

DATED 10th December **2018**

BARNSELY METROPOLITAN BOROUGH COUNCIL

and

CONDIE INVESTMENTS LIMITED

AGREEMENT

under Sections 72 and 278 of the Highways Act 1980 and Section 111 of the Local Government Act 1972 relating to highway improvements at Upper New Street Barnsley South Yorkshire

A.C. Frosdick, LL.B., DipLG,
Executive Director of Core
Services & Solicitor to the
Council
Town Hall
Barnsley
S70 2TA

THIS AGREEMENT is made the ten day of December Two thousand and eighteen

BETWEEN

1. **BARNSELY METROPOLITAN BOROUGH COUNCIL** of the Town Hall
Barnsley South Yorkshire S70 2TA ("**the Council**")
2. **CONDIE INVESTMENTS LIMITED** (Company number 04575048) whose
registered office is at Fairhurst House 7 Acorn Business Park Heaton Lane
Stockport SK4 1AS ("**the Company**")

INTERPRETATION

In this Agreement:-

"**Act**" means the Highways Act 1980 as amended by the New Roads and Street Works Act 1991

"**Blue Land**" means the land shown edged in blue on Drawing number 30288/103 revision A attached at Schedule 1 hereto which is intended to become highway maintainable at public expense as provided herein

"**CDM Regulations**" means the Construction (Design and Management) Regulations 2007

"**Certificate of Completion**" means the certificate to be issued by the Highways Officer upon the satisfactory completion of the Works

"**Company**" includes the successors in title and assigns of the Company

"**Development**" means the retail development at the Site for which planning permission has been granted (ref 2017/0130)

"**Drawings**" means the drawings listed and attached at Schedule 1 hereof

"**Final Certificate**" means the certificate to be issued by the Highways Officer upon the expiration of the Maintenance Period

"Highway" means the highway called Upper New Street Barnsley

"Highways Officer" means the Head of Highways Engineering and Transportation for the time being of the Council and includes any professional officer properly and reasonably appointed by him for the purpose of the supervision or inspection of the Works

"Maintenance Period" means a period of twelve calendar months from the date of the issue of the Certificate of Completion

"Security Deposit" means the sum of £68,654.13 (sixty eight thousand six hundred and fifty four pounds and thirteen pence) being the sum required to be deposited with the Council by the Company as security for the satisfactory completion of the Works as herein provided

"Site" means the land at the junction of Upper New Street and Thomas Street Barnsley

"Supervision Fee" means the sum of £5,632.00 (five thousand six hundred and thirty two pounds) being the reasonable and proper fees which are estimated will be incurred by the Council in checking and approving the drawings site inspections and administration of the Works of which a sum of £3,000.00 (three thousand pounds) has already been paid to the Council receipt of which is hereby acknowledged

"Specification" means the Specification for Highway Works published by HMSO with all amendments up to the date hereof

"Traffic Order Costs" means the reasonable and proper costs which are estimated will be incurred by the Council in the preparation and publication of a traffic regulation order made pursuant to the Road Traffic Regulation Act 1980 to implement changes to traffic controls to facilitate access and egress from the Site

“Works” means the works described generally in Schedule 2 hereof and indicated in outline on the Drawings and any amended or additional works as provided for herein

Clause headings are for ease of reference only and shall not form part of this Agreement for the purposes of its construction or interpretation

WHEREAS

- (1) The Council is the Highway Authority for the purposes of the Act
- (2) Planning permission has been granted for the Development at the Site and the Council and the Company are desirous that the Works shall be carried out to facilitate the Development
- (3) The Works are wholly required to improve access to the Site to a standard required for traffic safety and thus facilitate the Development and the Company will derive a special benefit if the Works are executed
- (4) The Company has the benefit of a lease at the Site dated 15th June 2016 from the Council for a term of 125 years from 15th June 2016 and the parties hereto enter into this Agreement with the intention that once the Works are carried out and completed as provided herein the Blue Land shall be dedicated as highway for use by the public as provided for herein
- (5) The Company shall execute or procure the execution of the Works as agent for and on behalf of the Council
- (6) This Agreement is made pursuant to Sections 72 and 278 of the Act and Section 111 of the Local Government Act 1972 and the Council is satisfied that it will be of benefit to the public

(7) Nothing herein contained shall operate to restrict or prejudice the powers duties and rights of the Council under the Highways Act 1980 and the New Roads and Street Works Act 1991

NOW IT IS HEREBY AGREED by and between the parties as follows:-

1. CONSENT TO WORK IN THE HIGHWAY

1.1 The Council shall during such hours of working as may be agreed in advance with the Highways Officer permit the Company to enter upon the Highway for the purpose of carrying out the Works and all matters in connection with the carrying out of the Works

2. EXECUTION OF THE WORKS

2.1 The Company shall at its own expense for the purpose of carrying out the Works:-

- (a) carry out surveys as required by the Highways Officer of the Highway and the Site
- (b) carry out any requisite site investigation works
- (c) appoint a designer approved by the Highways Officer (such approval not to be unreasonably withheld or delayed) to design a scheme for the Works (including all necessary drawings and documents to be approved by the Council) such approval will not be unreasonably withheld or delayed) ("**the Approved Documents**")
- (d) appoint a contractor approved by the Highways Officer (such approval not to be unreasonably withheld or delayed) for the construction of the Works in accordance with a form of contract which shall be approved

(such approval not to be unreasonably withheld or delayed) by the
Highways Officer ("**the Contract**")

2.2 The Company shall:

- (a) procure the provision in writing of a programme and timetable for the Works which shall be submitted to and approved by the Highways Officer (such approval not to be unreasonably withheld or delayed) prior to the commencement of the Works or any part thereof ("**the Approved Programme**")
- (b) upon the request of the Highways Officer procure the provision of a written programme and timetable for any temporary traffic arrangements or any other measures which may be necessary or required in connection with the carrying out of the Works which shall be submitted to and approved by the Highways Officer (such approval not to be unreasonably withheld or delayed) prior to the commencement of the Works or any part thereof and shall comply with any further requests of the Highways Officer at any time during the carrying out of the Works
- (c) procure that the Works are carried out at its own expense in a good and workmanlike manner with proper and suitable materials to the reasonable satisfaction of the Highways Officer in accordance with the Specification and the Approved Documents and if and when commenced to proceed diligently with the Works and to use reasonable endeavours to complete the Works in accordance with the Approved Programme and in any case within two years from the date of this Agreement

- (d) before the commencement of the Works take whatever steps are necessary to locate and identify any services apparatus and equipment of any utility company Local Authority or other body which is situated in on under or over the Highway or which may otherwise be affected by the Works and shall supply to the Highways Officer copies of all consultations which have been carried out copies of all consents and approvals obtained and details of any diversion or other works required to any services equipment or apparatus affected by the Works
("Apparatus Works")
- (e) carry out and complete the Apparatus Works at its own expense and in the same manner as the Works
- (f) procure compliance with all proper and lawful conditions and requirements imposed by any utility company local authority or other body in respect of any services equipment or apparatus affected by the Works
- (g) give the Highways Officer free access to the Site with a representative of the Company as is reasonably necessary for the proper inspection of the Works
- (h) procure that the Works are undertaken pursuant to the CDM Regulations
- (i) ensure the Works comply in every respect with the latest edition of Chapter 8 of the Traffic Signs Manual published by the Department of Transport
- (j) at its own expense arrange for a representative sample all materials and soils to be used in connection with the Works to be tested by a UK

Accreditation Service (NAMAS) accredited laboratory and shall submit the test results to the Highways Officer and meet the costs of any further testing required by the Highways Officer

- 2.3 In the event the Highways Officer (acting reasonably and properly) determines that any variations to the Works are required the Highways Officer shall notify the Company as soon as reasonably practicable of any revised or additional works which may be necessary and the Company shall carry out and complete the revised or additional works at its own expense and in the same manner as the Works

3. FEES AND COSTS

- 3.1 The Company shall on the completion of this Agreement pay to the Council:
- (i) the remaining balance of the Supervision Fee;
 - (ii) the sum of £1,000.00 being the Council's legal fees in the preparation and completion of this Agreement
 - (iii) the sum of £3,000.00 (three thousand pounds) in respect of the Traffic Order Costs

- 3.2 In the event the fees incurred by the Council (in respect of matters to which the Supervision Fee is to apply) exceed the Supervision Fee the Highways Officer shall provide a certified estimate of the sum of the increased fees and the Company shall pay the said sum of the increased fees to the Council within 28 days of receiving a written request therefor

4. CERTIFICATES AND MAINTENANCE PERIOD

- 4.1 The Company may at any time when it believes the Works have been completed notify the Highways Officer in writing whereupon the Highways Officer shall as soon as reasonably practicable thereafter make arrangements

to inspect the Works and if the Works have been completed to his satisfaction the Highways Officer shall issue the Certificate of Completion to the Company or if not the Highways Officer shall notify the Company of any outstanding items and the Company shall provide the Highways Officer with a program for their completion

4.2 The Company shall at its own expense maintain the Works and the Blue Land throughout the Maintenance Period and shall make good any defects or damage arising or occurring in the Works during that period to the satisfaction of the Highways Officer

4.3 After the expiration of the Maintenance Period the Company shall submit to the Highways Officer in an electronic format 'as-built' drawings and the whole of the Health and Safety file pursuant to the CDM Regulations and then provided the Company has made good any defects or damage to the entire satisfaction of the Highways Officer and provided that all monies due to the Council hereunder have been paid the Highways Officer shall issue the Final Certificate to the Company

4.4 For the avoidance of doubt the covenants on the part of the Company contained in Clause 6 of this Agreement shall not be affected by the issue of the Final Certificate

5. DEDICATION AND ADOPTION OF THE BLUE LAND

5.1 The Company and the Council hereby acknowledge and agree that upon the issue of the Certificate of Completion the Blue Land shall be deemed to have been dedicated for highway purposes for use by the public

5.2 Upon the issue of the Final Certificate the Blue Land shall become highway maintainable at the public expense

6. COMPENSATION AND INDEMNITY

- 6.1 The Company will on demand reimburse the Council with all expenditure it may properly incur in relation to any valid and proper claims made pursuant to the Noise Insulation Regulations 1975 or Part I of the Land Compensation Act 1973 arising from the use of the Highway as altered by the Works and the Roads constructed by the Works together with the reasonable legal costs and surveyor's fees incurred either by the Council or any third party whose costs the Council is legally obliged to pay in connection with the processing and settlement of any such claims
- 6.2 The Company will indemnify and keep indemnified the Council against all costs actions proceedings claims demands damages and losses of whatever nature directly arising out of the non-observance non-performance of the Company's obligations under this Agreement and all claims demands damages and losses of whatever nature which may be suffered by the Council due to any reason connected with the carrying out of the Works by or on behalf of the Company and not arising due to any act or omission on the part of the Council PROVIDED THAT the liability of the Company under this clause 6.2 shall not exceed the sum of £10,000,000.00 any single event or claim or any series of claims arising from the same event
- 6.3 The Company will indemnify and keep indemnified the Council against all costs actions proceedings claims demands damages and losses of whatever nature arising as a consequence of the discharge of water or any other substance or material whatsoever from the highway drainage system
- 6.4 The Company shall insure or shall procure that the Contractor carrying out the Works shall insure against any damage loss or injury which may occur to any

property or person arising by or out of the execution of the Works otherwise than due to any act or omission of the Council and such insurance shall be effected prior to the commencement of the Works with an insurer on terms approved by the Council (such approval not to be unreasonably withheld or delayed) for at least the sum of £10,000,000 for each and every claim

7. DETERMINATION BY THE COUNCIL

- 7.1 In the event the Company fails to perform or observe any of the obligations herein contained following written notice being given to the Company by the Council detailing the non performance or observance and allowing a reasonable time for the Company to remedy the same) or if a receiving order in bankruptcy is made against the Company or of the Company is wound up or enters into a composition or arrangement (otherwise than for the purpose of amalgamation or reconstruction) the Council may without prejudice to any of its rights claims or remedies against the Company for such non-performance or non-observance determine this Agreement by notice in writing to the Company sent to the address stated in this Agreement Subject always to the provisions of clauses 8 and 9 hereof

8. DEFAULT POWERS

- 8.1 Without prejudice to clauses 5 and 7 hereof if the Company fails to execute or complete the Works in accordance with the Company's obligations hereunder the Council shall be entitled to execute or complete the Works in default by its own employees contractors or otherwise and to recover from the Company all of the costs incurred by the Council thereby as certified in writing by the Highways Officer Provided that this default power shall only be exercisable by

the Council after at least twenty eight days notice of that intention has been given in writing to the Company

9. SECURITY DEPOSIT

- 9.1 The Company shall prior to the commencement of the Works pay the Security Deposit to the Council
- 9.2 Upon the issue of the Certificate of Completion the sum of the Security Deposit shall be reduced to a sum equal to ten percent of its original sum and the Council shall arrange as soon as practicable thereafter to refund the sum of the excess to the Company
- 9.3 As soon as practicable after the issue of the Final Certificate the Council shall refund the remaining sum of the Security Deposit to the Company
- 9.4 If at any time the Company fails to observe or perform any of the covenants on the Company's part herein contained or to pay any sums due from the Company to the Council under this Agreement or if circumstances shall arise which would entitle the Council to terminate this Agreement then without prejudice to any other rights and remedies of the Council against the Company under this Agreement or under statutory powers the Council shall be entitled to deduct the amount of any costs and expenditure which the Council may suffer or incur by reason thereof from the Security Deposit and the Council shall be entitled to retain any such sums so deducted and apply the same to discharge any such amounts or sums due from the Company to the Council
- 9.3 If the Council gives notice pursuant to clause 8 hereof and the amount as certified by the Highways Officer to be the estimated cost of carrying out and completing the Works or any part thereof or otherwise remedying any breach by the Company of the provisions hereof shall exceed the sum of the Security Deposit being held at that time the Company shall forthwith on demand pay the difference between the estimated cost and the sum of the Security

Deposit to the Council and the same shall be held by the Council as part of the Security Deposit

9.4 The amount of the costs and expenditure estimated to be incurred by the Council shall be that certified by the Highways Officer in writing and such certificate shall be final and binding on the parties hereto

10. **IT IS HEREBY AGREED AND DECLARED** as follows:-

10.1 If at any time prior to the commencement of the Works the Company wishes to terminate this Agreement it may do so by giving notice to the Council and the Council shall give the Company an account of all abortive costs reasonably and properly incurred by the Council in respect of this Agreement Within 28 days from the date of that account if that account shows that the payments made by the Company under the foregoing provisions of this Agreement have exceeded those costs the Council shall refund that excess and if that account shows that those costs exceed the payment made by the Company under the foregoing provisions of this Agreement the Company shall pay to the Council a sum equal to that excess

10.2 That for the purpose of carrying out its obligations under this Agreement but for no other purpose whatsoever the Company will act as agent for and on behalf of the Council

10.3 The Company is to act as the only client in respect of the Works pursuant to the CDM Regulations

10.4 Any monies due to be paid under the provisions of this Agreement shall be paid within twenty one days of the due date or if not paid within that period shall bear interest at 3% above the Base Rate of Barclays Bank Plc for the

time being such interest being payable from the due date to the date of payment

- 10.5 The Company shall not assign any of its rights and obligations arising under this Agreement without the prior written consent of the Council (such approval not to be unreasonably withheld or delayed).
- 10.6 Any notice or demand required by this Agreement to be given or made shall be in writing
- 10.7 The land which is to be benefited by the Works is the land to which the planning application hereinbefore referred to relates
- 10.8 This Agreement will be of benefit to the public
- 10.9 In the event of any dispute or difference between the parties hereto arising as to the construction of this Agreement or any of the provisions hereof such dispute or difference shall be referred to the President for the time being of the Institution of Civil Engineers whose decision shall be final and binding on the parties hereto Provided that nothing in this clause shall authorise the reference to arbitration of any question as to whether the whole or any part of the Works has been carried out and completed to the satisfaction of the Highways Officer

SCHEDULE 1

THE DRAWINGS

30288/100 revision B

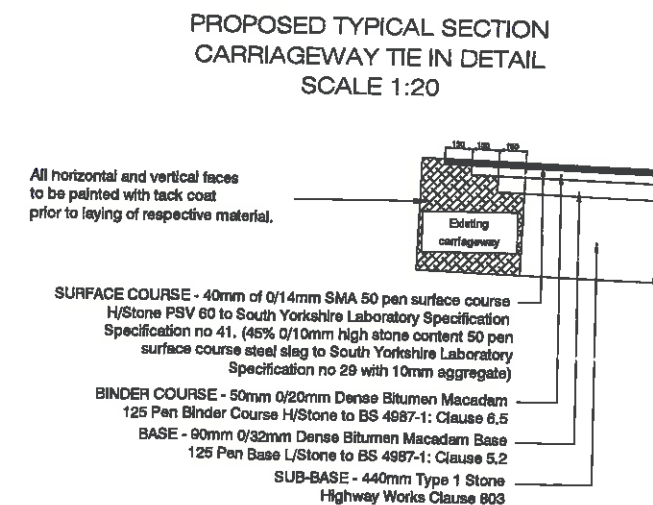
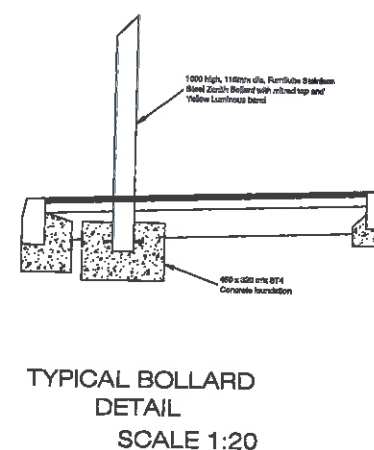
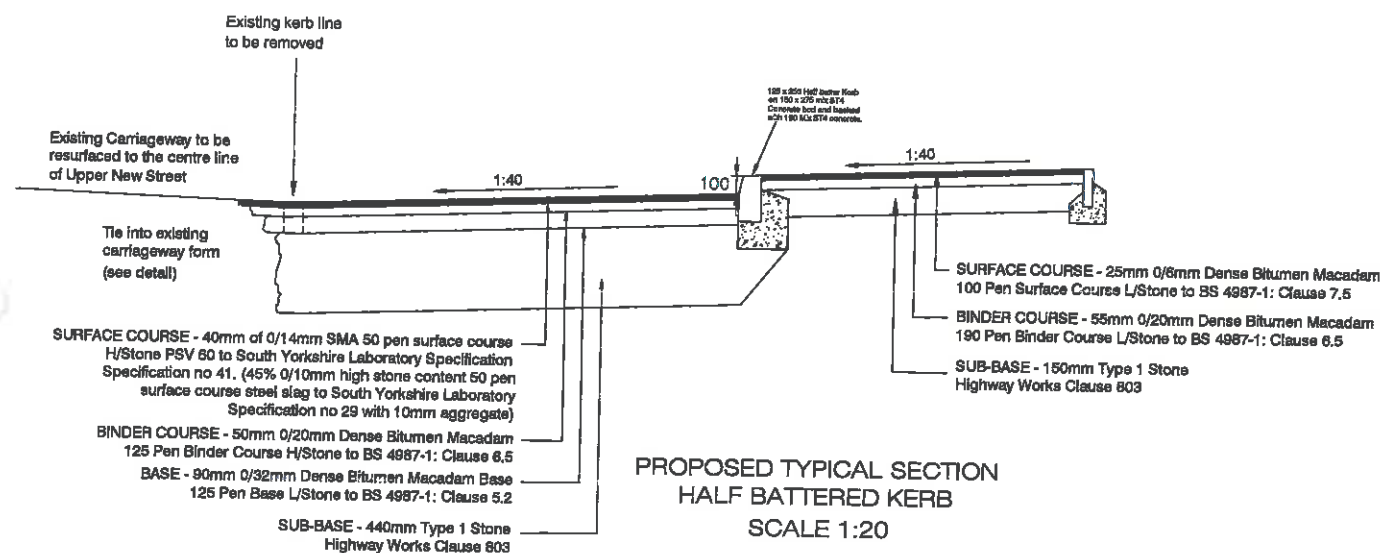
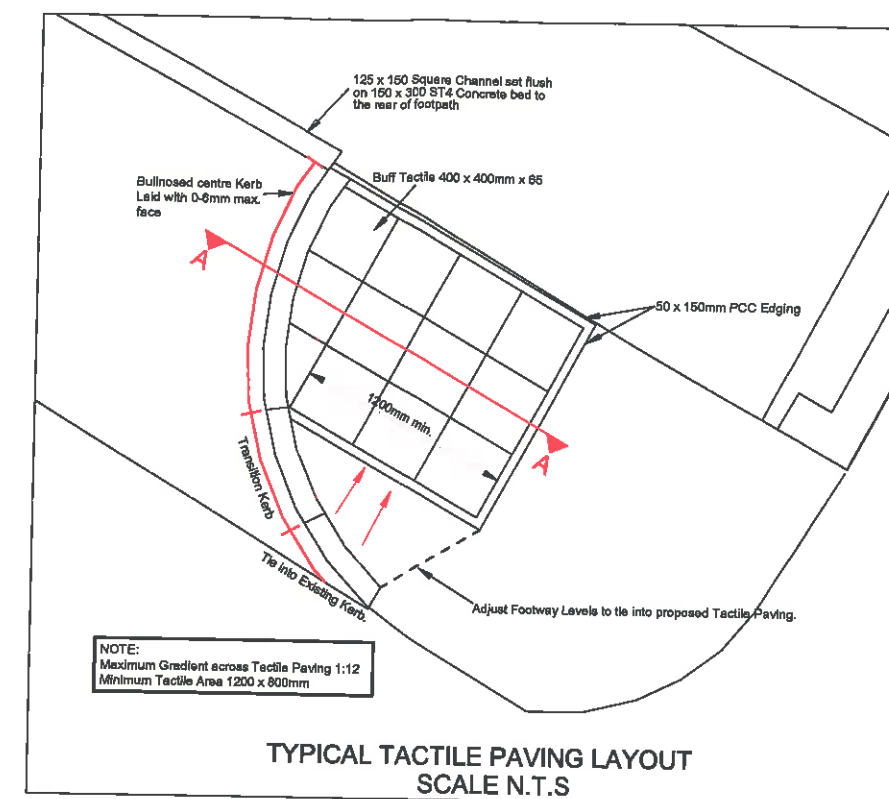
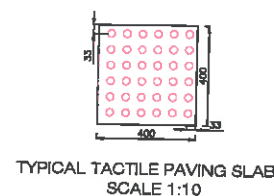
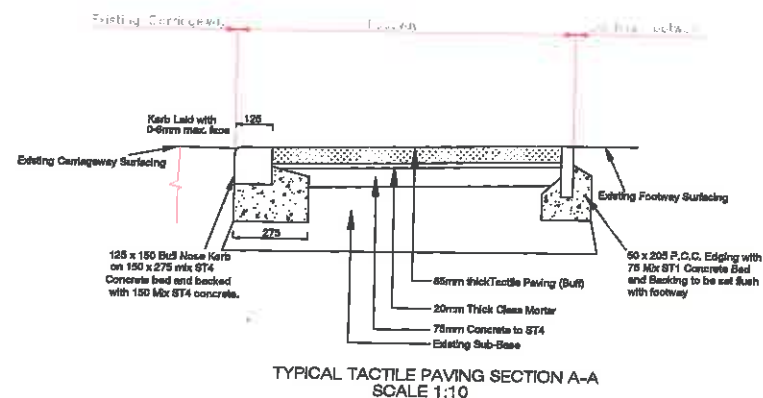
30288/101 revision B

30288/103 revision A

SCHEDULE 2

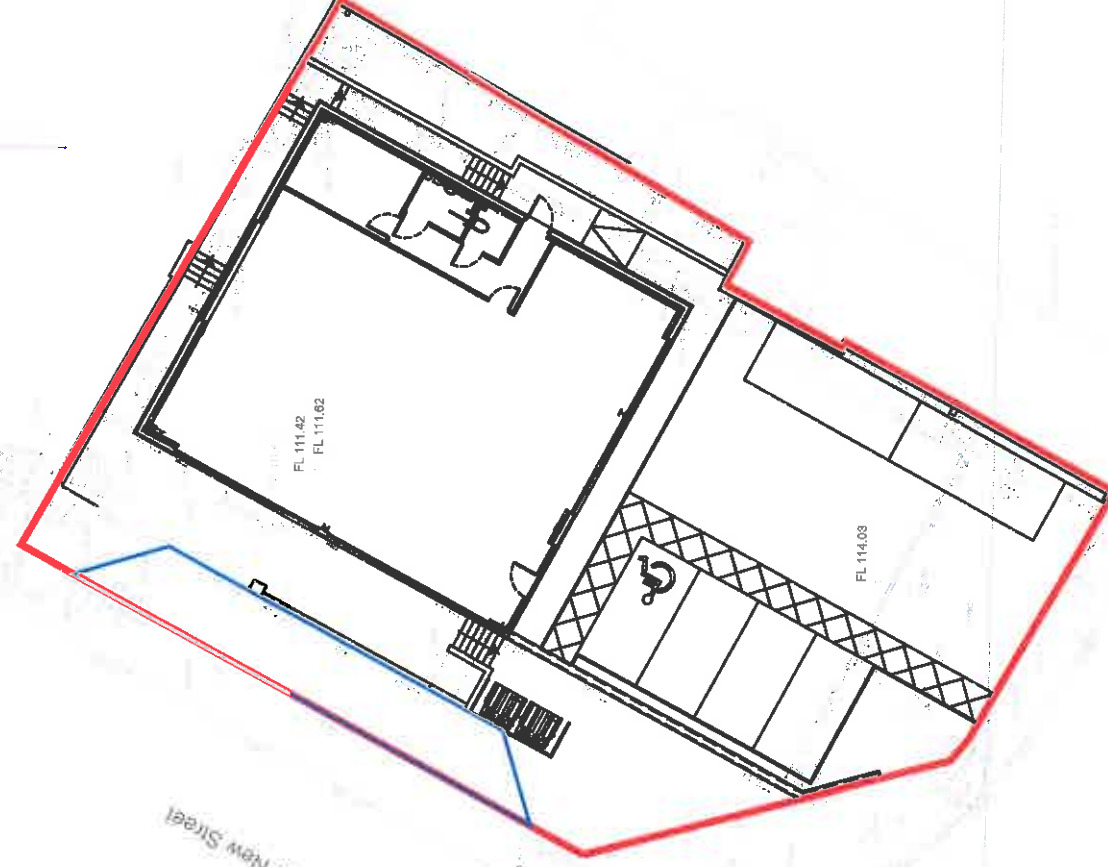
THE WORKS

- a) Construction of new lay-by ;
- b) Kerbing;
- c) Carriageway footway resurfacing;
- d) Drainage;
- e) Street Lighting;
- f) Provision of road markings and signing
- g) Any works ancillary to the above.



- NOTES**
1. All dimensions are in millimetres unless otherwise shown.
 2. All highway works shall be in accordance with Barnsley MBC Specification for Highway Works and Standard Details.
 3. Tactile paving arrangements where a radius kerb is present shall be set out with agreement from the Highway Authority.

B	09/10/17	SG	Amended to Barnsley MBC Highway Comments.
A	12/09/17	ND	Amended to Barnsley MBC Highway Comments.
Rev	Date	Initials	Details
Drawing Revisions			
North Arrow	Project	Upper New Street Barnsley	Client
Quality Ass.	Client	Condle Investments Limited	Environmental Planning Engineering Landscape Architecture Graphic Design
1/10/08 COS	Quality Assurance	ISO 9001:2008	3/08 Certificate 0800954208
Original Size	Copyright Acknowledgement	Drawn	Checked By
A1	© Crown Copyright. All rights reserved. Licence No. AL100017000.	EWB	SRG
		Date	Scale
		Aug 17	As Shown
	Drawn No.	30288/101	Revision
			B



KEY

Site Ownership

Land to be dedicated as new highway

[illegible]

EXECUTED by the parties hereto as a Deed the day and year first before written

THE COMMON SEAL of Barnsley)

Metropolitan Borough Council was)

hereunto affixed in the presence of:- ()



Executive Director of Core Services & Solicitor to the Council/Authorised Signatory

EXECUTED as a DEED)

by **CONDIE INVESTMENTS LIMITED**)

acting by a Director in the presence)

of a witness)

Witness

Signature

Name

Address

.....