

**Dated** 2025

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**AGREEMENT**

**under Section 111 Local Government Act 1972  
and Section 106 of the  
Town and Country Planning Act 1990  
relating to land at Preston Street, Whitehaven**

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**BETWEEN**

- (1) **CUMBERLAND COUNCIL**
- (2) **LEYLANDII LIMITED**
- (3) **MAPLE GROVE DEVELOPMENTS LIMITED**
- (4) **ALDI STORES LIMITED**

2025

- (1) **CUMBERLAND COUNCIL** of Cumbria House, 117 Botchergate, Carlisle CA1 1RD ("the Council");
- (2) **LEYLANDII LIMITED** (incorporated in the Isle of Man) of 1 Cooil Road, Braddan, Isle of Man, IM2 2QZ and care of Hill Dickinson LLP, 1 St. Pauls Square, Liverpool L3 9SJ ("the First Owner")
- (3) **MAPLE GROVE DEVELOPMENTS LIMITED** (company registration number 1577201) of Sceptre House, Sceptre Way, Bamber Bridge, Preston PR5 6AW ("the Second Owner"), and
- (4) **ALDI STORES LIMITED** (Company Registration Number 02321869 of Holly Lane, Atherstone, Warwickshire CV9 2SQ. ("the Developer").

1. The Council is the local planning authority for the purposes of the Act for the area within which the Development Land is situated and is the authority by whom the obligations hereby created in favour of the Council are enforceable.
2. The Council is the registered proprietor of those parts of the Development Land which are registered at HM Land Registry under title number CU193352. The freehold of these parts of the Council Owned Land will be transferred from the Council to the Developer pursuant to an agreement dated 22 November 2022 entered into between the Council and the Developer.
3. The First Owner is registered proprietor of those parts of the Development Land which are registered at HM Land Registry under title number CU51941.
4. The Developer entered into an agreement with the First Owner to purchase those parts of the Development Land which are registered at HM Land Registry under title number CU51941 dated 28<sup>th</sup> June 2023.

5. The Second Owner is registered proprietor of those parts of the Development Land which are registered at HM Land Registry under title number CU186319.
6. The Developer entered into an agreement with the Second Owner to purchase those parts of the Development Land which are registered at HM Land Registry under title number CU186319 dated 28<sup>th</sup> June 2023 as recorded by unilateral notice on this title.
7. The Developer has submitted the Application to the Council for planning permission for the Development.
8. The Council considers it expedient in the interests of the proper planning of its area that provision should be made for regulating or facilitating the Development as set out in this Deed, For the purposes of Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) the Council is satisfied that the restrictions and provisions contained in this Deed are necessary to make the Development acceptable in planning terms, that they are directly related to the Development and are fairly and reasonably related in scale and kind to the Development
9. The Council has resolved that Planning Permission should be granted for the Development subject to the prior completion of this Deed.

**NOW THIS DEED WITNESSES as follows:**

**1. Definitions**

"the 1990 Act"	means the Town and Country Planning Act 1990 (as amended).
"the Application"	means the planning application made to the Council for the Planning Permission for <i>Erection of a discount foodstore with associated access, parking, hard and soft landscaping and associated works</i> and known to the Council by reference 4/23/2314/0F1 and validated by the Council on 31 October 2023
"the Commencement of Development"	means the date upon which any part of the Development is begun by the carrying out on the Development Land of a material operation (as defined by section 56(4) of the 1990 Act) pursuant to the Planning Permission provided that the following shall not for the purposes of this Deed only be taken to be a

material operation and shall not amount to Commencement of Development:

- a) works of site clearance;
- b) ground investigation and site survey work;
- c) construction of boundary fencing or hoarding;
- d) archaeological investigation; and
- e) works of decontamination or remediation;

and the term "Commence Development" shall be construed accordingly.

"Confirmatory Deed"	Means a deed entered into pursuant to section 106 of the 1990 Act entered into by the Developer to ensure that any interest they have acquired in the Development Land following the completion of this Deed is bound by the provisions, obligations, covenants and undertakings of this Deed, a draft of which is attached to this Deed at the Fourth Schedule.
"Council Owned Land"	Means those parts of the Development Land as outlined in red on Plan 2 which the Council is the registered proprietor of as at the date of this Deed.
"the Development"	The development of the Development Land by the Developer in accordance with the Planning Permission.
"the Development Land"	means the land at Preston Street, Whitehaven outlined in red on Plan 1 but excluding any area of and which is adopted highway .
"Highways Contribution"	means the sum of £50,000 (fifty thousand pounds) to be used by the Council towards the delivery of a parallel signal controlled crossing on Preston Street.
"Occupation"	the physical use of land or buildings permitted by the Planning Permission but not including occupation by personnel engaged in construction or fitting out, or occupation for marketing and display, or occupation in relation to security operations,

and **Occupy**, **Occupied** and **Occupier** shall be construed accordingly.

“

“the Owners” means together (and not individually) the First Owner and the Second Owner.

“the Parties” means together (and not individually) the Council, the Owners and the Developer.

“Plan 1” means the plan attached to this Deed at the Third Schedule and marked as “PM\_40\_50-21-0001 S4 P01”.

“Plan 2” means the plan attached to this Deed at the Third Schedule and marked as “ALD214.236”.

“the Planning Permission” means a planning permission to be granted for the Development pursuant to the Application of which the draft form is annexed hereto at the Fifth Schedule;

“Price Index” means the All In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation as at the date the Highways Contribution become payable respectively;

“Travel Plan Monitoring Fee” means the sum of £6,600 (six thousand six hundred pounds) in respect of the costs associated with the ongoing review and monitoring of the travel plan, submitted by the Developer in accordance with the Planning Permission.

## 2. **Construction of this Deed**

2.1 Where in this Deed reference is made to any clause, paragraph, schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph, schedule or recital in this Deed.

2.2 Words importing the singular meaning where the context so admits includes the plural meaning and vice versa.

- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 2.4 If any party to this Deed comprises more than one person the obligations and liabilities of that party under this Deed shall be joint and several obligations and liabilities of those persons.
- 2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
- 2.6 References to any party to this Deed shall include the successors in title to that party and to any person deriving title through or under that party.

### **3. Legal basis**

- 3.1 This Deed is made pursuant to section 106 of the 1990 Act, section 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011 and any other enabling powers.
- 3.2 The covenants obligations and restrictions in this Deed (in so far as they are capable) are planning obligations for the purposes of section 106 of the 1990 Act and the Owner's and Developer's interests the Development Land shall be bound by the terms of this Deed.
- 3.3 The terms of this Deed are enforceable by the Council as local planning authority.

### **4. Conditionality**

- 4.1 The obligations and restrictions in this Deed, shall take effect upon the Commencement of Development save for:
- 4.1.1 Clause 1-12 (inclusive but excluding clause 5.1) and paragraph 1 to the Second Schedule which shall take effect on the date of this Deed;

- 4.1.2 Clause 5.1 shall take effect on the date of this Deed subject to paragraphs 2 and 3 to the First Schedule only taking effect upon the Commencement of Development
- 4.1.3 paragraph 1.1 to the First Schedule which shall take effect on the grant of the Planning Permission; and.
- 4.1.4 clause 5.2 which shall take effect on the date when any part of the Council Owned Land is transferred from the Council to the Developer AND FOR THE AVOIDANCE OF DOUBT the aforementioned date will be as stated on the transfer.

5. **The Owner's and Developer's covenants**

- 5.1 The Owners covenant with the Council as set out in the First Schedule of this Deed Provided that the First Owner shall only be liable for any breaches that occur in relation to Commencement of Development on those parts of the Development Land which are registered at HM Land Registry under title number CU51941 and the Second Owner shall only be liable for any breaches that occur in relation to Commencement of Development on those parts of the Development Land which are registered at HM Land Registry under title number CU186319.
- 5.2 The Developer covenants that with effect from the date they acquire any part of the Council Owned Land from the Council:
  - 5.2.1 They will comply with the covenants with the Council as set out in the First Schedule of this Deed; and
  - 5.2.2 Within 21 (twenty one) days of completion of the transfer of any part of the Council Owned Land from the Council to the Developer, the Developer shall deliver to the Council a Confirmatory Deed duly executed by the Developer which is fully and finally released to the Council such that the Council may proceed to complete the Confirmatory Deed without any further recourse to the Developer.

- 5.2.3 The Developer shall not dispose of their interest in the Development Land until such time as the Confirmatory Deed is duly executed and completed by the Council.

**6. The Council's Covenants**

- 6.1 The Council covenants with the Owners as set out in the Second Schedule of this Deed.

**7. Costs**

- 7.1 The Developer shall pay to the Council upon the date of this Deed all reasonable and proper costs of the Council in the preparation of this Agreement in the maximum sum of £1500 (no VAT payable).

**8. Notice**

- 8.1 Any notice or other communication given or made under this Deed shall be in writing and shall be delivered personally or sent by first class post to the address of the addressee specified in this Deed and any such notice or communication sent by first class post shall be deemed to be received the day after posting.

**9. Miscellaneous**

- 9.1 This Agreement is a local land charge and shall be registered as such.
- 9.2 The provisions of the Contracts (Rights of Third Parties) Act 1999 are excluded from the terms of this Deed.
- 9.3 No person shall be liable for breach of covenant contained in this Deed after he shall have parted with all interest in the Development Land or the part thereof in respect of which such breach occurs but without prejudice to his liability for any subsisting breach of covenant prior to parting with such interest.
- 9.4 Any sum referred to in this Deed (save for the Travel Plan Monitoring Fee) shall be increased by an amount equivalent to the increase in the Price Index from the date hereof until the date on which such sum is actually paid.

- 9.5 None of the obligations of this Deed shall be enforceable against any statutory authority or service company acquiring part of the Development Land or any electricity sub-station, gas governor or other land within the Development Land.
- 9.6 Nothing in this Deed shall prohibit or limit the right to develop any part of the Development Site in accordance with a planning permission granted (whether or not on appeal) after the date of this Deed.
- 9.7 If any provision of this Deed is held to be invalid illegal or unenforceable under any enactment or rule of law that term or provision shall to that extent be deemed not to form part of this Deed and the enforceability of the remainder of this Deed shall remain unaffected.
- 9.8 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 Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development.

10. **Determination of Dispute**

- 10.1 Any dispute arising between the parties as to their respective rights duties or obligations or as to the failure of the Council to give or confirm its consent where required under this Deed or as to any other matter or thing arising out of or connected with the subject matter of this Deed or any failure to agree upon any matter may be referred in accordance with clause 10.2 to the determination of a Specialist.
- 10.2 Any reference to a Specialist in accordance with clause 10.1 shall be to a reputable chartered surveyor unconnected to any of the parties hereto and experienced in commercial development matters who shall be agreed between the parties to the dispute or appointed on the application of any party to the dispute made at any time by the President of the Royal Institution of Chartered Surveyors or his duly appointed deputy and the decision of such Specialist shall be final and binding upon the parties to the dispute and the parties hereby agree to act in accordance with the decision (save for manifest error) and if the parties to the dispute shall agree in writing such reference shall be deemed to be a reference to an expert (and not an arbitrator) but shall otherwise be deemed to be a reference to an arbitrator pursuant to the Arbitration Act 1996 and if any Specialist shall act as an expert pursuant to the terms of this clause 10.2 then each of the parties to the dispute shall be entitled to submit to him representations and cross representations with such supporting evidence as they shall consider necessary and he shall have regard thereto in making his decision which he shall deliver in writing as expediently as possible and the reference to him shall include authority to determine in what manner all the costs

of the referral (whether incurred by the parties to the dispute or the Specialist himself) shall be paid.

**11. Governing Law**

- 11.1 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.

**12. Developer Consent**

- 12.1 The Developer consents to its interest in the Development Land being bound hereby and covenants with the Council that upon acquiring a freehold or leasehold interest in the Development Land it shall be subject to the relevant obligations in this Deed as a person deriving title thereto Provided That it shall have no liability under this Deed other than in respect of clause 5 unless and until it acquires the freehold or leasehold interest in the Development Land.

**IN WITNESS** whereof the parties hereto have executed this document as a Deed and it is delivered and takes effect on the date stated at the beginning of it.

**FIRST SCHEDULE**  
**THE DEVELOPER'S AND OWNERS COVENANTS**

**1. Notice and monitoring**

- 1.1 The Owners and the Developer shall give prior notice in writing to the Council not later than 28 days before the Commencement of Development.
- 1.2 The Owners and the Developer shall give notice in writing to the Council not later than 28 days before first Occupation of any part of the Development.
- 1.3 The Owners and the Developer shall give notice in writing to the Council upon Occupation.
- 1.4 The Owners and the Developer shall provide in writing to the Council (as soon as reasonably practicable following a written request made by the Council) such information as the Council reasonably requires to monitor compliance with this Deed.

**2. Travel Plan Monitoring Fee**

- 2.1 The Owners and the Developer covenant with the Council to pay the Travel Plan Monitoring Fee to the Council prior to first Occupation.
- 2.2 That the Occupation shall not occur until the Travel Plan Monitoring Fee has been paid to the Council.

**3. Highways Contribution**

- 3.1 The Owners and the Developer covenant with the Council to pay the Highways Contribution to the Council prior to first Occupation.
- 3.2 That the Occupation shall not occur until the Highways Contribution has been paid to the Council.

**SECOND SCHEDULE**  
**THE COUNCIL'S COVENANTS**

1. The Council hereby covenants that upon completion of this Deed it shall issue the Planning Permission.
2. To use the Highways Contribution received under the terms of this Deed for the purposes specified in Clause 1 of this Deed.
3. In the event that the Highways Contribution (or any parts thereof) are not expended within 10 (ten) years of that date of payment then the sum or sums not expended plus interest accrued shall be repaid to the party that paid it.
4. To use the Travel Plan Monitoring Fee towards the cost incurred by the Council in respect of ongoing review and monitoring of the travel plan, submitted in accordance with the Planning Permission.

**THIRD SCHEDULE**  
**PLANS**



REV	DATE	DESCRIPTION	DRW	CHK
P01	2023-10-18	First issue	Adel	MJ

Client  
**Aldi Stores Ltd.**



Project Title  
**Aldi - Whitehaven**

Project Address  
**Preston Street  
Whitehaven**

Drawing Title  
**Location Plan**

Job No.	Originator	Zone	Level	Type	Role
<b>0470</b>	<b>PA</b>	<b>XX</b>	<b>00</b>	<b>DR</b>	<b>A</b>

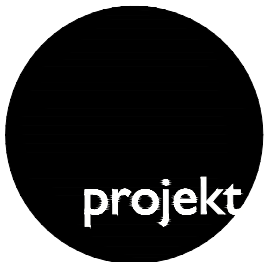
System Classification	Drawing No.	Suitability	Revision
<b>PM_40_50-21-0001</b>		<b>S4</b>	<b>P01</b>

Drawn	Checked	Date	Scale	Size
<b>Adel</b>	<b>MJ</b>	<b>2023-10-12</b>	<b>1:1000</b>	<b>A3</b>

Studio 303, Mailing Exchange,  
Hoults Yard, Walker Road,  
Newcastle Upon Tyne,  
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0 10 20 30 40 50  
Scale: 1:1250

**ward**  
**hadaway**

Client: **Aldi Stores Limited**

File: **ALD214.236**

Rev:

Title: **Contract / Transfer Plan 1**

Land at Preston Street  
Whitehaven

Scale: **1:1250 @A3**

Date: **23/10/23**

Ordnance Survey © Crown copyright  
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Drawn by: **KS**

**FOURTH SCHEDULE**  
**DRAFT CONFIRMATORY DEED**

**Dated**

**2025**

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**CONFIRMATORY DEED**

**under Section 106 of the  
Town and Country Planning Act 1990  
relating to land at Preston Street, Whitehaven**

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**BETWEEN**

**(1) CUMBERLAND COUNCIL**

**(2) ALDI STORES LIMITED**

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**Planning permission reference: 4/23/2314/0F1**

THIS DEED is made the                      day of                      2025

BETWEEN

- (1) **CUMBERLAND COUNCIL** of Cumbria House, 117 Botchergate, Carlisle CA1 1RD ("the Council"); (**Council**) and
- (2) **ALDI STORES LIMITED** (Company Registration Number 02321869 of Holly Land, Atherstone, Warwickshire CV9 2SQ. ("the Developer").

WHEREAS

1. This Confirmatory Deed relates to those parts the Development Land registered at HM Land Registry under title number CU193352 known as the Council Owned Land in the Initial Agreement.
- ~~2.~~ The Developer has contracted to enter into this Confirmatory Deed pursuant to section 106 of the 1990 Act upon assembly of the Development Land in accordance with the Initial Agreement.
3. The Council is the Local Planning Authority for the purposes of section 106 of the 1990 Act for the area in which the Development Land is located.
4. The Developer is the freehold owner of those parts of the Development Land which are registered at HM Land Registry under title number CU193352 and known as the Council Owned Land within the Initial Agreement.
5. This Confirmatory Deed is required to ensure that the legal estate acquired by the Developer in the Development Land is bound by the planning obligations, covenants, agreements and other provisions contained in the Initial Agreement and that the Initial Agreement is enforceable against the Developer and all persons deriving title to the Development Land or any part thereof from them.
6. This Confirmatory Deed is required pursuant to clause 5.2 of the Initial Agreement.

**AGREED TERMS**

**1. DEFINITIONS AND INTERPRETATION**

- 1.1 The definitions and rules of interpretation in Clause 1 apply:

<b>Initial Agreement</b>	means the agreement made pursuant to Section 111 of the Local Government Act 1972 and section 106 of the 1990 Act dated [ ] and made between the Council, Leylandii Limited, Maple Grove Developments Limited and the Developer.
<b>Development Land</b>	all that land shown edged red for illustrative purposes on the Plan.
<b>Plan</b>	means the plan appended to this Confirmatory Deed.
<b>Planning Permission</b>	means the planning permission granted by the Council on [ ] with reference number 4/23/2314/0F1.

**2. OPERATION OF THIS CONFIRMATORY DEED**

- 2.1 This Confirmatory Deed and the obligations contained in it are:

- 2.1.1 made pursuant to Sections 106 and 106A of the 1990 Act and all other enabling powers;

- 2.1.2 executed by the Developer so as to bind and subject their estate or interest in the acquired parts of the Development Land to the obligations, covenants, agreements and other provisions contained in the Initial Agreement; and
- 2.1.3 enforceable in accordance with this Confirmatory Deed and the Initial Agreement against the Developer and their successors in title to the Development Land by the Council acting as the local planning authority.

### **3. THE DEVELOPER'S OBLIGATIONS**

- 3.1 The Developer hereby covenants, agrees and undertakes (for themselves and their successors in title to the Development Land) that their estate or interest in the Development Land shall henceforth be bound by the obligations, covenants, agreements and other provisions contained in the Initial Agreement insofar as they relate to the Development Land (and to the extent that they remain outstanding at the date of this Deed).
- 3.2 The Developer acknowledges that from the date of this Deed the provisions of the Initial Agreement (to the extent that they remain outstanding at the date of this Deed) shall be enforceable against the Developer as owners of the Development Land and their successors in title to the Development Land by the Council.

### **4. MISCELLANEOUS PROVISIONS**

- 4.1 The terms of this Confirmatory Deed are enforceable by the Council as local planning authority against the Developer.
- 4.2 All words and phrases in this Confirmatory Deed shall bear the same meaning as defined in the Initial Agreement except where defined otherwise in this Confirmatory Deed.
- 4.3 This Confirmatory Deed shall be registrable as a local land charge by the Council.
- 4.4 No person shall be liable for breach of covenant contained in this Confirmatory Deed after he shall have parted with all interest in the Development Land or the part thereof in respect of which such breach occurs but without prejudice to his liability for any subsisting breach of covenant prior to parting with such interest.
- 4.5 Nothing in the Confirmatory Deed shall prohibit or limit the right to develop any part of the Development Land in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Confirmatory Deed.
- 4.6 No provision of this Confirmatory Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 4.7 None of the obligations of this Confirmatory Deed shall be enforceable against any statutory authority or service company acquiring part of the Development Land or any electricity sub-station, gas governor or other land within the Development Land.
- 4.8 Any invalidity illegality or unenforceability of any clause or paragraph in the Initial Agreement or this Confirmatory Deed shall not affect the validity or enforceability of the remaining provisions in this Confirmatory Deed.
- 4.9 This Confirmatory Deed shall immediately cease to have effect if and to the extent that the Initial Agreement ceases to have effect and in any such circumstance all reference to this deed shall be removed from the local land charges register.

### **5. NO FETTER OF DISCRETION**

- 5.1 Nothing in this Confirmatory Deed shall fetter or restrict the Council's statutory rights, powers, discretions and responsibilities.

- 5.2 If any provision of this Confirmatory Deed is held to be invalid illegal or unenforceable under any enactment or rule of law that term or provision shall to that extent be deemed not to form part of this Deed and the enforceability of the remainder of this Confirmatory Deed shall remain unaffected.

**6. DETERMINATION OF DISPUTE**

- 6.1 Any dispute arising between the parties as to their respective rights duties or obligations or as to the failure of the Council to give or confirm its consent where required under this Confirmatory Deed or as to any other matter or thing arising out of or connected with the subject matter of this Confirmatory Deed or any failure to agree upon any matter may be referred in accordance with clause 6.2 to the determination of a Specialist.
- 6.2 Any reference to a Specialist in accordance with clause 6.1 shall be to a reputable chartered surveyor unconnected to any of the parties hereto and experienced in commercial development matters who shall be agreed between the parties to the dispute or appointed on the application of any party to the dispute made at any time by the President of the Royal Institution of Chartered Surveyors or his duly appointed deputy and the decision of such Specialist shall be final and binding upon the parties to the dispute and the parties hereby agree to act in accordance with the decision (save for manifest error) and if the parties to the dispute shall agree in writing such reference shall be deemed to be a reference to an expert (and not an arbitrator) but shall otherwise be deemed to be a reference to an arbitrator pursuant to the Arbitration Act 1996 and if any Specialist shall act as an expert pursuant to the terms of this clause 11.2 then each of the parties to the dispute shall be entitled to submit to him representations and cross representations with such supporting evidence as they shall consider necessary and he shall have regard thereto in making his decision which he shall deliver in writing as expediently as possible and the reference to him shall include authority to determine in what manner all the costs of the referral (whether incurred by the parties to the dispute or the Specialist himself) shall be paid.

**7. GOVERNING LAW**

- 7.1 This Confirmatory 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.

**IN WITNESS** whereof the parties hereto have executed this document as a Deed and it is delivered and takes effect on the date stated at the beginning of it.

**EXECUTED** as a **DEED** by  
**CUMBERLAND COUNCIL**

)  
)  
)  
)

By affixing its common seal in the presence of

Authorised Signatory

**SIGNED** as a **DEED** by

.....

as attorney for

**ALDI STORES LIMITED** Attorney

under a power of attorney dated .....

in the presence of:

Witness' signature:

Name (in block capitals):

Address:

**FIFTH SCHEDULE**  
**DRAFT PLANNING PERMISSION**



Cumberland Council  
Cumbria House  
107-117 Botchergate  
Carlisle  
Cumbria CA1 1RD  
Telephone **0300 373 3730**  
[cumberland.gov.uk](http://cumberland.gov.uk)

TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED).

**DRAFT NOTICE OF GRANT OF PLANNING PERMISSION**

**This Permission is Subject to a Section 106 Agreement**

Avison Young  
Central Square  
Orchard Street  
Newcastle Upon Tyne  
NE1 3AZ  
FAO: Mr Chris Johnson

**APPLICATION No: 4/23/2314/0F1**

**ERECTION OF A DISCOUNT FOOD STORE WITH ASSOCIATED ACCESS,  
PARKING, HARD AND SOFT LANDSCAPING AND ASSOCIATED WORKS**

**LAND AT PRESTON STREET, PRESTON STREET, WHITEHAVEN**

**Aldi Stores Ltd**

The above application dated 31/10/2023 has been considered by the Council in pursuance of its powers under the above mentioned Act and PLANNING PERMISSION HAS BEEN GRANTED subject to the following conditions:

1. The development hereby permitted shall begin not later than three years from the date of this decision.

Reason

To comply with the requirements of Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. The development hereby permitted shall be carried out in accordance with the following approved plans:

Design and Access Statement (Projekt Architects)  
Preliminary Ecological Appraisal & Biodiversity Net Gain Report - Proposed Aldi, Whitehaven - Version 2 (Total Ecology)

Transport Assessment – Proposed Aldi Foodstore Relocation, Preston Street, Whitehaven - Project no: 48013 - (Andrew Moseley Associates)  
Highways Technical Note - Proposed Aldi Foodstore Relocation, Preston Street, Whitehaven - 19th January 2024  
Highways Technical Note - Proposed Aldi Foodstore Relocation, Preston Street, Whitehaven - 12th April 2024  
Interim Travel Plan - Proposed Aldi Foodstore, Preston Street, Whitehaven – Project No.45031 - (Andrew Moseley Associates)

Noise Impact Assessment - Our Reference – J3242 Revision - 1 (Paul Horsley Acoustics Ltd)  
Air Quality Impact Assessment - Report Reference: NJD23-0140-002R – Final v2 - (NJD Environmental)  
Aldi Stores Limited – Sustainability Statement – January 2023

Arboricultural Impact Assessment For Trees On Land Adjacent to Preston Street, Whitehaven (All About Trees)  
Drawing No. AMS EXI – Existing Trees Shown On Existing Layout (All About Trees)  
Drawing No. AIA TPP - Tree Protection Plan (All About Trees)  
Arboricultural Method Statement For Trees On Land Adjacent to Preston Street, Whitehaven (All About Trees)  
Drawing No. AMS TPP - Tree Protection Plan (All About Trees)

Archaeological Desk-Based Assessment - Proposed Aldi Preston Street Whitehaven - Report 6070  
Phase 1 Geo-Environmental Assessment – Report Ref. P18-2351 Issue 1- (3E Consulting Engineers)  
Preliminary Risk Assessment and Ground Investigation Report - Contract No. E12964/1B – Issue 1 - (DTS Raeburn)  
Geo-environmental Appraisal & Coal Mining Risk Assessment – Report Ref. P18-351/GA Issue 1 - (3E Consulting Engineers)

Flood Risk Assessment and Drainage Strategy – Preston Street, Whitehaven - Document Ref: P18-351-HYD-XX-XX-RP-C-0500 - (Hydrock)

Drawing No. 0470-PA-XX-00-DR-A-PM\_40\_50-21-0001-S4-P01 - Location Plan (Projekt Architects)  
Drawing No. 0470-PA-XX-00-DR-A-PM\_40-50-21-0002-S4-P03 - Proposed Site Plan (Projekt Architects)  
Drawing No. 0470-PA-XX-00-DR-A-PM\_40-50-21-0003-S4-P02 - Proposed Floor Plan (Projekt Architects)  
Drawing No. 0470-PA-XX-00-DR-A-PM\_40-50-21-0003-S4-P01 - Proposed Roof Plan (Projekt Architects)  
Drawing No. 0470-PA-XX-00-DR-A-PM\_40-50-21-0005-S4-P02 - Proposed Elevations (Projekt Architects)  
Drawing No. 0470-PA-XX-00-DR-A-PM\_40-50-21-0006-S4-P01 - Proposed Site Plan - Constraints (Projekt Architects)  
Drawing No. 0470-PA-XX-00-DR-A-PM\_40-50-21-0007-S4-P01 - Proposed Site Section (Projekt Architects)

#### Reason

For the avoidance of doubt and in the interests of proper planning.

#### Pre-Commencement Planning Conditions

##### *Highways*

3. No development shall commence until details, including longitudinal/cross sections of the carriageway, footways, footpaths have been submitted to and approved in writing by the Local Planning Authority.

Any works so approved shall be constructed in accordance with the approved details before the development is complete.

#### Reason

To ensure a minimum standard of construction in the interests of highway safety in accordance with the provisions of Policy CO4 of the Copeland Local Plan 2021-2039.

4. No development shall commence until visibility splays providing clear visibility of 43 metres measured 2.4 metres down the centre of the access road and the nearside channel line of the carriageway edge have been provided at the junction of the access road with the public highway as shown on: Drawing No. AMA/48013/SK001 - Visibility Splay Analysis.

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any Order revoking and re-enacting that Order) relating to permitted development, no structure, vehicle or object of any kind shall be erected, parked or placed and no trees, bushes or

other plants shall be planted or be permitted to grow within the visibility splay which obstruct the visibility splays.

The visibility splays shall be constructed before general development of the site commences so that construction traffic is safeguarded.

#### Reason

In the interests of highway safety in accordance with the provisions of Policy CO4 of the Copeland Local Plan 2021-2039.

5. No development shall commence until full design details of a scheme for highway modifications to Preston Street have been submitted to and approved in writing by the Local Planning Authority.

#### Reason

In the interests of highway safety in accordance with the provisions of Policy CO4 of the Copeland Local Plan 2021-2039

#### *Archaeology*

6. No development shall commence until the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has first been submitted to and approved in writing by the Local Planning Authority has been secured.

The written scheme of investigation must include the following components:

- i) An archaeological evaluation; and,
- ii) An archaeological recording programme the scope of which will be dependent upon the results of the evaluation.

#### Reason

To afford reasonable opportunity for an examination to be made to determine the existence of any remains of archaeological interest within the site and for the examination and recording of such remains in accordance with the provisions of Policy BE3 of the Copeland Local Plan 2021-2039.

#### *Ground Conditions*

7. No above ground development shall commence until:  
a) a scheme of further intrusive investigations has been carried out on site to establish the risks posed to the development by past shallow coal mining activity; and,

b) any remediation works and/or mitigation measures to address land instability arising from coal mining legacy, as may be necessary, have been implemented on site in full in order to ensure that the site is made safe and stable for the development proposed.

The intrusive site investigations and remedial works shall be carried out in accordance with authoritative UK guidance.

#### Reason

To ensure the safety and stability of the development, in accordance with the provisions of Policy DS8 of the Copeland Local Plan 2021-2039.

#### *Construction Management*

8. No development shall commence until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority.

The CEMP shall include:

- details of the means of access and parking for construction traffic and vehicles;
- procedures for the loading and unloading of plant and materials;
- hours of delivery;
- details of the storage of plant and materials used in construction;
- details of measures to control dust, emissions, sediments and pollutants arising from the development;
- a scheme for recycling/disposing of waste resulting from construction works; and,
- measures to control noise and vibration.

The approved CEMP shall be adhered to throughout the construction period.

#### Reason

To protect amenity and to protect the environment from pollution in accordance with Policy DS9 of the Copeland Local Plan 2021-2039.

9. No development shall commence until a Construction Surface Water Management Plan (CSWMP) has been submitted to and approved in writing by the Local Planning Authority.

The CSWMP shall include:

- details of measures to control surface water flows and prevent flooding during the construction period; and,
- measures to prevent the discharge of sediments and pollutants to the existing watercourses.

The approved CSWMP shall be adhered to throughout the construction period.

#### Reason

To safeguard against flooding to surrounding sites and to safeguard against pollution of surrounding watercourses and drainage systems in accordance with the provisions of Strategic Policy DS6, Policy DS7 and Policy DS8 of the Copeland Local Plan 2021-2039.

#### *United Utilities Asset Protection*

10. No development shall commencement until details of the means of ensuring the 600x800mm public combined sewer that is laid within the site boundary is protected from damage as a result of the development (including the proposed level changes and connections to this sewer) have been submitted to and approved by the Local Planning Authority.

The details shall outline the potential impacts from construction activities and the impacts post completion of the development on the public sewer that crosses the site and identify mitigation measures to protect and prevent any damage to the pipeline both during construction and post completion of the development.

The development shall be completed in accordance with the approved details.

#### Reason

To ensure protection of essential services and safeguard against flooding in accordance with the provisions of Policy DS4 of the Copeland Local Plan 2021-2039.

#### *Landscaping*

11. Notwithstanding the submitted details, no development shall commence until a detailed scheme of soft landscape works has been submitted to and approved in writing by the Local Planning Authority.

These shall include planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants, noting species, plant sizes and proposed numbers / densities; an implementation programme and a five-year maintenance plan.

The agreed scheme shall be carried out as approved to the agreed timetable.

Any trees / shrubs which are removed, die, become severely damaged or diseased within five years of their planting shall be replaced in the next planting season with trees / shrubs of similar size and species to those originally required to be planted.

## Reason

To safeguard and enhance the character of the area and secure high quality landscaping in accordance with the provisions of Policy DS5 of the Copeland Local Plan 2021-2039.

12. Prior to the occupation of the development hereby approved a Biodiversity Net Gain Strategy (BNGS) and a Project Implementation Plan (PIP) shall be submitted to and approved in writing by the Local Planning Authority.

The BNGS shall detail proposals to redress loss of biodiversity and the mitigation strategy proposed shall include all on and off-site habitats required to deliver a net gain of at least ten percent. The BNGS shall use the Statutory Biodiversity Metric Calculation Tool associated with the Environment Act 2021.

The PIP shall detail the delivery of ecological BNG mitigation and compensation, in accordance with the approved BNG strategy. The PIP shall include timescales for implementation, and an ongoing management and maintenance plan.

The BNGS and PIP shall be implemented, managed and maintained in accordance with the approved details.

## Reason

To ensure delivery of the required biodiversity net gain in accordance with the provisions of Policy N3P of the Copeland Local Plan 2021-2039.

## Pre-Occupation

### *Highways*

13. Prior to the occupation of the development hereby approved the modifications to the public highway at Preston Street shall be completed in accordance with the approved details.

## Reason

In the interests of highway safety in accordance with the provisions of Policy CO4 of the Copeland Local Plan 2021-2039.

14. Prior to the occupation of the development hereby approved, the approved access and parking requirements shall be constructed in accordance with the approved plans and details.

The access and or parking provision shall be retained and be capable of use when the development is completed and shall be retained for the lifetime of the development.

#### Reason

To ensure a minimum standard of access provision when the development is brought into use in accordance with the provisions of Policy CO4 of the Copeland Local Plan 2021-2039.

#### *Ground Conditions*

15. Prior to the occupation of the development hereby approved a signed statement or declaration prepared by a suitably competent person confirming that the site is, or has been made, safe and stable for the approved development shall be submitted to and approved in writing by the Local Planning Authority.

This document shall confirm the methods and findings of the intrusive site investigations and the completion of any remedial works and/or mitigation necessary to address the risks posed by past coal mining activity.

#### Reason

To ensure the safety and stability of the development, in accordance with the provisions of Policy Policy DS8 of the Copeland Local Plan 2021-2039.

#### *Drainage*

16. Prior to occupation of the development hereby approved the approved scheme of foul and surface water drainage infrastructure shall be completed and brought into operational use.

Once completed and brought into operational use, the surface water drainage infrastructure shall be retained operational for the lifetime of the development.

#### Reason

To ensure that management arrangements are in place for the sustainable drainage system in order to manage the risk of flooding and pollution during the lifetime of the development in accordance with the provisions of Strategic Policy DS6, Policy DS7 and Policy DS8 of the Copeland Local Plan 2021-2039.

#### *Noise*

17. Prior to the occupation of the development hereby approved the acoustic mitigation scheme detailed in Noise Impact Assessment for the Proposed New ALDI Retail Store at Preston Street, Whitehaven Planning Application No 4/23/2314/0F1 Our Reference – J3242 Revision - 1 shall be implemented in full.

The mitigation measures shall be retained in good working condition for the lifetime of the development.

#### Reason

To protect amenity of nearby residential dwellings in accordance with the provisions of Policy DS4 of the Copeland Local Plan 2021-2039.

#### *External Lighting and CCTV*

18. No external lighting shall be installed unless or until a scheme of external lighting has first been submitted to and approved in writing by the Local Planning Authority.

The scheme shall include details of the intensity of illumination and predicted lighting spill contours.

All external lighting shall be installed in accordance with the approved details and shall thereafter be retained as such for the lifetime of the development.

#### Reason

To protect residential amenity, to ensure high quality design and to protect the environment from light pollution in accordance with Policy DS4 of the Copeland Local Plan 2021-2039.

19. No external closed circuit television equipment shall be installed unless or until a scheme of closed circuit television equipment has first been submitted to and approved in writing by the Local Planning Authority.

All closed circuit television equipment shall be installed in accordance with the approved details and shall thereafter be retained as such for the lifetime of the development.

#### Reason

To protect residential amenity and ensure high quality design in accordance with Policy DS4 of the Copeland Local Plan 2021-2039.

#### Other Planning Conditions

## *Highways*

20. Dropped kerbs shall be provided on each side of every junction to enable wheelchairs, pushchairs etc. to be safely manoeuvred at kerb lines.

Any works so approved shall be constructed in accordance with the approved details before the development is complete.

### Reason

To ensure that pedestrians and people with impaired mobility can negotiate road junctions in relative safety in accordance with the provisions of Policy DS4 and Policy CO4 of the Copeland Local Plan 2021-2039.

21. Within 6 months of the development hereby permitted (or any part thereof) opening for business, a Final Travel Plan shall be submitted and approved in writing by the Local Planning Authority.

The Final Travel Plan shall identify the measures that will be undertaken by the developer/occupant to encourage the achievement of a modal shift away from the use of private cars to visit the development to sustainable transport modes.

The measures identified in the Final Travel Plan shall be implemented by the developer/occupant within 12 months of the development (or any part thereof) opening for business.

### Reason

To aid in the delivery of sustainable transport objectives in accordance with the provisions of CO5 of the Copeland Local Plan 2021-2039.

22. The developer/occupant shall submit to the Local Planning Authority for review the following as defined in the Interim Travel Plan - Proposed Aldi Foodstore, Preson Street, Whitehaven:

- i. The survey of staff completed one month before relocation from the existing store to establish existing travel patterns;
- ii. The follow up travel survey to be undertaken 6 months post relocation from the existing store to establish how, if at all, travel patterns have changed; and,
- iii. Four subsequent annual reviews of the Final Travel Plan.

The annual review of the Final Travel Plan shall review the effectiveness of the Travel Plan and include any necessary amendments or measures.

### Reason

To aid in the delivery of sustainable transport objectives in accordance with the provisions of CO5 of the Copeland Local Plan 2021-2039.

### *Archaeology*

23. Where significant archaeological remains are revealed by the approved programme of archaeological work, there shall be carried out within one year of the completion of that programme on site, or within such timescale as otherwise agreed in writing by the Local Planning Authority: an archaeological post-excavation assessment and analysis, the preparation of a site archive ready for deposition at a store, the completion of an archive report, and the preparation and submission of a report of the results for publication in a suitable specialist journal.

#### **Reason**

To ensure that a permanent and publicly accessible record is made of the archaeological remains that have been disturbed by the development in accordance with the provisions of Policy BE3 of the Copeland Local Plan 2021-2039.

### *Ground Conditions*

24. In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing within 14 days to the Local Planning Authority and once the Local Planning Authority has identified the part of the site affected by the unexpected contamination, development must be halted on that part of the site.

An assessment must be undertaken and where remediation is necessary a remediation scheme, together with a timetable for its implementation, must be submitted to and approved in writing by the Local Planning Authority.

The measures in the approved remediation scheme must then be implemented in accordance with the approved timetable. Following completion of measures identified in the approved remediation scheme a validation report must be submitted to and approved in writing by the Local Planning Authority.

#### **Reason**

To prevent harm to human health and the environment in accordance with the provisions of Policy DS8 of the Copeland Local Plan 2021-2039.

### *Construction Management*

25. No work for the construction of these developments, including demolition, shall take place on the site, except between the hours:  
07:30 - 18.00 Monday to Friday; and

08.00 - 13.00 on Saturdays.

No work should be carried out on Sundays or officially recognised public holidays.

#### Reason

To safeguard the amenity of neighbouring occupiers in accordance with the provisions of Policy DS4 of the Copeland Local Plan 2021-2039.

#### *Arboriculture*

26. Arboricultural Method Statement For Trees On Land Adjacent To Preston Street, Whitehaven shall be implemented as approved for the duration of the construction period.

#### Reason

To ensure the protection and retention of important landscape features in accordance with the provisions of Policy DS5 of the Copeland Local Plan 2021-2039.

#### *Ecology*

27. The development here by approved shall not proceed except in accordance with the recommendations outlined in Preliminary Ecological Appraisal & Biodiversity Net Gain Report Proposed Aldi, Whitehaven Avison Young & Aldi October 2023.

#### Reason

For the avoidance of doubt and to prevent harm to biodiversity in accordance with the provisions of Policy ENV3 of the Copeland Local Plan 2021-2039.

#### *Drainage*

28. Drainage of the development hereby approved shall be constructed, maintained and managed in accordance with the details outlined in Flood Risk and Drainage Assessment - Ref P18-351-HYD-XX-XXRP-C-0500 Issue P02.

For the avoidance of doubt no surface water will be permitted to drain directly or indirectly into the public sewer.

#### Reason

To ensure a satisfactory form of development and to prevent an undue increase in surface water run-off and to reduce the risk of flooding in accordance with the provisions of Strategic Policy DS6, Policy DS7 and Policy DS8 of the Copeland Local Plan 2021-2039.

### *Operating Limitations*

29. The net retail sales floorspace of the development hereby approved shall not exceed 1,150 square metres.

#### Reason

In order to control the precise nature and scale of the retail use and to prevent a significant adverse impact on the vitality and viability of any defined centre in accordance with the provisions of Strategic Policy R1 and Policy R8 of the Copeland Local Plan 2021-2039.

30. Not more than 20% of the net retail sales floorspace of the development hereby approved shall be used for the sale of comparison goods.

#### Reason

In order to control the precise nature and scale of the retail use and to prevent a significant adverse impact on the vitality and viability of any defined centre in accordance with the provisions of Strategic Policy R1 and Policy R8 of the Copeland Local Plan 2021-2039.

31. No additional floorspace shall be created through the use of mezzanines or other structures to increase the amount of usable floor area of the development hereby approved.

#### Reason

In order to control the precise nature and scale of the retail use and to prevent a significant adverse impact on the vitality and viability of any defined centre in accordance with the provisions of Strategic Policy R1 and Policy R8 of the Copeland Local Plan 2021-2039.

32. The approved store shall not be open for trade except between:

- 08:00 hours to 23:00 hours – Mondays to Saturdays; and
- 09:00 hours to 18:00 hours – Sundays

#### Reason

To safeguard the amenity of neighbouring occupiers in accordance with the provisions of Policy DS4 of the Copeland Local Plan 2021-2039.

33. The retail store hereby permitted shall be used for the sale of food and ancillary comparison goods, and for no other purpose including any other purpose in Class E1(a) of the Schedule to the Town and County Planning (Use Classes) Order 1987 (as amended), or in any provision equivalent to that Class in any Statutory Instrument revoking and re-enacting that Order.

Reason

In order to control the precise nature and scale of the retail use and to prevent a significant adverse impact on the vitality and viability of any defined centre in accordance with the provisions of Strategic Policy R1 and Policy R8 of the Copeland Local Plan 2021-2039.

34. The Gross Internal Area for retail purposes (Use Class E(a)) shall be a maximum of 1,916 square metres.

Reason

In order to control the precise nature and scale of the retail use and to prevent a significant adverse impact on the vitality and viability of any defined centre in accordance with the provisions of Strategic Policy R1 and Policy R8 of the Copeland Local Plan 2021-2039.

Pre-commencement Planning - Confirmatory Deed

35. No development shall commence unless and until the Local Planning Authority has confirmed in writing that a "Confirmatory Deed", as defined in the Section 111/106 Agreement dated XXXXX between Cumberland Council and XXX has been completed, which ensures that the freehold interest subsisting in the land identified as "the Development Land", in the said Section 111/106 Agreement (and any mortgage or charge in respect of such interest) is subject to and bound by the provisions of that Section 106 Agreement.

Reason

To ensure that the required extent of the Application Site is bound by the Section 106 Agreement that is required to be made to make the development acceptable in planning terms.

Please read the accompanying notice

Nick Hayhurst  
Head of Planning and Place  
Inclusive Growth and Placemaking

DRAFT

**APPROVALS  
(OUTLINE, FULL RESERVED MATTERS & HOUSEHOLDER)**

**TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT  
PROCEDURE) (ENGLAND) ORDER 2015**

**PART 2**

**TOWN AND COUNTRY PLANNING ACT 1990**

**Appeals to the Secretary of State**

- If you are aggrieved by the decision of your local planning authority to refuse permission for the proposed development or to grant it subject to conditions, then you can appeal to the Secretary of State under section 78 of the Town and Country Planning Act 1990.
- If you want to appeal against your local planning authority's decision then you must do so within 6 months of the date of this notice.
- Appeals can be made online at: <https://www.gov.uk/appeal-planning-decision> . If you are unable to access the online appeal form, please contact the Planning Inspectorate to obtain a paper copy of the appeal form on tel: 0303 444 5000.
- The Secretary of State can allow a longer period for giving notice of an appeal but will not normally be prepared to use this power unless there are special circumstances which excuse the delay in giving notice of appeal.
- The Secretary of State need not consider an appeal if it seems to the Secretary of State that the local planning authority could not have granted planning permission for the proposed development or could not have granted it without the conditions they imposed, having regard to the statutory requirements, to the provisions of any development order and to any directions given under a development order.
- If you intend to submit an appeal that you would like examined by inquiry then you must notify the Local Planning Authority and Planning Inspectorate ([inquiryappeals@planninginspectorate.gov.uk](mailto:inquiryappeals@planninginspectorate.gov.uk)) at least 10 days before submitting the appeal. [Further details are on GOV.UK.](#)

**Purchase Notices**

- If either the Local Planning Authority or the Secretary of State refuses permission to develop land or grants it subject to conditions, the owner may claim that he can neither put the land to a reasonably beneficial use in its existing state nor render the land capable of a reasonably beneficial use by the carrying out of any development which has been or would be permitted.
- In these circumstances, the owner may serve a purchase notice on the Council (District Council, London Borough Council or Common Council of the City of London) in whose area the land is situated. This notice will require the Council to purchase his interest in the land in accordance with the provisions of Part V1 of the Town and Country Planning Act 1990.

**EXECUTED as a DEED by  
CUMBERLAND COUNCIL**

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)  
)  
)

By affixing its common seal in the presence of

Authorised Signatory

**EXECUTED as a DEED by  
LEYLANDII LIMITED, a company incorporated in Isle of Man,  
acting by  
and  
who, in accordance with the laws of that territory are acting  
under the authority of the company:**

**Signature in Name of Company:           Leylandii Limited**

**Signature of**

.....

**Signature of**

.....

**SIGNED as a Deed by**  
**MAPLE GROVE DEVELOPMENTS LIMITED**  
**acting by a Director and its Secretary**  
**or by two Directors**

.....

**Director**

.....

**Director/Secretary**

**SIGNED as a DEED by**

.....

as attorney for

**ALDI STORES LIMITED** Attorney

under a power of attorney dated .....

in the presence of:

Witness' signature:

Name (in block capitals):

Address: