

DATED 2nd November 2023

(1) RIBBLE VALLEY BOROUGH COUNCIL

- and -

(2) SHACKLETONS HOLDINGS LIMITED

- and -

(3) TRUSTEES OF THE SHACKLETON EXECUTIVE PENSION SCHEME

- and -

(4) THE PAVILION COFFEE HOUSE & BRASSERIE LIMITED

- and -

(5) NATIONAL WESTMINSTER BANK PLC

AGREEMENT

Under Section 106 of the Town and Country Planning Act 1990

**Relating to property known as Shackletons Garden Centre, Clitheroe
Road, Chatburn, Clitheroe**

THIS DEED is made the *2nd* day of *November* 2023

BETWEEN

1. **RIBBLE VALLEY BOROUGH COUNCIL** of Council Offices Church Walk Clitheroe Lancashire BB7 2RA ("the Council");
2. **SHACKLETONS HOLDINGS LIMITED** (Company Reg. No. 13039945) whose registered office is at Mentor House, Ainsworth Street, Blackburn, Lancashire BB1 6AY ("First Owner");
3. **DAVID MARK SHACKLETON, PAUL ANDREW SHACKLETON and LINDLEY TRUSTEES LIMITED** of 1 New Walk Place, Leicester LE1 6RU (Company Reg. No. 02361457) as **TRUSTEES OF THE SHACKLETON EXECUTIVE PENSION SCHEME** ("Second Owner");
4. **SHACKLETONS GARDEN CENTRE LIMITED** (Company Reg. No. 04303803) whose registered office is at Shackleton Garden Centre, Clitheroe Road, Chatburn, Clitheroe, Lancashire, BB7 4JY ("Garden Centre Tenant");
5. **THE PAVILION COFFEE HOUSE & BRASSERIE LIMITED** (Company Reg. No. 06495969) whose registered office is at Shackletons Nursery, Clitheroe Road, Chatburn, Clitheroe, Lancs, BB7 4JY ("Restaurant Tenant"); and
6. **NATIONAL WESTMINSTER BANK PLC** as security agent for National Westminster Bank Plc and NatWest Markets plc whose registered office is at 250 Bishopsgate, London EC2M 4AA and whose address for service is Credit Documentation, PO Box 339, Manchester M60 2AH ("Chargee")

WHEREAS:

- (1) The Council is the local planning authority for the purposes of section 106 of the 1990 Act for the area within which the Application Site is situated and by whom the obligations contained in this Deed are enforceable.
- (2) The First Owner is the owner of the parts of the Application Site which are registered at the Land Registry under title numbers LA853479 and LA948621.
- (3) The Second Owner is the owner of the part of the Application Site which is registered at the Land Registry under title number LAN222503.
- (5) The Garden Centre Tenant has a leasehold interest in the parts of the Application Site which are registered at the Land Registry under title numbers LA853479 and LA948621 by virtue of a lease dated 15th February 2021 between the First Owner and the Garden Centre Tenant.
- (6) The Restaurant Tenant has a leasehold interest in the part of the Application Site comprising the Restaurant by virtue of a lease dated 12 April 2019 between the Garden Centre Tenant and the Restaurant Tenant.
- (7) The Chargee has a registered charge dated 15th February 2021 over the parts of the Application Site registered at the Land Registry under title numbers LA853479 and LA948621.
- (8) There are no other legal or equitable interests in the Application Site.
- (9) The Developer has submitted the Application to the Council for the Planning Permission.
- (10) The Council resolved on 7th April 2022 that the Application be approved

subject to the entering into of this Deed in accordance with section 106 of the 1990 Act.

NOW THIS DEED WITNESSETH as follows:

1. DEFINITIONS and INTERPRETATION

1.1 In this Deed unless the context otherwise requires:

1990 Act

"1990 Act" means the Town and Country Planning Act 1990 (as amended).

Application

"Application" means the application for full planning permission submitted to the Council and registered by the Council on 20th November 2020 and given reference number 3/2020/0911 for the proposed two-storey extension to rear and re-modelling of home and garden centre, including additional indoor and outdoor retail space and increased cafe area and play area on the Application Site as detailed in the plans and particulars deposited with the Council as part of the application.

Application Site

"Application Site" means the freehold property known as Shackletons Garden Centre, Clitheroe Road, Chatburn, Clitheroe BB7 4JY as shown indicatively edged red on the Location Plan against which this Deed may be enforced and registered as at the date of this Deed at the Land Registry under title numbers LA853479, LA948621 and LAN222503.

Commencement of Development

"Commencement of Development" means the earliest date on which any material operation (as defined by section 56(4) of the 1990 Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and for no other purposes) operations consisting of:

- (i) site clearance;
 - (ii) demolition;
 - (iii) archaeological investigation;
 - (iv) advanced habitat creation;
 - (v) investigation for the purposes of assessing contamination and minor or temporary general maintenance works or works of repair;
 - (vi) remedial action in respect of contamination;
 - (vii) diversion and provision of services and drainage;
 - (viii) the erection of means of enclosure for the purpose of site security and/or the display of advertisements;
 - (ix) tree works; or
 - (x) construction of temporary access
- and "Commence Development" shall be construed accordingly.

Council's Monitoring Fee

"Council's Monitoring Fee" means the sum of £1,000 (One Thousand Pounds) to be paid by the Owners to the Council to cover the Council's costs in monitoring compliance with this Deed.

Development

"Development" means the development on the Application Site as approved by the Planning Permission.

Expert

"Expert" means an independent person appointed in accordance with clause 13 to determine a dispute.

Indoor Retail Areas

"Indoor Retail Areas" means the part of the Application Site within Area 2 shown coloured green on the Layout Plan.

Interest

"Interest" means interest at 4% (four) per cent above the base lending rate of Barclays Bank Plc from time to time.

Layout Plan

"Layout Plan" means the plan annexed hereto at Appendix 2.

Location Plan

"Location Plan" means the plan annexed hereto at Appendix 1.

Outdoor Retail Areas

"Outdoor Retail Areas" means the part of the Application Site within Area 1 shown coloured yellow on the Layout Plan.

Owners

"Owners" means the First Owner, the Second Owner, the Garden Centre Tenant and the Restaurant Tenant collectively.

Planning Permission

"Planning Permission" means the full planning permission subject to conditions to be granted pursuant to the Application, a draft of which is set out in Appendix 2 (and including any amendment of it granted pursuant to an application under Section 96A of the 1990 Act).

Restaurant

"Restaurant" means the Pavilion Coffee House and Brassiere shown as Area 3 and coloured blue on the Layout Plan.

UCO

"UCO" means the Town and Country Planning (Use Classes) Order 1987 (as amended).

Working Days

"Working Days" means those days that are not a Saturday or Sunday, Christmas Day, Good Friday or any day that is a bank holiday.

- 1.2 The headings in this Deed do not and will not by implication form any part of this Deed and shall have no legal force whatsoever.
- 1.3 Unless the context requires otherwise reference to this Deed to a clause, schedule or paragraph are references respectively to a clause, schedule or paragraph of this Deed.
- 1.4 Where any party to this Deed comprises two or more persons any obligation on the part of that party contained or implied in this Deed shall be deemed to be joint and several obligations on the part of these persons and references to that party shall include reference to each or any of those persons.
- 1.5 A reference to any statute or statutory section shall be taken to include a reference to any statutory amendment, modification or re-enactment of it for the time being in force.
- 1.6 Words denoting the singular shall include the plural and vice versa words denoting any gender shall include all genders and words denoting persons shall include bodies corporate and vice versa.
- 1.7 References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party to the Site or any part thereof and in the case of the Council and County Council the successors to their respective statutory functions.

2. LEGAL BASIS AND ENFORCEABILITY

- 2.1 This Deed is made pursuant to section 106 of the 1990 Act, section 111 of the Local Government Act 1972 and section 1 of the Localism Act

2011 and all other enabling powers.

2.2 This Deed is a planning obligation under section 106 the 1990 Act with the intent to bind the Application Site and is enforceable by the Council as local planning authority against the Owners and their respective successors in title who shall observe and perform the covenants herein.

2.3 The covenants and obligations of this Deed are conditional on:

2.3.1 the grant of the Planning Permission; and

2.3.2 the Commencement of the Development

SAVE FOR the provisions of this clause 2 and clauses 1, 2, 3, 4, 5, 8 (only in respect of paragraph 1 of Schedule 1), 10, 13, 14.1-14.6 and 15 which shall come into effect immediately upon completion of this Deed.

2.5 No persons shall be liable for a breach of covenant contained in this Deed after he shall have parted with his interest in the Application Site or the part in respect of which any liability has arisen which is the subject of a breach but without prejudice to liability for any existing and/or subsisting breach of covenant prior to parting with such interest. Neither the reservation of any rights or the inclusion of any covenants or restrictions over the Application Site in any transfer of the Application Site will constitute an interest for the purposes of this clause 2.5.

2.7 The provisions of this Deed shall not be enforceable by any third party (which for the avoidance of doubt shall exclude any statutory successor or authority to the Council or the respective successors in the title to the Owners) pursuant to the Contract (Rights of Third Parties) Act 1999.

3. CHARGEES' CONSENT

The Chargee acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Application Site

shall be bound by the obligations contained in this Deed and that the security of its charge over the Application Site shall take effect subject to this Deed PROVIDED THAT the Chargee shall otherwise have no liability under this Deed unless it takes possession of the Application Site in which case it too will be bound by the obligations as if it were a person deriving title from the Owners.

4. EXPIRY, MODIFICATION, VARIATION OR AMENDMENTS OF PLANNING PERMISSION

4.1 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owners) it is modified by any statutory procedure (other than an application made under Section 96A of the Act) or expires prior to the Commencement of Development.

4.2 Nothing in this Deed shall prohibit or limit the right to develop any part of the Application Site in accordance with any planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed and this Deed shall not apply to development carried out under any planning permission other than the Planning Permission.

5. REGISTRATION

This Deed is a Local Land Charge and shall be registered as such by the Council.

6. SERVICE OF NOTICES

Any notice or other written communication to be served by one party upon any other pursuant to the terms of this Deed shall be deemed to have been validly served if delivered by hand or sent by pre-paid

registered delivery post to the party to be delivered to the address herein specified or to such other address as may from time to time be notified for the purposes of notice in writing.

7. REASONABLENESS

Where any agreement, certificate, consent, permission expression of satisfaction or other approval is to be given by any party or any person on behalf of any party hereto under this Deed the same shall not be unreasonably withheld or delayed.

8. COVENANTS

The Owners hereby covenant with the Council to perform the obligations as specified in Schedule 1.

9. WAIVER

No waiver (whether expressed or implied) by the Council of any breach or default in performing or observing any of the covenants, terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant covenants, terms or conditions or for acting upon any subsequent breach or default.

10. CHANGE IN OWNERSHIP

The Owners agrees with the Council to give the Council within 10 (ten) Working Days written notice of any change in the ownership of any if its interests in the Application Site (save for any transfer in respect of an individual Dwelling) occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Application Site purchased by reference to

a plan.

11. INTEREST

If any payment due under this Deed is paid late, Interest shall be payable from the date payment is due to the actual date of payment.

12. VAT

All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.

13. DISPUTE RESOLUTION

13.1 In the event of any dispute or difference arising between any of the parties to this Deed touching or concerning any matter or thing arising or contained in this Deed (other than a dispute or difference touching or concerning the meaning or construction of this Deed) such dispute or difference shall be referred to an Expert being an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in England to such qualifications.

13.2 In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to clause 13.1 or as to the appropriateness of the professional body then within 15 (fifteen) Working Days after any party has given to the other parties to the dispute or difference a written request to concur in the professional qualifications of the Expert to be appointed pursuant to clause 13.1 then such question may be referred by either party to the president for the time being of the Law Society of England and Wales and for him to appoint a solicitor to determine the dispute such solicitor acting as an expert and his decision shall be final and binding on all parties in the absence of a manifest error

and his costs shall be payable by the parties to the dispute in such proportion as the Expert shall determine and failing such determination shall be borne by the parties in equal shares

13.3 The Expert howsoever appointed shall act as an expert and not as an arbitrator and his reasonable costs shall be at his discretion and the Expert shall be subject to the express requirement that he reaches his decision and communicates it to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than 45 (forty five) Working Days after the date of his appointment to act.

13.4 The Expert shall be required to give notice to each of the said parties inviting each of them to submit to him within 10 (ten) Working Days of notification of his appointment written submissions and supporting material and shall afford to each of the said parties an opportunity to make counter submissions within a further 15 (fifteen) Working Days in respect of any such submission and material and the Expert's decision shall be given in writing within 20 (twenty) Working Days from receipt of any counter submissions or in the event that there are no counter submissions within 20 (twenty) Working Days of receipt of the written submissions and supporting material with reasons and in the absence of manifest error the Expert's decision shall be final and binding on the said parties.

13.5 The provisions of this clause shall not affect or fetter the ability of the Council to apply for and be granted any of the following: declaratory relief, injunction, specific performance, payment of any sum, damages, any other means of enforcing this Deed and consequential and interim orders and relief.

14. MISCELLANEOUS

14.1 Nothing contained or implied in this Deed shall prejudice or affect or

restrict the rights, discretions, powers, duties and obligations of the Council and the County Council under all statutes, by-laws, statutory instruments, orders and regulations in the exercise of its functions as a local authority.

- 14.2 If any provision in this Deed shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be deemed thereby to be affected or impaired.
- 14.3 This Deed is a deed and is enforceable by the Council against the Owners in relation to the obligations respectively entered into with each of them.
- 14.4 The Owners shall pay the Council's legal fees incurred in relation to this Deed on or before the date of this Deed.
- 14.5 The Owners shall pay the Council's Monitoring Fee to the Council on completion of this Deed and shall not Commence Development until the Council's Monitoring Fee has been paid.
- 14.6 This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales (as it applies in England) and the parties submit to the non-exclusive jurisdiction of the courts of England and Wales.
- 14.7 The liability of Lindley Trustees Limited as a trustee of the Shackleton Executive Pension Scheme shall be limited to the extent of the total assets for the time being of the Shackleton Executive Pension Scheme and further Lindley Trustees Limited shall have no liability in respect of any of the any of the obligations, covenants or terms contained in this Deed after it ceases to be a trustee of the Shackleton Executive Pension Scheme but without prejudice to liability for any existing and/or

subsisting breach prior to parting with such interest.

15. DELIVERY

The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

IN WITNESS whereof the Parties hereto have executed this Deed on the day and year first before written.

SCHEDULE 1
Owners' Obligations

The Owners hereby covenant with the Council:

1. Notice of Commencement

To give written notice to the Council of the Commencement of Development on the Application Site within 10 (ten) Working Days of the same.

2. Restrictions on Use

Restaurant

- (a) Without prejudice to the existing lease in favour of the Restaurant Tenant and any renewal thereof, not at any time to otherwise sell, transfer, lease or licence the Restaurant separately from the remainder of the Application Site without the prior written consent of the Council.
- (b) To ensure at all times that the Restaurant, the Indoor Retail Areas and the Outdoor Retail Areas are occupied and operated by the same party SAVE THAT this restriction shall not apply to the existing occupation and operation of the Restaurant by the Restaurant Tenant and any renewal thereof.
- (c) To ensure that the Restaurant and all other buildings situated within the Application Site remain as a single planning unit in perpetuity.
- (d) Not to use or permit the use of the Restaurant other than within use class E(b) in Schedule 2 of the UCO.

Outdoor Retail Areas

(e) Not to sell any goods or services from the Outdoor Retail Areas other than the following:

- (i) horticultural products, trees, plants, shrubs, house plants and flowers;**
- (ii) propagation seeds, bulbs, seed trays, plant pots etc;**
- (iii) sundries, plant protection and plants support, hanging baskets and auxiliary products;**
- (iv) compost and gravels, aggregates and other garden hard landscaping sundries;**
- (v) fencing, trellis, gates and other associated products (landscaping materials);**
- (vi) fertilizer and chemicals;**
- (vii) garden and outdoor clothing and footwear, tool belts, gloves and kneelers etc;**
- (viii) garden buildings, sheds, summerhouses and outdoor play equipment;**
- (ix) outdoor garden furniture;**
- (x) outdoor aquatics and water garden equipment and their accessories;**
- (xi) outdoor spas and pools;**
- (xii) barbeques and their accessories;**
- (xiii) garden equipment, mowers, garden machinery, hand tools and accessories;**
- (xiv) bird and wildlife care products. Hedgehog house, bat boxes, bird feed, bird tables;**
- (xv) wood preservatives and other treatments necessary for the maintenance of garden furniture;**

Indoor Retail Areas

- (f) Not to sell any goods or services from the Indoor Retail Areas (without obtaining the Council's prior approval in writing) other than the following:
- (i) garden furniture;
 - (ii) conservatory and interior furniture;
 - (iii) indoor aquatics, pet products and accessories;
 - (iv) toys and crafts;
 - (v) regional produce;
 - (vi) baskets, wickerwork and country crafts;
 - (vii) home and kitchen accessories, freestanding kitchen furniture;
 - (viii) giftware;
 - (ix) stationary and books;
 - (x) original artwork and prints;
 - (xi) fabric cushions, soft furnishings, ornamental rugs, floor coverings and accessories;
 - (xii) garden games;
 - (xiii) country and outdoor clothing, footwear accessories, camping and outdoor pursuit products;
 - (xiv) Christmas decorations, trees and gifts;
 - (xv) china, glass and gifts;
 - (xvi) jewellery;
 - (xvii) conservatories.
- (g) Not to display, offer for sale or sell any goods outside the sales areas comprising the Restaurant, Indoor Retail Areas and Outdoor Retail Areas shown respectively as Areas 1, 2 and 3 on the Plan.

Opening Hours

- (h) Unless otherwise approved in writing by the Council, not to operate outside of the following opening hours:

Restaurant:

- 8:00am – midnight Monday to Sunday (inclusive).

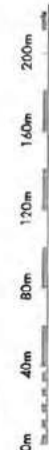
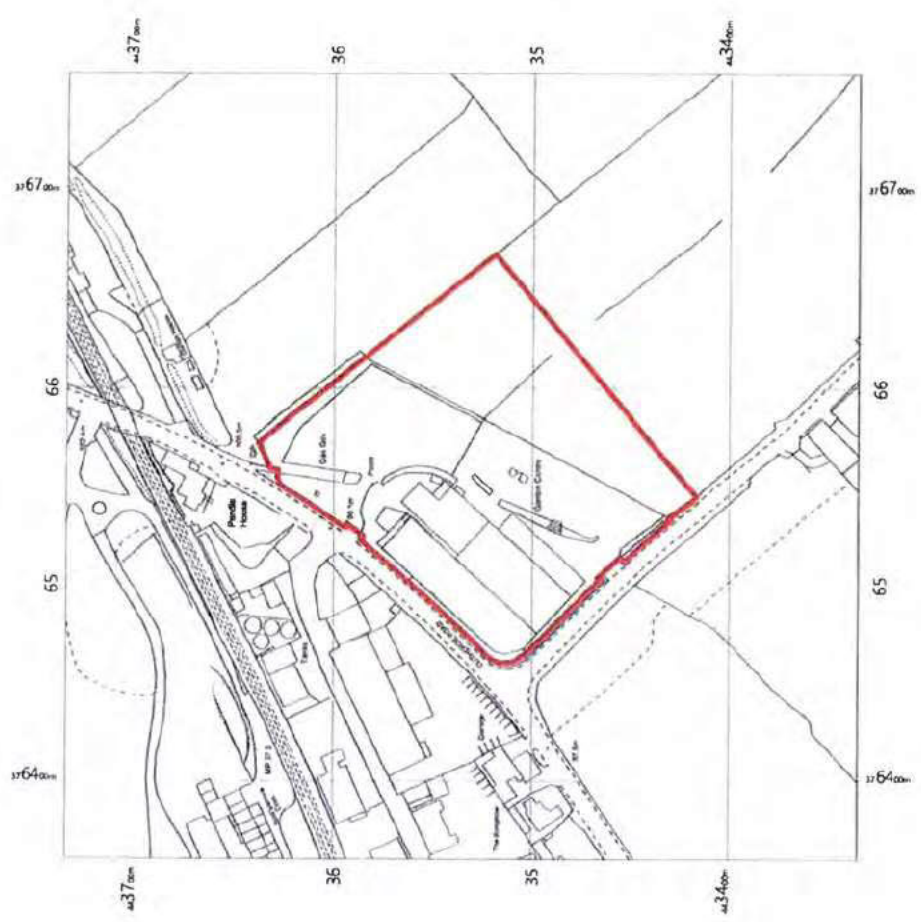
Indoor Retail Areas and Outdoor Retail Areas:

- 8:00am – 8:00pm Monday to Saturday (inclusive); and
- 10:00am – 4.30pm on Sunday.

APPENDIX 1

Location Plan

Notes:
1. This plan is issued for pre-app only. It is not a final plan and should not be used for construction.
2. The plan is issued for pre-app only. It is not a final plan and should not be used for construction.
3. The plan is issued for pre-app only. It is not a final plan and should not be used for construction.



A issued for pre-app 19.07.2019

stanton andrews
architects

44 york street
chichester
PO1 2DQ

t 01200 44490
e mail@stantonandrews.co.uk
w stantonandrews.co.uk

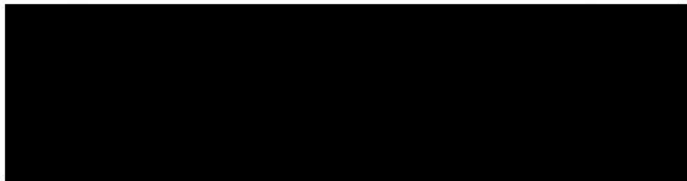
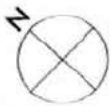
shackletons home & garden
chatham

location plan

drawn	db	date	1859 / EX00	rev	A
scale	1:2500	0 A3			

APPENDIX 2

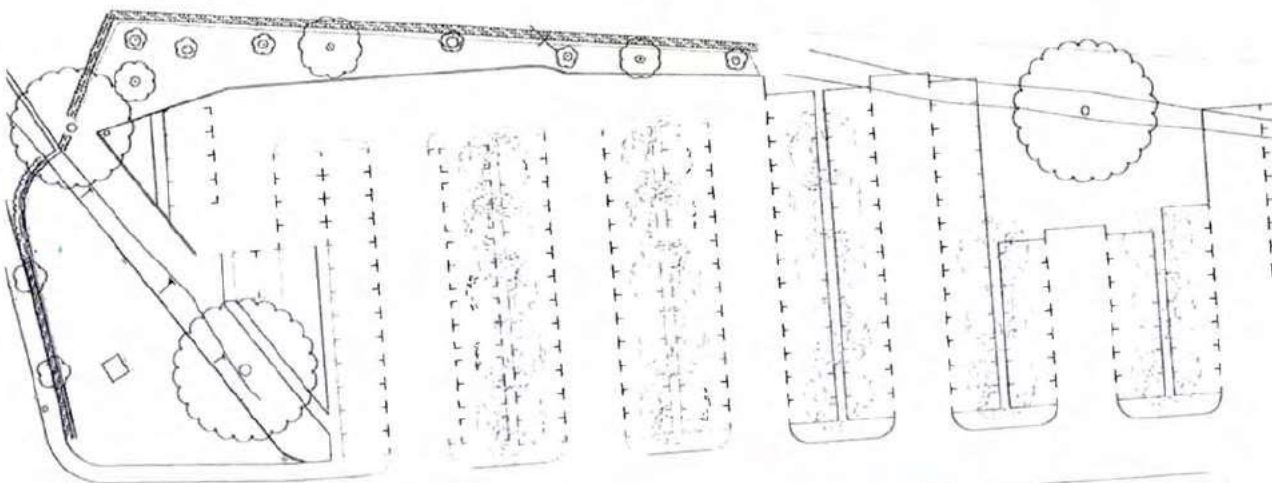
Layout Plan



North Arrow

KEY

- AREA 1 - OUTDOOR
- AREA 2 - INDOOR
- AREA 3 - CAFE



CLITHEROE ROAD

WORSTON ROAD



APPENDIX 3

Draft Planning Permission