

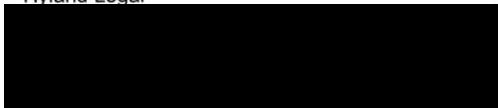


26 September 2022

Rossendale Borough Council  
and  
Lancashire County Council  
and  
Lidl Great Britain Limited

Supplemental Agreement under Section 106A of the Town and  
Country Planning Act 1990 relating to land at 35 Bacup Road,  
Rawtenstall

Hyland Legal



w: [www.hylandlegal.uk](http://www.hylandlegal.uk)

THIS DEED is made the 26 day of September 2022

**BETWEEN:**

- (1) **Rossendale Borough Council** of Futures Park. Newchurch Road, Bacup, Lancashire, OL13 0BE (**'the Council'**); and
- (2) **Lancashire County Council** of PO Box 78, County Hall, Preston, Lancashire, PR1 8XJ (**'the County Council'**)
- (3) **Lidl Great Britain Limited** (Company Number 2816429) of 19 Worpole Road, London, SW19 4JS (**'the Landowner'**)

**WHEREAS:**

- (A) The Council is the local planning authority for the purposes of the 1990 Act for the area in which the Site is situated.
- (B) The County Council is the Highways Authority for the area in which the Site is located.
- (C) The Landowner is the freehold owner of the Site free from encumbrances.
- (D) On 18 May 2009 the Council, the County Council and the Landowner entered into the Original Agreement.
- (E) Without prejudice to the terms of the other covenants contained in the Original Agreement the parties have agreed to vary the terms of Original Agreement as set out in this Deed.
- (F) The Landowner's agent has submitted an application under reference number 2021/0417 pursuant to Section 73 of the 1990 Act for an amendment to condition 3 of planning permission reference 2007/0665 to extend the trading hours of the food store on the Site from 20:00 to 22:00 on any day and the Council has decided to grant permission for such amendment subject to the making of this Agreement without which the planning permission pursuant to such Section 73 application will not be granted.
- (G) This Agreement is made under Section 106A of the 1990 Act and is supplemental to the Original Agreement.

**THE PARTIES AGREE** as follows:

1. **Interpretation**

The following definitions and rules of interpretation apply in this Deed.

1.1 Definitions:

**Original Agreement:** the agreement made under Section 106 of the 1990 Act dated 18 May 2009 between the Council, the County Council and the Landowner in respect of the Site.

**Planning Amendment:** means as defined at clause 3.2 (b) below

1.2 Unless the context otherwise requires, all words and phrases defined in the Original Agreement shall have the same meaning in this Deed.

1.3 Clause headings shall not affect the interpretation of this Deed.

1.4 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.7 A reference to any party shall include that party's personal representatives, successors or permitted assigns and in the case of the Council the successors to its respective statutory functions.

1.8 Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

1.9 Unless the context otherwise requires, a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.

1.10 Unless the context otherwise requires, references to clauses are to the clauses of this Deed.

1.11 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.12 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.

2. **Statutory provision**

This Deed is made pursuant to the provisions of Sections 106 and 106A of the 1990 Act, section 111 of the Local Government Act 1972 and any other enabling powers.

3. **Variations to the Original Agreement**

- 3.1 From the date of this Agreement the Original Agreement shall be varied by adding the following new clause 2.6.4:

*2.6.4 In the event that an application is made pursuant to Section 73 of the 1990 Act for an amendment to the Permission and planning permission is granted in respect of the application references to the Permission in this Agreement shall be to the new planning permission granted pursuant to Section 73 of the 1990 Act as well and this Agreement shall apply to and remain in full force in respect of that new planning permission (and the original Permission) without the need for a further agreement to be entered into pursuant to Section 106 of the 1990 Act*

- 3.2 From the date of grant of the Planning Amendment the Original Agreement shall be varied as follows:

- (a) In clause 1.1 the definition of Permission shall be deleted and replaced with the following definition:

***“Permission”** means the planning permission granted pursuant to the Application under reference number 2007/665 as amended by the Planning Amendment.*

- (b) In clause 1.1 the following new definition shall be inserted in the relevant alphabetical location:

***“The Planning Amendment”** means the amendment to the Permission to be made as a result of the Council granting permission to the application made under Section 73 of the 1990 Act under reference number 2021/0417.*

- 3.3 The provisions of the Original Agreement shall remain fully effective and applicable following the grant of the Planning Amendment and shall continue to bind the Site.

- 3.4 From the date of grant of the Planning Amendment the provisions of the Original Agreement shall be construed as though the Permission had been granted including the amendment to condition 3 set out in the Planning Amendment.

- 3.5 In all other respects the Original Agreement (as varied by this Deed) shall remain in full force and effect.

4. **Covenants to the Council and the County Council**

- 4.1 Following the grant of the Planning Amendment the Landowner covenants with the Council to observe and perform the covenants, restrictions and obligations which were made to the Council and contained in the Original Agreement and as varied by this Deed.

- 4.2 Following the grant of the Planning Amendment the Landowner covenants with the County Council to observe and perform the covenants, restrictions and

obligations which were made to the County Council and contained in the Original Agreement and as varied by this Deed.

5. **Local land charge**

This Deed shall be registered as a local land charge.

6. **Council's and County Council's costs**

6.1 The Landowner shall pay to the Council on or before the date of completion of this Deed, the Council's reasonable and proper legal costs together with all disbursements incurred in connection with the preparation, completion and registration of this Deed.

6.2 The Landowner shall pay to the County Council on or before the date of completion of this Deed, the County Council's reasonable and proper legal costs together with all disbursements incurred in connection with the preparation, completion and registration of this Deed.

7. **Value added tax**

7.1 All consideration given in accordance with the terms of this Deed shall be exclusive of any VAT properly paid.

7.2 If at any time VAT is or becomes chargeable in respect of any supply made in accordance with the terms of this Deed then to the extent that VAT has not been previously charged in respect of that supply the party making the supply shall have the right to issue a VAT invoice to the party to whom the supply was made and the VAT shall be paid accordingly.

8. **Third party rights**

A person who is not a party to this Deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed.

9. **Governing Law**

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.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

**EXECUTED AS A DEED** by the  
**ROSSENDALE BOROUGH COUNCIL**

By affixing its common seal in the

Presence of: [Redacted]

The common seal of **LANCASHIRE** )  
**COUNTY COUNCIL** )  
was affixed to this deed in the presence )  
of

[Redacted]

.....  
Authorised Officer



No. IN SEAL REGISTER  
115623



30827

Executed as a deed by  
**LIDL GREAT BRITAIN LIMITED**  
acting by a director in the  
presence of

[Redacted]  
.....  
Director

[Redacted]

Signature of witness  
Name ..... N: MORRISON  
Address .....  
.....

Lidl GB  
Lidl House  
14 Kingston Road  
Surbiton KT5 9NU