



Report of the Chief Planning Officer

South and West Plans Panel

Date: 26th October 2023

Subject: 23/05968/S106 - Application under S106A for the modification or discharge of Planning Obligations pursuant to Section 106A of the Town and Country Planning Act 1990 to vary the existing S106 Agreement to application 18/01501/OT to remove the build to rent and PRS covenants at Former Airedale Mills, Moss Bridge Works, Town Street, Rodley, Leeds, LS13 1HP

Applicant: Rodley Limited

Electoral Wards Affected:

**Bramley & Stanningley
Calverley & Farsley**

Yes

Ward Members consulted
(referred to in report)

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

RECOMMENDATION: DEFER AND DELEGATE to the Chief Planning Officer for approval subject to the S106 agreement, as amended, being completed after the expiry of the 21 day publication period.

PROPOSAL

- 1 This Application has been brought to Plans Panel in accordance with the Chief planning Officers delegation arrangements whereby the Chair in consultation with the Chief Planning Officer considers that the application should be referred to this Plans Panel for determination because of the significance of the proposal to vary an existing S106 agreement to 100% Affordable Housing. The existing s106 Agreement was completed on 01.07.2019 for planning application 18/01501/OT
- 2 This application is to vary the existing s106 Agreement by of Deed of Variation (“DoV”) pursuant to s106A of the Town and Country Planning Act 1990 (as amended). The

variation sought seeks to remove the reference within the current agreement to providing affordable housing provision restricted as private rented housing. The proposed variation seeks to clarify and ensure that the developer can now provide 100% affordable housing.

- Remove the Build to Rent / PRS (Private Rented Sector) covenant. The PRS covenant requires occupation of all of the dwellings in the development as 100% rented housing which is owned and managed by a single PRS operator. This restriction (in para 2 of the First Schedule of the Deed of Variation) needs to be removed as the scheme will not be delivered as 100% rented housing with associated amendments to remove the PRS Limitation Period and remove definitions relating to the PRS Housing (e.g. PRS Operator, PRS Units etc).
- Inclusion of definitions of the Affordable Housing proposed (e.g. Social Rent, Social Rented Affordable Units, Intermediate Affordable Units, Intermediate Price) and removal of the definitions of Benchmark BTR Affordable Units, alongside any references to the rental price.
- Removal of the restriction on occupying the Benchmark BTR Affordable Units only as Benchmark BTR Affordable Units.
- Inclusion of a Registered Provider exclusion clause (save for compliance with the specific affordable housing provisions)
- Flexibility to provide 100% affordable housing so that any open market dwellings can be used as additional affordable housing but that the units are not affordable units for the purposes of the s106.

3 This current application for a DoV seeks to remedy the reference within the current agreement to providing affordable housing provision restricted as private rented housing. The proposed changes seek to add flexibility to provide 100% affordable housing so that any open market dwellings can be used as additional affordable housing meaning the units are not simply affordable units for the purposes of the S106 agreement.

HISTORY OF NEGOTIATIONS AND PLANNING HISTORY

4 The site has been the subject of a previous outline permission (18/01501/OT) which granted consent for the principle of the development including means of access with all matters reserved (09.07.2019). The development site was considered to lie within a sustainable location along with its allocation being considered via the adoption of the Site Allocations Plan. A full assessment of the proposed access, including replacement swing bridge, associated modelling data and transport assessment was considered by highways officers and found to be satisfactory.

5 Reserved Matters consent (21/09266/RM) was granted via Plans Panel resolution on 08.06.2023 considering layout, scale, appearance, and landscaping for the erection of 67 dwellings pursuant to outline permission 18/01501/OT.

6 A Section 106 Agreement pursuant to Reserved Matters consent 21/09266/RM was signed and completed on 25.09.2023 including provision for 15% affordable housing,

as defined traditionally as rented housing owned and managed by a registered PRS operator. Additionally securing an off-site greenspace contribution of £50,000.

PUBLIC/LOCAL RESPONSE:

7 Site Notice – posted 12.10.2023 (21-day publicity period)

The Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992.

Publicity for applications by local planning authority

(1) When a local planning authority receive an application for the modification or discharge of a planning obligation they shall publicise the application by–

(a) posting notice of the application on or near the land to which the planning obligation relates for not less than 21 days; or

(b) serving notice of the application on the owners and occupiers of land adjoining that land; or

(c) publishing notice of the application in a local newspaper circulating in the locality in which that land is situated.

(2) The notice posted, served, or published in accordance with paragraph (1) shall be in the form set out in Part 3 of the Schedule and shall invite representations on the application to be made to the local planning authority within 21 days of the date on which the notice is posted or served, or within 14 days of the date on which the notice is published, as the case may be.

(3) The local planning authority shall make a copy of the application and the relevant part of the instrument by which the planning obligation was entered into available for inspection during the period allowed for making representations pursuant to paragraph (2).

(4) In paragraph (1)(b) “owner” in relation to any land means any person who–

(a) is the estate owner in respect of the fee simple; or

(b) is entitled to a tenancy granted or extended for a term of years certain of which not less than seven years remain unexpired.

CONSULTATION RESPONSES:

8 Legal

The DoV has been passed to Legal and the wording contained therein is considered to be appropriate to achieve the aims of the proposed DoV and thus allow delivery of 100% affordable housing.

RELEVANT PLANNING POLICIES

9 There are no planning policies that are relevant to the application and the limits to be considered focus solely on the acceptability of the proposed variation to the s106 to omit the requirement to provide 15% provision of affordable housing units for the purposes of the S106 agreement.

10 A DoV is a mechanism provided by s106A of the Town and Country Planning Act 1990, which states that a planning obligation may not be modified or discharged except *either* by agreement between the “appropriate authority”, meaning *inter alia* the LPA, and the person(s) against whom the obligation is enforceable.

- 11 Periods within which applications to modify an obligation can be made, are as follows:
- For obligations entered into on or before 6 April 2010 – an application can be made at any time.
 - For obligations entered into after 6 April 2010 – an application can be made after 5 years beginning with the date the obligation has been entered into.

MAIN ISSUES

Deed of Variation

- 12 The proposals seek to remove the standard restrictions within the current S106 agreement, para 2 of the First Schedule of the Deed of Variation, as the applicant is proposing the scheme not to be delivered as 100% rented housing. In essence the removal of this restriction omits the Private Rented Sector (PRS) limitation period and definitions relating to PRS housing, PRS Operator(s) and PRS Units. The PRS covenant requires occupation of all of the dwellings in the development as 100% rented housing to be owned and managed by a single PRS operator. This restricts the applicant from providing an alternative 100% affordable housing scheme due to the definitions.
- 11 The applicant has identified an affordable housing provider whom would take the development forward and thus seek to implement a scheme providing 100% affordable housing, above and beyond the 15% policy requirement.
- 12 It is proposed that the S106 is amended to incorporate an alternative restriction on the affordable housing remaining as affordable units in perpetuity and thus protecting the units, subject to a list of relevant exclusions including exercising the right to buy, staircasing, acquiring the whole lease through a buy basis and mortgagee exclusion clauses.

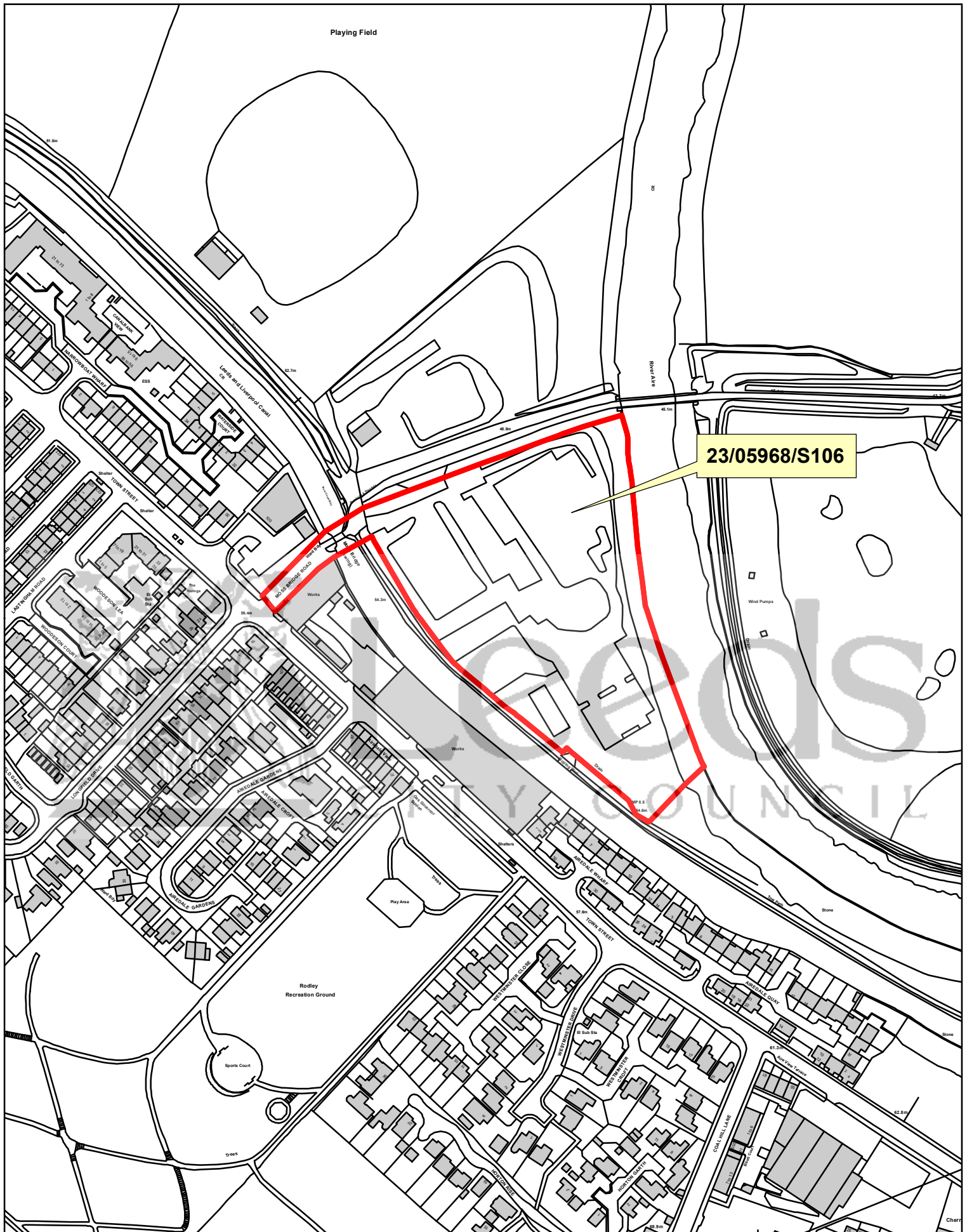
7.0 Conclusion

- 13 The proposed DoV is considered to be acceptable given the wider benefits proposed through the creation of a development incorporating 100% affordable housing and thus adding a significant number of units within the city. It is considered allowing such flexibility for an affordable housing provider is acceptable and the proposed changes do not undermine the aims of the original S106.

Background Papers:

Application files 23/05968/S106

Certificate of ownership: Certificate B signed by the agent



23/05968/S106

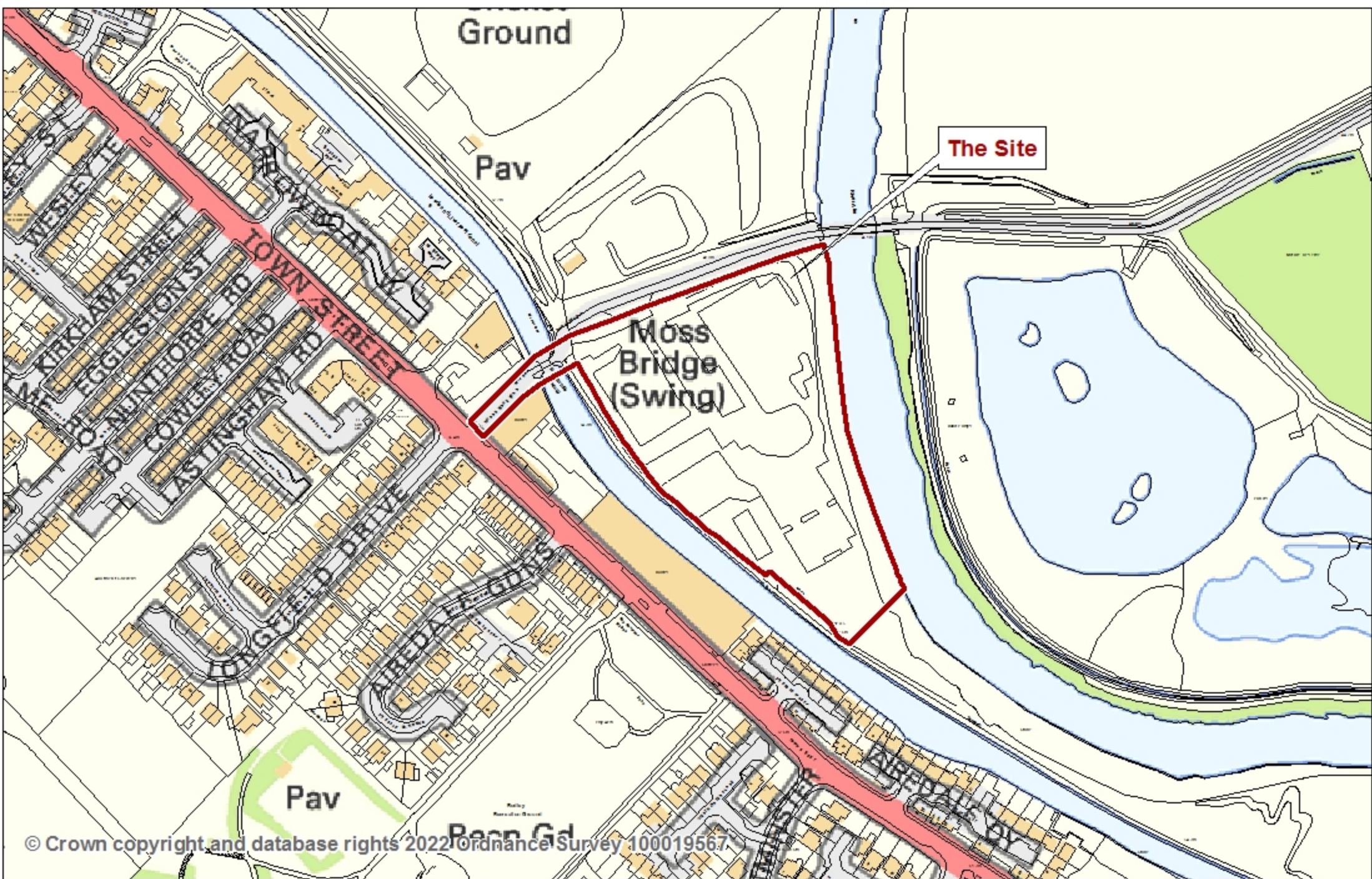
SOUTH AND WEST PLANS PANEL

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SCALE : 1 / 2500





PLANS PANEL PRESENTATION

SCALE 1:2500



The Site

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