balance of probability, the land has been used for the parking and outdoor storage of vehicles (a Sui Generis use) continuously without cessation over the last ten years. The planning history and evidence submitted confirms that the site has been used actively for car parking (in part) since much earlier, with parking formerly serving a warehouse unit that occupied the central portion of the site from 1967. On demolition of the warehouse in 2009, we understand the whole site was used for car and vehicle parking.

Whilst evidence confirms that the site edged red has been used for vehicle parking continuously for in excess of ten years, we are aware that containers were temporarily stored on part of the site between 2021 and 2022. This means that vehicles could not have parked on these parts of the site during this time. We recognise that this means there was a break in the ten year use of these particular parts of the site. We have therefore identified these on the site plan, and shaded them blue to essentially exclude these parts of the site from the application.

Application Submission

The application is accompanied by the following plans and documents:

- Application forms
- Site Location/ Block Plan
- Two Statutory Declarations
- Evidence (aerial photographs and photographs)
- Reference to the site's planning history
- 1967 Deed confirming parking on the site from this date.



The evidence presented demonstrates that the use of the site for vehicle parking as identified on Plan A has been continuous for in excess of ten years to satisfy the requirements of Section 191 of the Town and Country Planning Act (TCPA) 1990.

Site and Surroundings

The site is identified on the submitted Site Location Plan edged red. It forms a rectangular parcel bounded by Travis St/Adair Street to the north and St Andrew's Square to the east, south and St Andrew's Street to the west.

Planning History

The planning history of the site is summarised at Appendix 1.

Prior to the records summarised, we understand that the site was developed to provide an industrial warehouse on the central section (on the footprint of the former church building) with vehicle parking on the area around this. This was confirmed in a Deed (dated 26th June 1967, Appendix 4) between the landowner and lessee which specifies a, *"right and liberty at their own entire expense to lay out the green land for the purpose of parking of cars lorries and vans in connection with their business carried on in buildings on the pink land and to provide suitable access ways to the green land from adjoining highways all works to be carried out in accordance with plans and specifications lodged with and approved by the said Court and the requirements of the Corporation as Planning Authority"* (Deed, Page 5).

Planning permission for an extension to the former haulage warehouse unit (which was formerly centrally located on the site) is listed on the Council's website dating back to 1981 (ref F15563). No plans are available to view. Car, lorry and bus parking around the warehouse unit formed part of this use (corroborated by other evidence submitted with this application).

Two more recent permissions are relevant, both relating to temporary parking uses. The first was approved for a temporary period in 2010 (ref 093717/FO/2010/C2), the second, for which we were involved and acted as agent, was temporarily approved in 2018 (ref 121209/FO/2018).

Neither of these permissions were implemented. This is evidenced on site and confirmed by the lack of any discharge of condition applications. Both permissions have since lapsed.

We understand that the site has not been subject to any formal enforcement action.

The Case for Lawful Use

The evidence available and submitted with this application demonstrates that the site has operated as a car and vehicle parking use for in excess of ten years. Historically it was used during the working week, more recently the car park is operated twenty four hours a day, seven days a week. This is corroborated by:

- 1) Sworn affidavits prepared by Mr M Currie and Mr D Berry.
- 2) The planning history of the site (Appendix 1).
- 3) Aerial/'street view' photographs of the site since 2009 from Google Earth which show vehicles parking on the site over the last ten years (Appendix 2). Where possible we have identified the day of the photographs to demonstrate when these were taken at the weekend rather than a week day when the car park was open.



- 4) Site visit photographs taken 8th February 2019 (Appendix 3).
- 5) Deed (1967) relating to the use of the former churchyard as a car park (Appendix 4).

Conclusion

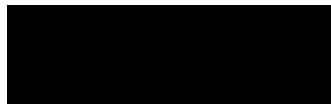
In conclusion, the evidence demonstrates that on the balance of probability, the use of the site for car and vehicle parking has continued in excess of ten years without cessation and is now lawful as set out within Section 191 of the TCPA 1990.

Whilst the temporary presence of containers on part of the site means that these limited areas have not been occupied by vehicle parking, they are clearly identified on Plan A to enable their exclusion from any certificate.

We trust the summary above and associated evidence is acceptable and clear to enable a positive CLEUD to be issued.

Should you require any further information or clarification, please contact us.

Yours faithfully



Mandy Lewis

DIRECTOR

Enc.



Appendix 1: Planning History

Application Reference	Description	Decision
F15563	Extension of existing transit warehouse and vehicle maintenance bay.	Approved 22 Apr 1981
093717/FO/2010/C2	Change of use, for 2 year period, to temporary car park with associated improvements to the site including erection of perimeter fencing, repairs to existing low level boundary wall and landscaping of Adair Street frontage	Temporarily Approved 29th November 2010
121209/FO/2018	Use as temporary car park for a period of 2 years and 3 months with associated improvements to the site including resurfacing of car parking area (over existing hardstanding), replacement 2.1 metre high gates, replacement 2.1 metre high fencing, new lighting and electric vehicle charging points.	Temporarily Approved 30th September 2019

Appendix 2: Aerial Photographs since 2009 (Google Earth)



Date of Image: Tuesday 2nd June 2009

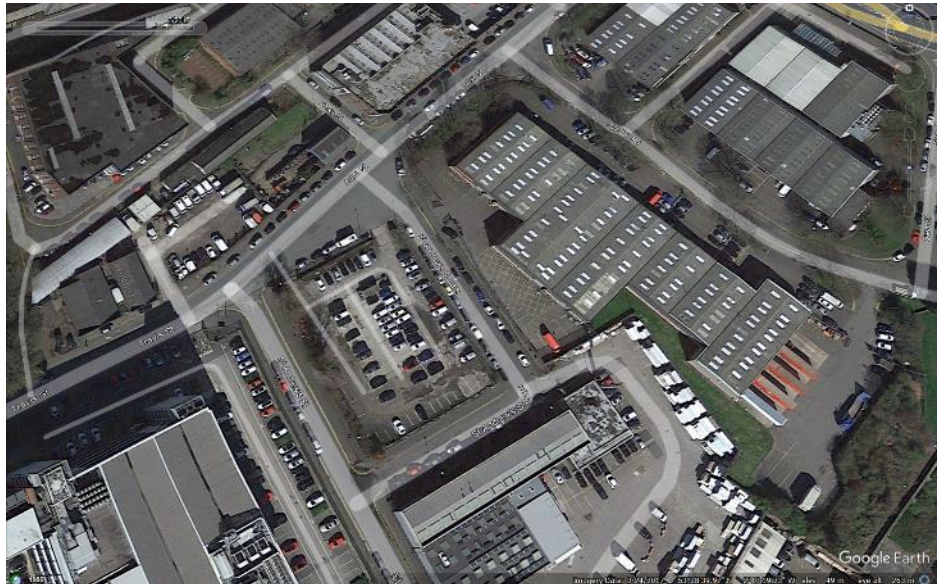


Date of Image: Saturday 6th April 2013 (note the car park was closed on Saturdays at this point in time)

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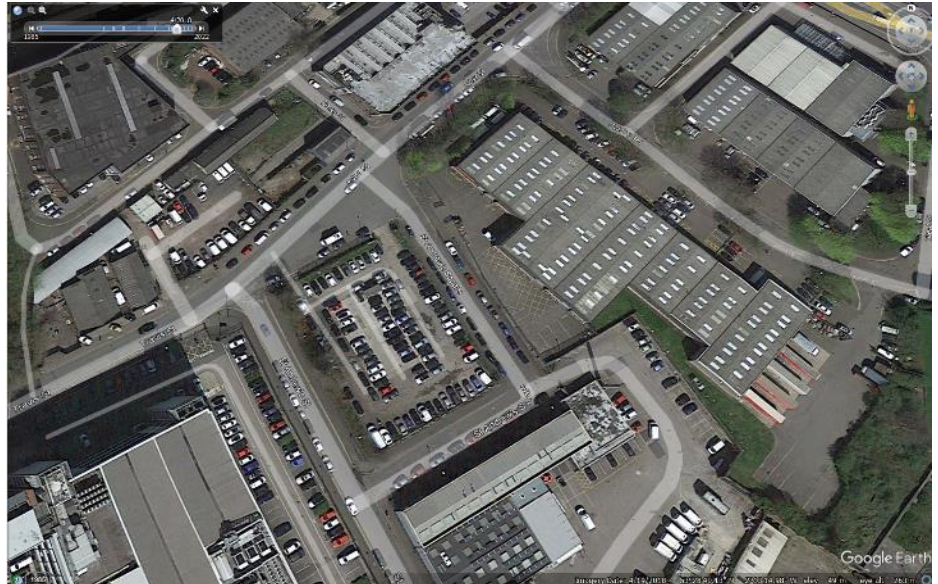


Date of Image: Saturday 17th September 2016 (note the car park was closed on Saturdays at this point in time).

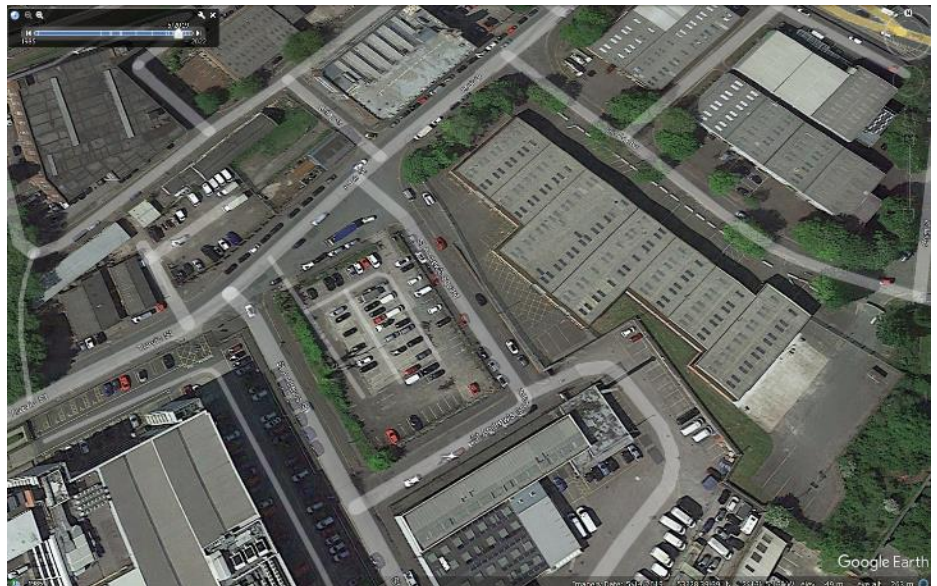


Date of Image: Friday 24th March 2017

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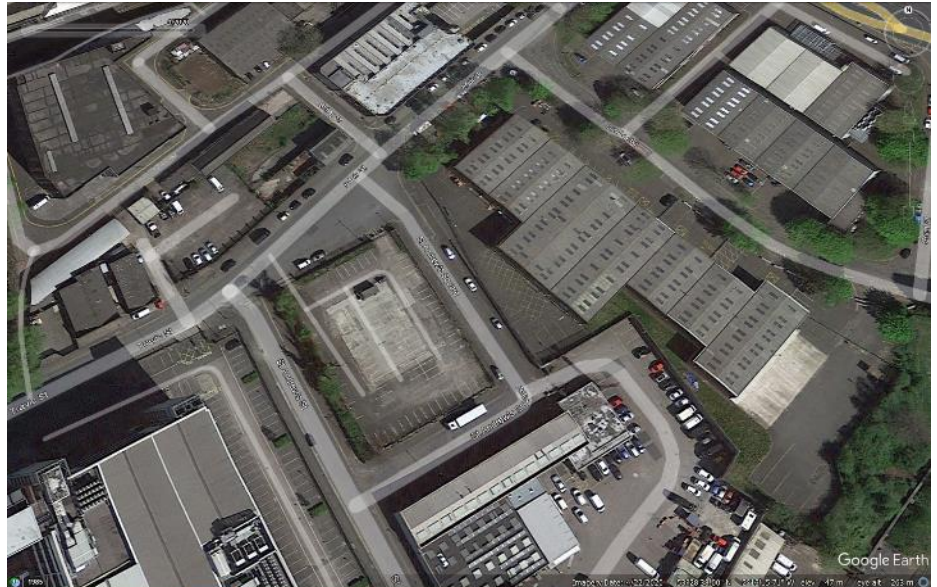


Date of Image: Thursday 19th April 2018

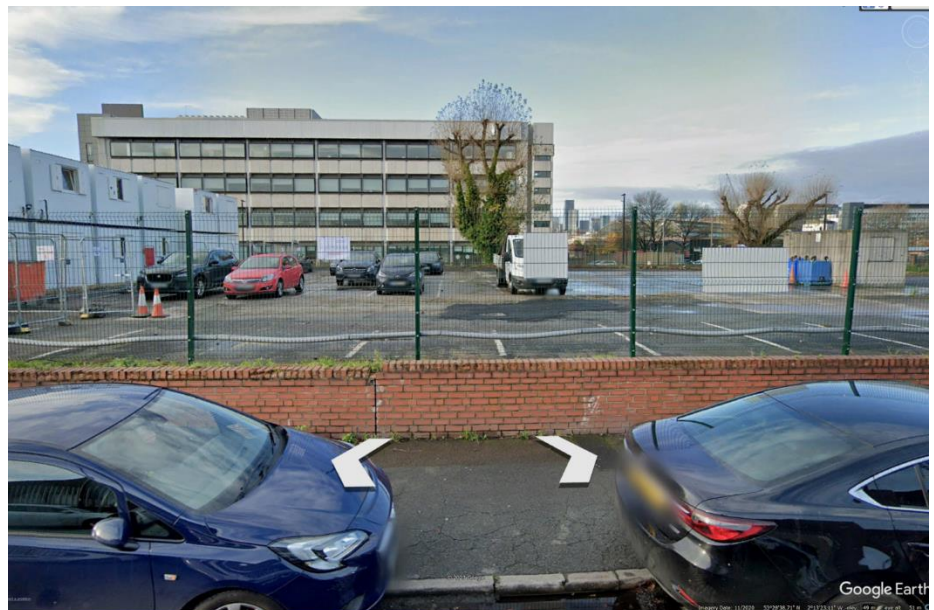


Date of Image: Tuesday 14th May 2019

EDEN

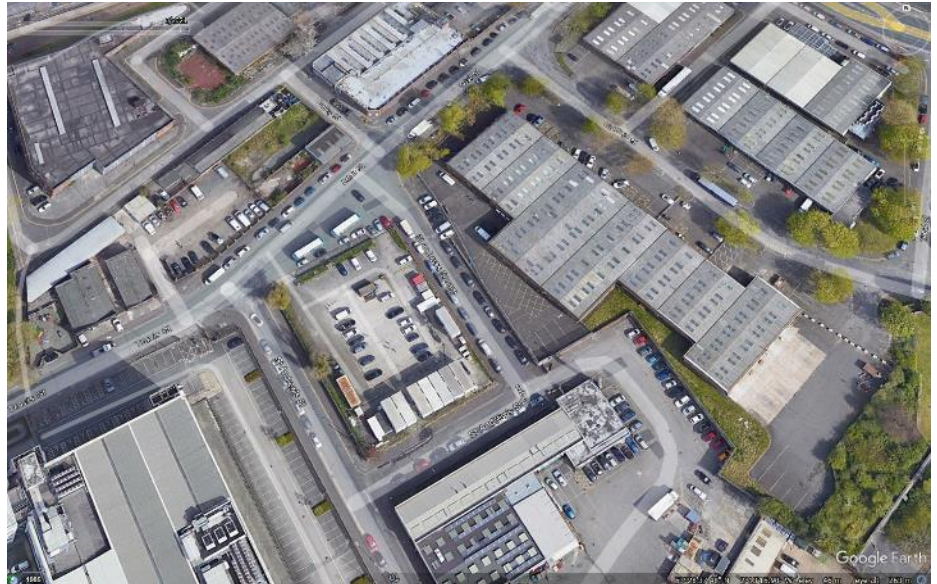


Date of Image: Wednesday 22nd April 2020 (Covid lockdown meant people were directed to work from home, car parking was still available on site if needed).

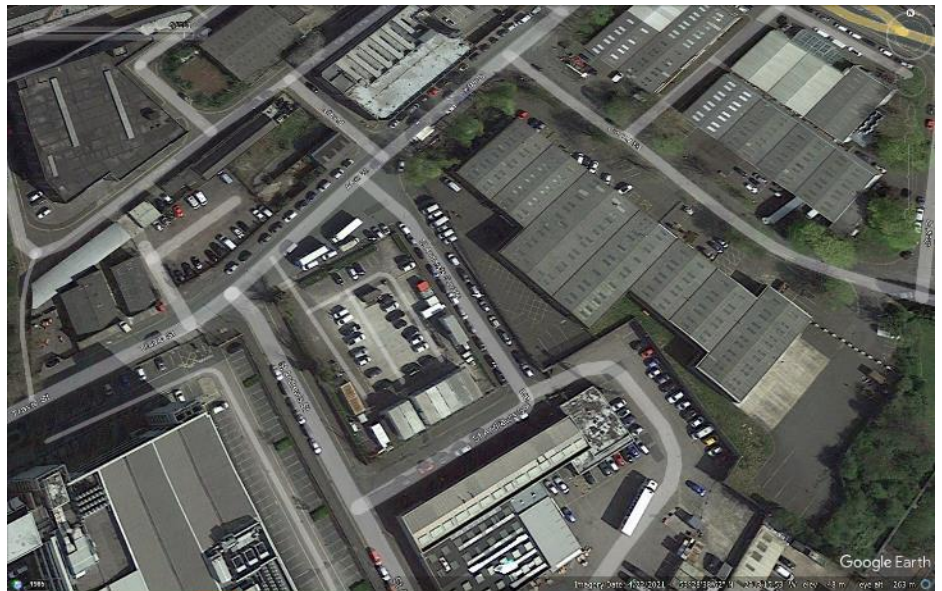


Date of Image: (no specific date available) November 2020

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Date of Image: (no specific date available) 2021



Date of Image: Wednesday 22nd April 2021

E D E N



Date of Image: (no specific date available) August 2021



Date of Image: (no specific date available) September 2021

EDEN



Date of Image: Monday 31st January 2022



Cert

orig

DANIEL WALLIS FOYSTER

St. Peter Street Manchester M2 7BB

Dated 5/6/2000

DATED

20/1/1967

1967

THE RECTORY, ST. ANDREW'S PAROCHIAL CHURCH
NORTHALL, ST. ANDREW'S PARISH OF ALL SOULS WITH
ST. ANDREW'S CHURCH, MANCHESTER

and

THE MANCHESTER CORPORATION

to

MESRS. W. H. CURRIE (trading as Messrs.
H. Currie & Son)

DEED

relating to the use as a car park (and for
auxiliary thereto) of the Churchyard
surrounding the site of the former Church of
St. Andrew, Northall, Manchester

BOOTE, EGGAR & CO.,
Manchester 2.



This DEED is made the twenty-sixth
day of June One thousand nine
hundred and sixty seven BETWEEN THE REVEREND OLIVER
JOHN HORROCKS of All Souls Rectory Every Street
Manchester - Clerk in Holy Orders (hereinafter called
"The Rector") of the first part HENRY BAIRSTO of 12
Tutbury Street Manchester 4 and ROBERT BRADBURY of 6
Harding Street Manchester 4 (hereinafter called "the
Churchwardens") of the second part THE PAROCHIAL CHURCH
COUNCIL OF THE UNITED PARISH OF ALL SOULS ANCOATS
(FORMERLY THE UNITED PARISH OF ALL SOULS WITH ST. ANDREW
ANCOATS) IN THE DIOCESE OF MANCHESTER (hereinafter
called "the Council") of the third part THE LORD MAYOR
ALDERMEN AND CITIZENS OF THE CITY OF MANCHESTER
(hereinafter called "the Corporation") of the fourth part
and NORMAN CURRIE and HERBERT CURRIE who are in
partnership as Carriers under the firm name or style of
H. Currie & Son at 39 Bloom Street Manchester 1
(hereinafter called "the Grantees") of the fifth part.

WITNESSETH:-

(A) In this Deed the following expressions have the
following meanings that is to say:-

"the pink land" and "the green land" mean respectively
the pieces of land so coloured on the plan annexed
hereto

"the Parochial Authorities" means the parties to this Deed of the first three parts when referred to collectively

"the Commissioners" means the Church Commissioners for England

(B) THE pink land was formerly occupied by the Parish Church of the Parish of St. Andrew Ancoats (now demolished as herein appears) and the green land is the Churchyard (long since closed as is next recited) which surrounded the said Church until it was taken down

(C) BY an Order in Council dated the Twenty first day of May One thousand eight hundred and fifty five and published in the London Gazette on the Twenty fifth day of May One thousand eight hundred and fifty five it was ordered that burials be forthwith discontinued in the green land

(D) BY a further Order in Council dated the Third day of August One thousand nine hundred and sixty and published in the London Gazette on the Fifth day of August One thousand nine hundred and sixty affirming a Scheme made by the Commissioners under the Union of Benefices Measures 1923 to 1952 it was (among other things) provided that -

(i) the benefices and parishes of All Souls Ancoats and St. Andrew Ancoats be permanently united so as to form a single parish and

benefice;

(ii) the Church of the Parish of All Souls Ancoats should be the Parish Church of the new United Parish; and

(iii) the Church of St. Andrew Ancoats be taken down and the site sold by the Commissioners

(E) PURSUANT to this said scheme the Church of St.

Andrew Ancoats was taken down and by a Contract

dated the thirteenth day of January One thousand

nine hundred and sixty six the pink land was

agreed to be sold to the Grantees by the

Commissioners for the sum of Four thousand five

hundred pounds conditionally (inter alia) upon

the Grantees obtaining a faculty from the

Consistory Court of the Diocese of Manchester

which would result in the Grantees being enabled

to use the green land for the purpose of parking

lorries and vans and for the purpose of access to

and egress from the pink land by a date extended

in the event to the first day of June One

thousand nine hundred and sixty seven.

(F) THE Rector is the Rector of the United Parish of All Souls Ancoats and accordingly the freehold of the green land is vested in him and the Churchwardens are the present Churchwardens of the said Parish.

(G) THE Functions and liabilities with respect to the

maintenance of the green land and the repair of the walls and fences thereof which would otherwise be the obligation of the Council by the joint effect of Section 18 of the Burial Act 1855 and Section 4 of the Parochial Church Councils (Powers) Measure 1956 have been duly transferred to the Corporation by virtue of the provisions of Section 269(2) of the Local Government Act 1933.

(H) BY a Faculty or Licence dated the Sixteenth day of May One thousand nine hundred and sixty seven and issuing out of the Consistory Court of the Diocese of Manchester the Parochial Authorities the Corporation and the Grantees were authorised to execute this Deed and the Grantees were authorised to do all such acts as they hereinafter covenant or are permitted to do

(I) THE Parochial Authorities and the Corporation have agreed with the Grantees to enter into this Deed in consideration of the payments to be made by the Grantees and of the covenants on the part of the Grantees hereinafter contained.

NOW THIS DEED WITNESSES and it is hereby AGREED AND DECLARED as follows:-

1. THIS Deed is made in pursuance of the said agreement and in consideration of the half yearly payments to be made by the Grantees as is hereinafter provided and of the covenants on the part of the Grantees hereinafter

contained and is executed in exercise of the power in that behalf conferred by the said Faculty or Licence and all or any other relevant powers enabling the parties hereto in this behalf.

THE Rector with the consent of the Churchwardens and of the Council (testified by their execution of this Deed) hereby agrees with the Grantees that the Grantees may have the following rights easements and liberties over and in respect of the green land:-

- (A) Right and liberty at their own entire expense to lay out the green land for the purpose of parking of cars lorries and vans in connection with their business carried on in buildings on the pink land and to provide suitable access ways to the green land from adjoining highways all works to be carried out in accordance with plans and specifications lodged with and approved by the said Court and the requirements of the Corporation as Planning Authority;
- (B) Right and liberty to sink into the ground at a point on the north side of the green land indicated on the said plans or one of them and to maintain therein a diesel oil storage tank with an outlet for pump or gravity feed and ancillary equipment and piping for use by the Grantees in connection with the purposes aforesaid;
- (C) Free and exclusive right and liberty at all times

for themselves and all other persons with their sole permission for all purposes whatsoever concurrent with the use and enjoyment of the pink land or any part or parts thereof (howsoever used or occupied) by night and day and with or without vehicles of any description to pass and repass over and upon the green land or any part or parts thereof to and from the pink land or from and to any adjoining highway to which access may be had as aforesaid as they may from time to time require and to stand or permit to stand at all times any such vehicle as aforesaid and any goods merchandise materials and equipment upon all or any part of the green land.

3. THE Grantees hereby covenant with the Parochial Authorities and as a separate covenant with each of them as follows that is to say:-

(A) the Grantees shall pay to the Council the sum of £50 per half year to be paid on the Twenty fifth day of March and the Twenty ninth day of September in each year the first payment to be made on the Twenty ninth day of September One thousand nine hundred and sixty seven and to be a proportionate part of such instalment calculated from the date hereof;

(B) the Grantees will from time to time and at all

and will maintain the said stone and inscription in good order and condition;

(F) the Grantees will indemnify the Parochial Authorities and each of them against all actions proceedings costs damages claims demands or liabilities for or in respect of any act or thing which they are hereby permitted or obliged to do.

(G) if at any time the Grantees shall cease to carry on business on the green land in their own name or if such business is carried on under the title of any limited company if they shall cease to have controlling interest in such limited company then they shall forthwith give notice of such fact to the other parties to this Deed and to the Registrar of the Consistory Court of the Diocese of Manchester.

4. THE Grantees further covenant with the Parochial Authorities and the Corporation and as a separate covenant with each of the parties hereto of the first four parts as follows that is to say:-

(A) the Grantees will at all times well and substantially repair cleanse maintain amend and keep in good condition as a car park the green land to the satisfaction of the Parochial Authorities or their Surveyor and the Corporation

times hereafter indemnify the Parochial Authorities and each of them against all rates taxes duties charges assessments and outgoings whatsoever (whether parliamentary parochial local or of any other description) which are now or may at any time hereafter be assessed charged or imposed upon or payable in respect of the green land or on the owner or occupier in respect thereof and against all liability whatsoever and costs thereof;

(C) the Grantees will from time to time pay all costs charges and expenses incurred by the Parochial Authorities or any of them in abating a nuisance and executing all such works as may be necessary for abating a nuisance in obedience to a notice served by a Local Authority;

(D) no act or thing which shall or may be or become a nuisance damage annoyance or inconvenience to the occupiers of any of the adjoining or neighbouring buildings or the neighbourhood shall be done upon the green land or any part thereof;

(E) the Grantees shall cause to be placed in a suitable position to be approved by the Rector on a boundary wall of the green land a suitable slab of stone legibly inscribed with words to indicate that the Churchyard forms the Churchyard of the Church of the Parish of St. Andrew Ancoats

or their Director of Parks and will keep the Corporation indemnified against all liability arising out of the maintenance of the green land in decent order or out of the necessary repair of the walls and fences thereof, And on determination by any party to this Deed or by an Order of the Consistory Court of the Diocese of Manchester (hereinafter referred to as "such determination") the Grantees will remove the diesel oil storage tank and ancillary equipment and piping if so required by the Parochial Authorities or the Corporation or under such Order and put the green land in decent order and condition to the satisfaction of the Corporation or their Director of Parks.

(B) The Grantees shall erect (if not already erected) and maintain a wall surrounding the green land such wall to be erected and maintained in such manner and to have such openings therein as shall be approved by the Parochial Authorities or their Surveyor and on such determination the Grantees will put such wall in good repair to the satisfaction of the Corporation or their Director of Parks and will (subject to the provisions in that behalf of any Order of the said Consistory Court) fill in such openings or erect suitable gates to the satisfaction of the Parochial

Authorities or their Surveyor.

(C) The Grantees will prepare a statement sufficiently describing by the name and date appearing thereon the gravestones in the green land together with any other particulars and will arrange for the inscriptions on any gravestone designated by the Rector as of particular interest to be copied exactly and will prepare three bound copies of such statement one of which will be made available if desired for the Parochial Authorities and another will be deposited in the Local History Library at the Manchester Central Library.

5. PROVIDED ALWAYS and these presents are upon this condition that if the said half-yearly sums or any part thereof shall at any time be in arrear and unpaid for twenty-one days after the same shall have become due whether formally or legally demanded or not or if the Grantees shall at any time fail or neglect to perform or observe any of the covenants conditions or agreements herein contained and on their part to be performed and observed then and in any such case the rights and privileges hereby conferred upon them shall on the Rector sending a notice to that effect to the Grantees forthwith cease and be extinguished as if these presents had not been made without prejudice to any right of action or remedy of the Parochial Authorities or the Corporation or any of them in

respect of any breach of any of the covenants by the Grantees hereinbefore contained. A copy of any notice given under this Clause shall be sent to the Corporation.

IN this Deed where the context so requires or admits the expression "the Rector" shall be deemed to include his successors the Rectors for the time being of the United Parish of All Souls with St. Andrew Ancoats; the expression "the Churchwardens" shall include the Churchwardens for the time being of the said Parish and the expression "the Grantees" shall be deemed to include the survivor of them and their and his successors in title owner or owners for the time being of the pink land.

I N W I T N E S S whereof the Rector and the Churchwardens and the Grantees have hereunto set their respective hands and seals and the Rector the Chairman presiding at the meeting of the Council at which this Deed is executed together with Mrs. May Tidswell and Mr. George Ackerley two members of the Council both of whom were present at that meeting have on behalf of the Council set their hands and seals and the Corporation has caused its corporate seal to be hereunto affixed the day and year first before written.

SIGNED SEALED AND DELIVERED by)
the said MAY TIDSWELL in the)
presence of:-)

STOREMAN.

SIGNED SEALED AND DELIVERED by)
the said GEORGE ACKERLEY in)
the presence of:-)

Wife of said.

THE CORPORATE SEAL of the said THE)
LORD MAYOR ALDERMEN AND CITIZENS OF)
THE CITY OF MANCHESTER was hereunto)
affixed in the presence of:-)



Lord Mayor

Crowder
Deputy Town Clerk

306678

SIGNED SEALED AND DELIVERED by)
the said NORMAN CURRIE in the)
presence of:-)



J. Barron
37 Hawthth Road
Mansfield, 18
Legal Executive

SIGNED SEALED AND DELIVERED by)
the said HERBERT CURRIE in the)
presence of:-)



J. Barron
37 Hawthth Road
Mansfield, 18
Legal Executive



R

MASSACHUSETTS
LAND REGISTRY

TITLE No. 49 1182518

NOTICE REGISTD 25/6. 84

This OFFICE COPY shows the state of the title plan on 16th July 1997
 Under s.113 of the Land Registration Act 1925 this copy is admissible in evidence to the same extent as the original.
 This office copy of the title plan may be subject to minor distortions in scale. The red edging on the original plan is represented by a thick black line.
 Issued on 17 July 1997 by HM Land Registry. This title is administered by the Lytham District Land Registry.

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M.B. 25

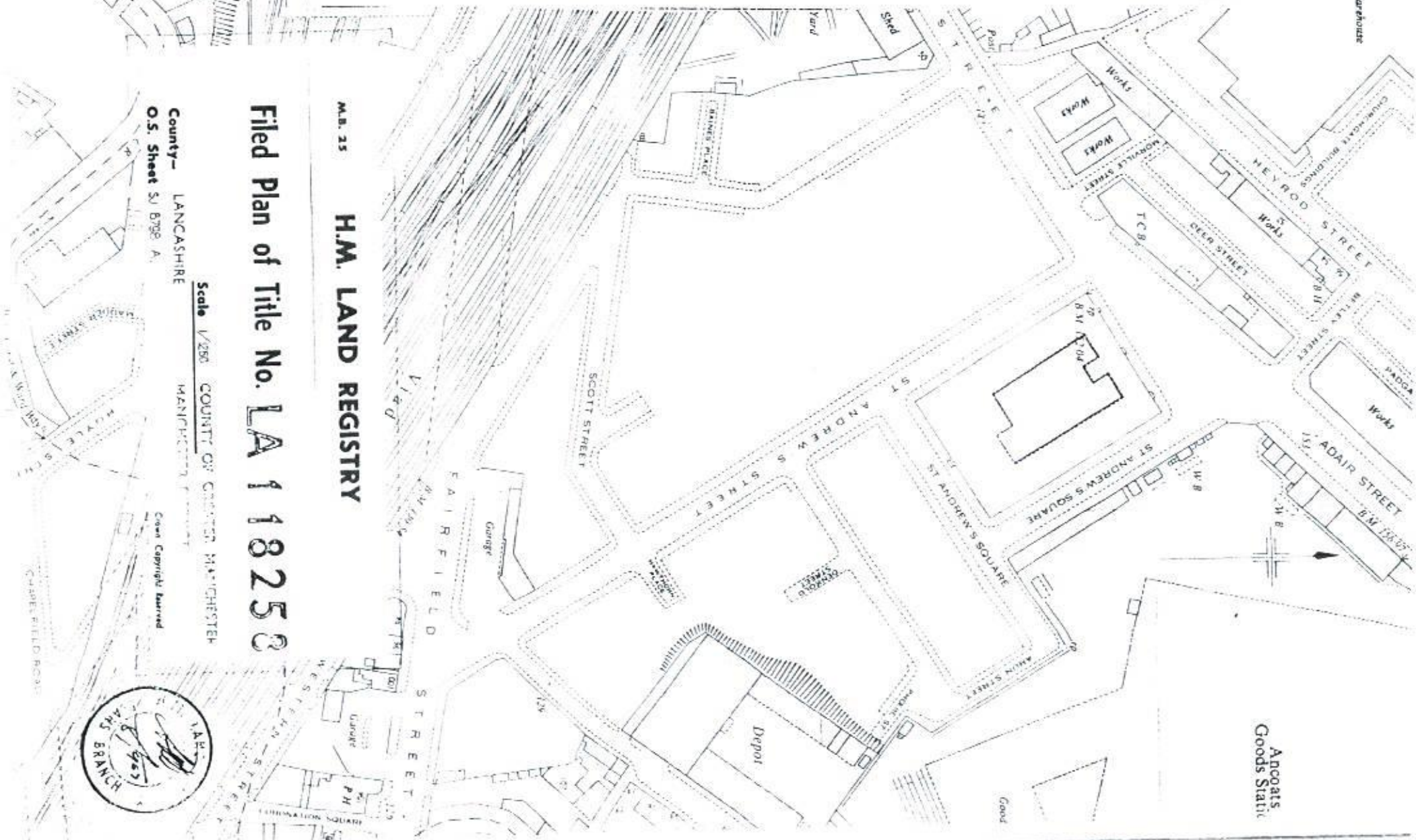
H.M. LAND REGISTRY

Filed Plan of Title No. LA 118253

Scale 1/250 COUNTY OF CHESHIRE MANCHESTER

County— LANCASHIRE
 O.S. Sheet SJ 8798 A.

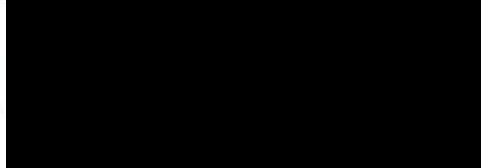
Crown Copyright Reserved



SIGNED SEALED AND DELIVERED by the)
said OLIVER REVEREND/JOHN HORROCKS in the)
presence of:-

J. Horrocks

R Walker
Spread Eagle, Every St



SIGNED SEALED AND DELIVERED by the)
said HENRY BAIRSTO in the)
presence of:-

Henry Bairsto

H. Bairsto, (Jnr.)
12, Tutbury Street,



SIGNED SEALED AND DELIVERED by the)
said ROBERT BRADBURY in the)
presence of:-

Robt Bradbury

H. Barker
62 Cambridge Rd

