

A94087

**BOROUGH OF ROSSENDALE**

**INTERDEPARTMENTAL MEMORANDUM**

My ref      AMP/SS/Z.12/214  
              Mrs. A. M. Parkinson

Your ref

22<sup>nd</sup> December 2005,

TO: ROBERT AIREY, CONVEYANCER

**RE: SECTION 106 AGREEMENT.  
ASDA STORES LIMITED, ST. MARY'S WAY, RAWTENSTALL.**

Attached is the executed Section 106 Agreement dated 19<sup>th</sup> December 2005. I would be grateful if you could index this in the system.



Ang  
Acting Head of Legal  
and Democratic Services.

4087

**DATED**

19<sup>th</sup> December

**2005**

**ROSSENDALE BOROUGH COUNCIL**

- and -

**ASDA STORES LIMITED**

**AGREEMENT**

under Section 106 of the Town and Country Planning Act 1990  
(as amended) relating to land  
at Lower Mill, St Mary's Way, Rawtenstall

**WALKER MORRIS**

Kings Court  
12 King Street  
LEEDS  
LS1 2HL  
Tel: 0113 2832500  
Fax: 0113 2459412  
Ref: RMS/ASP.15-17

4087

THIS AGREEMENT is made the 19<sup>th</sup> day of December 2005

**BETWEEN**

- (1) **ROSSENDALE BOROUGH COUNCIL** of PO Box 40, Town Hall, Rawtenstall, Rossendale, BB4 7NP ("the Council") of the first part; and
- (2) **ASDA STORES LIMITED** (Company No. 00464777) whose registered office is situate at Asda House, Southbank, Great Wilson Street, Leeds, LS11 5DA ("the Owner") of the second part;

**1 DEFINITIONS AND INTERPRETATION**

1.1 In this Agreement unless the context requires otherwise the following words and expressions have the respective meanings as set out opposite to them: -

"the Act" means the Town and Country Planning Act 1990 as amended;

"Application" means an application for planning permission for the Development dated 21 December 2004 and given reference number 2005/21 for the erection of a building for retail sales within Use Class A1 and for use as a restaurant within Use Class A3 with car parking, landscape, infrastructure and alterations to existing access;

"Car Parking Management Plan" a scheme which aims to manage the use of the Retail Store car park in accordance with paragraph 4 of Part II of the First Schedule

"Commencement of Development" means the date upon which the Development shall commence by the carrying out on the Site pursuant to the Planning Permission of a material operation as specified in Section 56 of the Act **Save That** the term "*material operation*" shall not include operations in connection with any work of or associated with demolition site clearance remediation works environmental investigation site and soil surveys erection of

contractors work compound erection of site office erection of fencing to site boundary and Commence Development shall be construed accordingly;

"Development"	means the development of the Site in accordance with the Planning Permission;
"Plan"	means the plan attached to this Agreement;
"Planning Permission"	means a planning permission which may be granted pursuant to the Application;
"the Public Transport Contribution"	means the sum of £100,000 (One Hundred Thousand Pounds) or part thereof to be paid to the Council by the Owner in accordance with Part III of the First Schedule
"the Retail Store"	the retail store proposed to be built as part of the Development;
"Site"	means all that land at and adjoining St Mary's Way, Rawtenstall shown for identification purposes edged red on the Plan;
"Travel Plan"	a scheme aimed at encouraging those employed at the Retail Store to access that store by means of transport other than private car and/or to make efficient use of private cars in accordance with the matters set out in paragraph 5 of Part I of the First Schedule.

1.2 The masculine feminine and neuter genders include each of the other genders and the singular includes the plural and vice versa.

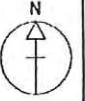
1.3 A reference to an Act of Parliament refers to the Act as it applies at the date of this Agreement.



TITLE NUMBER

LA950326

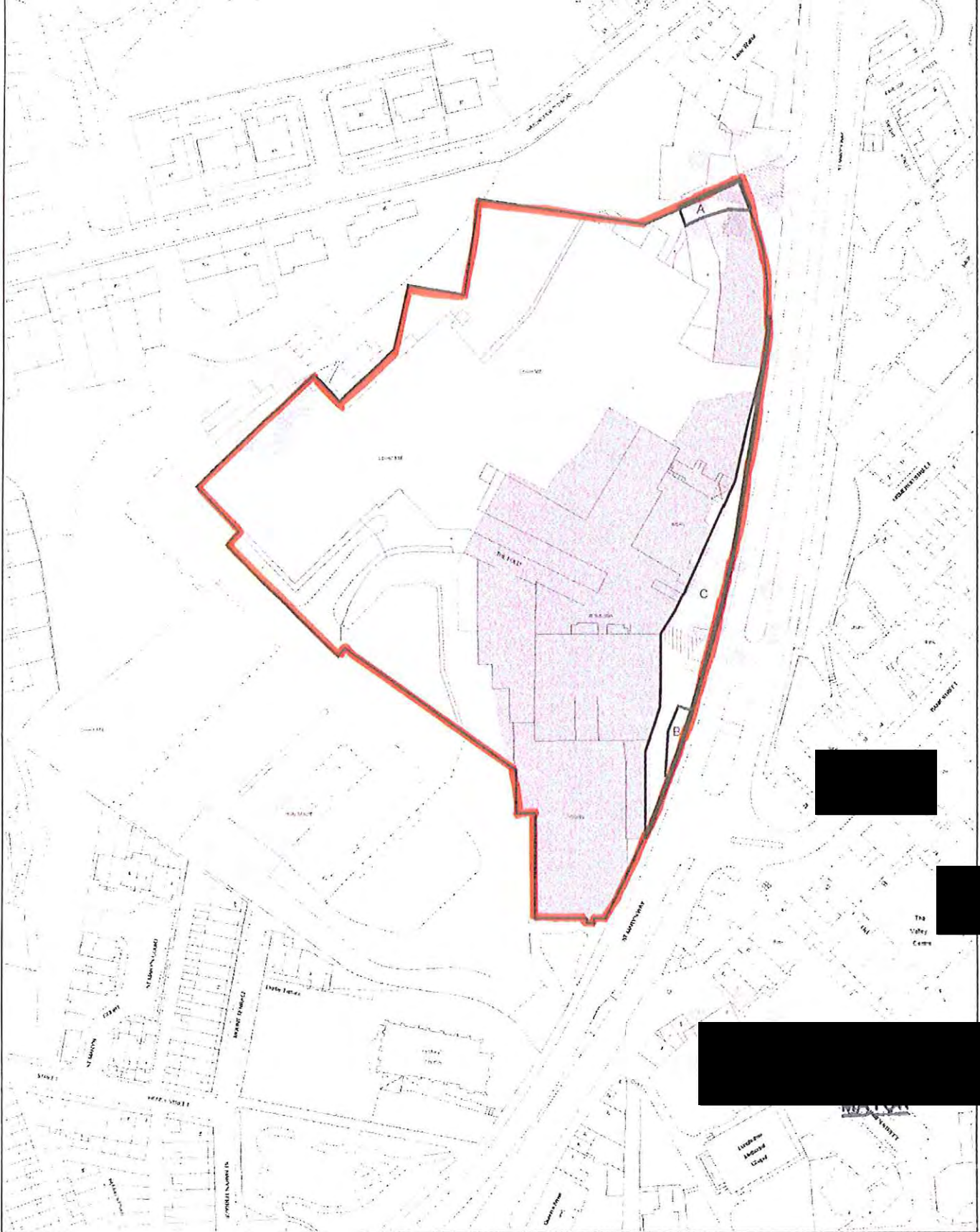
LANCASHIRE : ROSSENDALE



ORDNANCE SURVEY MAP REFERENCE: SD8122NW

SCALE: 1:1250

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- 1.4 A reference to a clause paragraph or schedule is a reference to a clause paragraph or schedule contained in this Agreement.
- 1.5 Reference to any party in this Agreement shall include the successors in title of and those deriving title from that party and in the case of the Council shall include its statutory successors in title.

## **2 RECITALS**

- 2.1 By virtue of the Act the Council is the Local Planning Authority for the purposes of this Agreement for the area in which the Site is situated and is the Authority by whom the planning obligations hereby created are enforceable.
- 2.2 The Owner is the owner of the site registered at HM Land Registry under Title Number LA950326.
- 2.3 The Council is minded to grant planning permission but would be unwilling to approve or conditionally approve the Application in the absence of this Agreement as the Council is concerned to ensure that any development of the Site is carried out in a proper manner and that the Owners will make appropriate provision in relation to public transport travel plan and car parking management issues.
- 2.4 The Owner by entering into this Agreement does so to create planning obligations in respect of the Site and each part of it in favour of the Council pursuant to Section 106 of the Act and to be bound by and observe and perform the covenants agreements conditions and stipulations hereinafter contained.

## **3 OPERATIVE PROVISIONS**

- 3.1 This Agreement is a planning obligation made in pursuance of Section 106 of the Act and to the extent that the covenants and obligations in this Agreement are not made under Section 106 of the Act they are made under Section 111 of the Local Government Act 1972 and all other powers so enabling.
- 3.2 The Council is the local authority by which the planning obligations contained in this Agreement are enforceable.
- 3.3 The planning obligations comprised in this Agreement except in the case of Paragraph 1 of Part III of the First Schedule shall not become effective until the following conditions are satisfied: -

- 3.3.1 The Planning Permission has been granted; and
- 3.3.2 The Commencement of Development.
- 3.4 The Owner covenants with the Council that the Site shall (subject to the terms of clause 3.3 above) be permanently from the date hereof subject to the restrictions and provisions regulating the Development and use thereof specified in the First Schedule hereto.
- 3.5 The Council covenants with the Owners to comply with its obligations in the First and Second Schedules hereto.
- 3.6 For the purpose of such parts of this Agreement as may be subject to the law against perpetuities this Agreement shall remain in force for a period of 80 years from the date hereof or (if sooner) as long as any of such of the covenants conditions stipulations and agreements herein may not have been performed.
- 3.7 In this Agreement the expressions "the Council" and "the Owner" shall where the context so admits be deemed to include their respective successors in title and assigns.
- 3.8 No party shall be bound by the terms of this Agreement or be liable for the breach of any covenants restrictions or obligations contained in this Agreement occurring after he or it has parted with his or its interest in the Site or the part in respect of which such breach occurs.
- 3.9 This Agreement shall cease to have effect if: -
- 3.9.1 the Planning Permission shall be quashed revoked or otherwise withdrawn or modified prior to the Commencement of Development (save in respect of any minor modifications to the Development as shall be agreed from time to time by the Council and the Owner); or
- 3.9.2 the Planning Permission shall expire prior to the Commencement of Development.
- 3.10 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than one relating to the Development as specified in the Application) granted after the date of this Agreement.

- 3.11 Where any consent approval or licence is required under the terms of this Agreement such consent approval or licence shall not be unreasonably withheld or delayed upon an application being duly made therefore.
- 3.12 The obligations hereby created shall be capable of being registered as a Local Land Charge.
- 3.13 No person who is not a party to this Agreement may enforce any terms hereof pursuant to the Contracts (Right of Third Parties) Act 1999 provided that this clause shall not affect any right of action of any person to whom this Agreement has been lawfully assigned or becomes vested in law.

#### 4 ARBITRATION

- 4.1 Any dispute or difference relating to any matter or thing arising out of or in connection with this Agreement shall be referred to arbitration in accordance with the Arbitration Act 1996 except to the extent that it provides otherwise.
- 4.2 If the parties do not agree upon the appointment of the Arbitrator within 28 days of the service of an arbitration notice, the Arbitrator shall be nominated upon the application of either party by the President or Vice President for the time being of the Royal Institution of Chartered Surveyors. The Arbitrator shall be an independent person who is professionally qualified in respect of the subject matter of the dispute for minimum period of 10 years.
- 4.3 Unless the Arbitrator shall direct to the contrary:
- 4.3.1 not more than 28 days after the Arbitrator's appointment the claimant shall send to the Arbitrator and respondent a summary of its case together with a bundle of key documents relied upon;
- 4.3.2 not more than 28 days after the receipt of the claimant's submission the respondent shall send the Arbitrator and the claimant a summary of its case together with a bundle of key documents relied upon;
- 4.4 The Arbitrator shall be at liberty to visit the Site.
- 4.5 The Arbitrator may call for such written evidence from the parties as he may require.



4.6 The Arbitrator shall use all reasonable endeavours to make his award and the reasons for it in writing as quickly as possible and in any event within 90 days of his appointment. Within 21 days of the receipt of the Arbitrator's award either party may apply to the Arbitrator for further written clarification of his award and the reasons including details of the methodology of any calculation and the arbitrator shall provide such clarification within 21 days of the application.

## FIRST SCHEDULE

### PART I – TRAVEL PLAN

- 1 No later than six months after the Commencement of Development the Owner shall submit to the Council for approval a draft of a Travel Plan.
- 2 Within 28 working days of the Council receiving the draft Travel Plan the Council will notify the Owners in writing of its approval of the draft Travel Plan or will acting reasonably provide in writing its proposed amendments to the draft Travel Plan pursuant to which the Owner shall submit a revised draft Travel Plan incorporating those amendments as are reasonable **PROVIDED THAT** if the Council does not notify the Owners of its decision within the 28 working days referred to above (or such other period as may be agreed in writing) it shall be deemed that the Council has approved the Travel Plan submitted to it.
- 3 From the date of the Retail Store first opening for trade to the public the terms of the Travel Plan as approved by the Council or as deemed approved shall be implemented.
- 4 No later than 12 months after the date upon which the Retail Store is first open to the public for trade the Owner shall submit details of the operation of the approved Travel Plan to the Council.
- 5 The Travel Plan shall accord with the following matters which shall determine its contents and its approval by the Council;
  - encourage a co-ordinated approach to collective staff travel (e.g. car sharing)
  - provide detailed information to staff to facilitate their use of non car modes of travel to work
  - manage the staff use of parking spaces so as to encourage non car staff access and/or more efficient use of car access
  - provide cycle parking facilities (and showering and changing facilities) for persons employed at the Retail Store.

## PART II – CAR PARK MANAGEMENT

- 1 No later than six months after the Commencement of Development the Owner shall submit to the Council for approval a draft Car Park Management Plan.
- 2 Within 28 working days of the Council receiving the draft Car Park Management Plan the Council will notify the Owners in writing of its approval of the draft Car Park Management Plan or will acting reasonably provide in writing its proposed amendments to the draft Car Park Management Plan pursuant to which the Owners shall submit a revised draft Car Park Management Plan incorporating those amendments as are reasonable **PROVIDED THAT** if the Council does not notify the Owner of its decision within the 28 working days referred to above (or such other period as may be agreed in writing) it shall be deemed that the Council has approved the Car Park Management Plan submitted to it.
- 3 From the date of the Retail Store first opening for trade to the public the terms of the Car Park Management Plan as approved by the Council or as deemed approved shall be implemented.
- 4 The Car Park Management Plan shall provide for the car park associated with the Retail Store to be operated as a short-stay car park with penal charges to discourage long-stay parking (over 3 hours) and shall be available to all users irrespective of shopping destination.

### PART III – PUBLIC TRANSPORT CONTRIBUTIONS

- 1 Within 28 days of the Planning Permission being granted the Owner shall pay to the Council the sum of £33,334 (Thirty Three Thousand Three Hundred and Thirty Four Pounds) being the first part of the Public Transport Contribution ("the First Payment") **PROVIDED THAT** within that 28 day period there has been no legal challenge by way of Judicial Review or otherwise to the validity of the Planning Permission and in the event that there has been such a challenge to pay the same sum within 28 days of the final determination of that challenge if the Planning Permission remains lawfully in existence
  
- 2 Within 28 days of the Retail Store first opening for trade to the public the Owner shall pay to the Council the sum of £33,333 (Thirty Three Thousand Three Hundred and Thirty Three Pounds) being the second part of the Public Transport Contribution ("the Second Payment") **PROVIDED THAT** at that time there has been no legal challenge by way of Judicial Review or otherwise to the validity of the Planning Permission and in the event that there has been such a challenge to pay the same sum within 28 days of the final determination of that challenge if the Planning Permission remains lawfully in existence
  
- 3 Within 12 months of the Second Payment being made the Owner shall pay £33,333 (Thirty Three Thousand Three Hundred and Thirty Three Pounds) to the Council being the third part of the Public Transport Contribution ("the Third Payment") **PROVIDED THAT** at that time there has been no legal challenge by way of Judicial Review or otherwise to the validity of the Planning Permission and in the event that there has been such a challenge to pay the same sum within 28 days of the final determination of that challenge if the Planning Permission remains lawfully in existence

## SECOND SCHEDULE

### 1 The Council Covenants;

- 1.1 That it will approve or provide reasonable comments consistent with the terms of paragraph 5 of Part I of the First Schedule within 28 days of receipt of any draft Travel Plan.
- 1.2 That it will approve or provide reasonable comments consistent with the terms of paragraph 4 of Part II of the First Schedule within 28 days of receipt of any draft Car Park Management Plan.
- 1.3 That it will provide details of the pricing structure of all the Council run short stay car parks in the centre of Rawtenstall to the Owner on demand and that it will notify the Owner within 14 days of any change to such pricing structure in those car parks.
- 1.4 To issue a written receipt to the Owner in respect of any part of the Public Transport Contribution within 14 days of receipt of that part.
- 1.5 To place the Public Transport Contribution in an interest bearing account within 14 days of receipt.
- 1.6 Not to apply the Public Transport Contribution for any purpose other than improving public transport provision in Rawtenstall (including but not limited to improvements to the Rawtenstall Bus Station)
- 1.7 To repay to the Owner all of the Public Transport Contribution as has at that time been paid with interest within 14 days of any successful legal challenge or Judicial review to the Planning Permission which quashes the Planning Permission
- 1.8 In the event the Public Transport Contribution or any part or parts thereof are not expended within twenty four months of the date upon which the Third Payment is made then the sum not expended plus interest accrued will be repaid to the Owner and the Council shall provide details and receipts of all the money that has been expended and what it has been expended upon

EXECUTED as a DEED on the date specified at the commencement of this Agreement

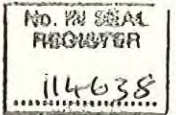
THE COMMON SEAL of )

ROSSENDALE BOROUGH COUNCIL )

was affixed in the presence of:- )



MAYOR



THE COMMON SEAL of )

ASDA STORES LIMITED )

was affixed in the presence of:- )



Director )

Director / S )

