

Kb/agreements/3.4.429,prestonstreet,whitehavenbyaldistores

Draft – 3.7.2025

THIS AGREEMENT is made as a deed this day of 2025

BETWEEN

1. **CUMBERLAND COUNCIL** of Cumbria House 117 Botchergate Carlisle CA1 1RD ("the Council") of the first part; and
2. **ALDI STORES LIMITED** (Co. Regn. No. 02321869) of Aldi Foodstore Limited, Holly Hall, Athterstone CV9 2SQ ("the Developer") of the second and final part.

WHEREAS

- (1) The Council is the Highway Authority for the purposes of the Highways Act 1980 for the roads referred to in this Agreement and in particular for the highway known as Preston Street, Whitehaven ("the Road").
- (2) The Developer is registered as freehold owner under Title No. CU51941 of land lying to the east of Preston Street, Whitehaven ("the Land").
- (3) Planning permission was granted by Cumberland Council on >< ("the Approval") under application reference 4/23/2314/0F1, for the erection of a discount food store with associated access, parking, hard and soft landscaping and associated works on land at Preston Street, Whitehaven ("the Development")
- (4) Conditions 3, 4 and 5 of the Approval provide: -

"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 grown 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”

- (5) In order to discharge the Conditions specified in recital (4) above, the Developer has requested the Council to permit it to execute the works referred to in the Schedule and shown in outline on the attached drawing (“the Drawing”) entitled “S.278 Agreement Plan” and marked “Drawing No. 5006 Revision C04” (“the Highway Works”) for the benefit of the Land and to facilitate the carrying out of the Development.
- (6) The Council is authorised by virtue of the Highways Act 1980 to carry out the Highway Works in the Road and subject to the terms of this Agreement is prepared to authorise the Developer to carry out those Highway Works on behalf of the Council.
- (7) This Agreement is made pursuant to Sections 38 and 278 of the Highways Act 1980 as substituted by Section 23 of the New Roads and Street Works Act 1991.
- (8) The Council is satisfied that this Agreement and the undertaking of the Highway Works will be of benefit to the public.

Commented [BK1]: Due to the dedication

NOW THIS DEED WITNESSETH AS FOLLOWS:

- 1. In this Agreement a reference to a clause recital or schedule followed by a number is a reference to the clause recital or, as the case may be, the schedule of this Agreement bearing that number.

2. The Council and the Developer in relation to their respective obligations under this clause covenant with each other as follows: -

- 2.1 The Developer shall carry out the Highway Works in accordance with the Schedule and the Drawing annexed hereto subject to any alterations made in pursuance of Clause 8 of this Agreement.
- 2.2 The Developer has designed a scheme for the execution of the Highway Works and submitted this to the Council and the Local Planning Authority who have approved it for the construction of the Highway Works
- 2.3 Upon receipt of a request from the Developer under Clause 3.1 that it wishes to commence the Highway Works the Council shall forthwith notify in writing to the Developer the date for the commencement of the Highway Works ("the Commencement Date"), which shall be fixed to occur upon the expiry of such further time period as the Council may then deem appropriate (after giving due consideration to any representations from the Developer) having regard to its duties for the co-ordination of street works (and other matters) under the New Roads and Street Works Act 1991 and the Traffic Management Act 2004.
- 2.4 The Developer shall use all reasonable endeavours to complete the Highway Works within 12 weeks of the Commencement Date, extensions of time being permitted with respect to those matters beyond the control of the Developer.
- 2.5 The Council shall upon notification in writing by the Developer that the Highway Works have been completed forthwith undertake an inspection of the Highway Works, and: -
 - (i) if the said Highway Works have been completed in accordance with the Schedule and the Drawings; and
 - (ii) the Developer has provided the Council with a stage 3 safety audit report ("the Stage 3 Safety Audit") carried out in accordance with DMRB GG119 Road Safety Audit or current

amendment thereof published by the Department for Transport,
and

- (iii) The Developer has provided to the Council a copy of the “as
built” drawing(s),

shall issue to the Developer a copy of the certificate of completion (the
“Certificate of Completion”) which shall not be unreasonably withheld or
delayed.

- 2.6 A maintenance period of 12 months (“the Maintenance Period”) shall
commence upon the issue of the Certificate of Completion during which
time: -

2.6.1 the Developer shall at his own expense reinstate and make good
any defect or damage which may have arisen from any cause
whatsoever or be discovered during the Maintenance Period of
which he has been notified in writing by the Council so that the
Highway Works comply with the Schedule and the Drawing
annexed hereto.

2.6.2 90% of the Deposit shall be refunded to the Developer forthwith
together with interest accrued at the variable Bank of England
base rate up to the date of refund (subject to the retention of a
minimum of £2,500).

- 2.7 Upon the expiry of the Maintenance Period providing all the defects and
damage referred to in clause 2.6.1 above have been reinstated and made
good, to the Council’s reasonable satisfaction (which shall be evidenced
by the issue by the Council of a final certificate (“the Final Certificate”)),
the remaining 10% of the Deposit or £2,500 as referred to in clause 2.6.2
above, shall be refunded forthwith to the Developer together with interest
accrued at the variable Bank of England base rate up to the date of refund
without prejudice to any future liability which may arise hereunder.

- 2.8 The Council shall inspect the Highway Works to ensure compliance with
this Agreement and the agreed technical specification.

2.9 The Highway Works will be carried out within the Road and upon the issue of the Final Certificate the Highway Works (already being part of the Road) shall thereafter be maintained by the Council as a highway maintainable at the public expense.

3. In consideration of the covenants and agreements contained in clause 2 hereof the Developer and the Council further covenant and agree as follows: -

3.1 The Developer shall within 28 days of the date of this Agreement notify the Council that it wishes to commence the Highway Works in accordance with clause 2.3, such notice to be given via email to mark.hankin@cumberland.gov.uk.

3.2 The Highway Works (estimated at £134,513.00) shall be carried out and completed at no expense to the Council.

3.3 The Developer shall, on the date hereof, pay to the Council the following fees in respect of the Highway Works (receipt of which the Council hereby acknowledges):

3.3.1 the sum of £2,000 in respect of the design checking costs incurred by the Council;

3.3.2 the sum of £10,761.04 in respect of the establishment charges incurred by the Council which includes, but is not limited to the following: -

- (i) administrative and overhead costs;
- (ii) management of the Agreement;
- (iii) legacy and handover (future planning implications, highway asset management consideration);
- (iv) communications with consultants and internal/external stakeholders; and
- (v) site inspection and any meetings directly linked to the planning application/Agreement

- 3.3.3 the sum of £1,800 in respect of the Council's legal costs incurred in the making of this Agreement;
 - 3.3.4 the sum of £1,500 in respect of the Stage 3 Safety Audit (to be refunded if carried out by the Developer); and
 - 3.3.5 the sum of £5,000 in respect of the traffic regulation order, irrespective of whether it proceeds to completion.
- 3.4 The Developer shall, within 14 days of receipt of a written request ("the Due Date"), make the following payments to the Council in respect of the Highway Works: -
- 3.4.1 a sum equal to the whole of any reasonable and proper expense to which the Council is reasonably and properly put by reason of the carrying out of the Highway Works including (without prejudice to the generality of the foregoing) all reasonable and proper costs or expenses incurred in or in connection with:
 - 3.4.1.1 the granting of any authorisation permission or consent required for the Highway Works including all reasonable costs incurred in connection with undertakers apparatus PROVIDED THAT:
 - (a) the foregoing shall not extend to any damage caused by or arising out of the neglect or default of the Council or their officers servants agents or contractors
 - (b) the Council shall notify the Developer forthwith upon receipt of any claim, action, demand, expense, proceeding and compensation of which it intends to make a claim on the Developer under this clause.
 - (c) the Council shall keep the Developer informed as to the progress of any such action, claim, demand, expense, proceeding and compensation of which it intends to make a claim on the Developer under this clause.

- (d) the Council shall not accept any such claim without first having given the Developer details of such claim and having given the Developer the opportunity to make representations to the Council as to the validity and quantum of such claim
- (e) the Council shall in settling any such claim give full and due regard to any representations made by the Developer in respect thereof

3.4.1.2 insulating buildings against noise or in satisfying claims made under Part 1 of the Land Compensation Act 1973 together with any claims for injurious affection under Section 10 of the Compulsory Purchase Act 1965 arising from the execution or use of the Highway Works save those arising from any defect in the design of or default in the inspection of the execution of the Highway Works by the Council
PROVIDED THAT:

- (a) the foregoing shall not extend to any damage caused by or arising out of the neglect or default of the Council or their officers servants agents or contractors
- (b) the Council shall notify the Developer forthwith upon receipt of any claim
- (c) the Council shall not accept any such claim without first having given the Developer details of such claim and having given the Developer the opportunity to make representations to the Council as to the validity and quantum of such claim

- (d) the Council shall in settling any such claim give full and due regard to any representations made by the Developer in respect thereof.

- 3.5 The Developer shall at the same time as paying any sum owed under clause 3.3 above pay to the Council a sum equal to any Value Added Tax chargeable thereon by the Council against delivery of a valid VAT invoice and any reasonable and properly incurred additional costs arising from the safety audits.
 - 3.6 The Developer shall, on the date hereof deposit with the Council the sum of £7,980 in respect of the 2 road lighting columns (30 years x £132/year) for maintenance and energy costs.
 - 3.7 Upon the issue of the Certificate of Completion the Developer shall without further act be deemed to dedicate as public highway and the Council shall be deemed to accept as public highway such part or parts of its land shown coloured pink on the attached drawing entitled "S278 Land Dedication Plan" and marked "Drawing No. 5007 Revision C05" upon which part of the Highway Works so certified shall have been constructed whereupon such land shall be added to and form part of the Roads and become part of the highway maintainable at the public expense.
4. Subject always to the provisions of clause 2.3 above the Developer and the Council shall cooperate with each other to enable the Highway Works to be carried out and completed as expeditiously and economically as possible

5. The amounts of payments due under the provisions of this Agreement shall be certified on behalf of the Council. Where the amounts payable do not exceed the estimates given in this Agreement the amounts payable shall be verified by the Council and the Council's decision as to the amounts shall be final and in all cases it shall provide to the Developer any information relating to the amounts as the Developer may reasonably require.
 - 5.1 At any time before the Commencement Date the Developer may terminate this Agreement by giving notice to the Council that the Developer does not wish to carry out the Highway Works.
 - 5.2 On any termination under Clause 5.1 the Council shall give the Developer an account of all reasonable abortive costs incurred by the Council in respect of this Agreement. Within 28 days from the date of receipt by the Developer of that account:
 - 5.2.1 if that account shows a further sum as due to the Council the Developer shall pay that sum to the Council
 - 5.2.2 if that account shows that the payments previously made by the Developer under the foregoing provisions of this Agreement have exceeded those costs the Council shall refund that excess
6. The rights and liabilities of the Developer under this Agreement are assignable only with the written consent of the Council such consent not to be unreasonably withheld or delayed.
 - 6.1 The Developer shall on the date hereof, pay to the Council the sum of **£134,513.00** ("the Deposit") as security for the estimated cost of the Highway Works referred to at clause 3.2 of this Agreement.
 - 6.2 It is HEREBY AGREED that the Deposit is not paid hereunder in full and final settlement of the sum due under clause 3.2 but by way of security to the Council save that the Council shall, if necessary, be entitled to utilise the same

to reimburse itself from time to time (acting reasonably) with respect to the Developer's liabilities under clause 3.2 hereof, and subject thereto the balance of the Deposit shall be held by the Council until completion and payment of the Highway Works in accordance with Clause 3.2, following which if there are at that time no further liabilities outstanding to the Council from the Developer under this Agreement the Deposit (or the remaining balance of the Deposit) hereof shall be forthwith refunded to the Developer together with interest accrued at the variable Bank of England Base Rate up to the date of refund without prejudice to any future liability which may arise hereunder.

6.3 If the total liabilities of the Developer at any time exceed the Deposit the Developer shall pay to the Council within 14 days of the date on which the Developer receives a written request from the Council the difference between the Deposit and any sum due under clauses 3.2 and 3.3 hereof PROVIDED THAT:

- a) The Council shall properly evidence in writing any costs or liabilities that in their reasonable opinion exceed the Deposit and notify the Developer forthwith;
- (b) The Council shall give the Developer the opportunity to make representations to the Council as to the validity and the quantum;
- (c) The Council shall take into account any reasonable comments made by the Developer; and
- (d) In the event of any dispute relating to the costs or liabilities the Developer and/or the Council shall comply with the terms of clause 9 to this Agreement.

7. If any payment due from the Developer under any of the provisions of this Agreement is not made on or before the Due Date the Developer shall at the same time as making the payment pay to the Council interest at 8 per cent above the Bank of England base rate as at the Due Date for the period starting

with the Due Date and ending with the date on which payment of the sum on which interest is payable is made.

8. The Council may require the Developer to make any alteration in the construction of the Highway Works as (acting reasonably) it shall consider necessary, whether at the request of the Developer or otherwise but there shall be no alteration to the layout and location save as agreed by the Developer.
9. In the event of any dispute arising between the parties hereto in respect of the construction of the Highway Works the same shall at the request of any party be referred to a Chartered Civil Engineer to be agreed between the parties hereto or, failing agreement as to the same within 14 days of such request to be appointed upon the application of either party hereto by the President for the time being of the Institution of Civil Engineers and in this respect such a request shall be construed as a submission to arbitration within the meaning of the Arbitration Act 1996 or any statutory modification or re-enactment thereof.
10. Any notice or demand required to be served upon the Council shall be in writing and shall be sufficiently given or served upon the Council if emailed to mark.hankin@cumberland.gov.uk ; any notice requiring to be served upon the Developer shall be in writing and shall be sufficiently given or served upon it if delivered or posted to the Developer's before mentioned address.
11. Save where otherwise expressly stated the expressions "the Council" and "the Developer" shall include their respective successors in title and assigns.
12. It is hereby agreed by the parties hereto that the land which is to be benefited by the Highway Works is the Land.

13. This is the entire Agreement between the Parties and shall not be altered other than in writing signed by all Parties.
14. Unless expressly stated herein, nothing in this Deed will create rights pursuant to The Contract (Rights of Third Parties) Act 1999 in favour of anyone other than the parties to this Deed.

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

SCHEDULE

The Highway Works on the Road comprise

- Realignment of the existing carriageway to incorporate a new access to the proposed store
- Reconstruction of footways to the frontage of the proposed store
- Relocation of pedestrian crossing refuge island
- Improvements to road lighting; and Land dedication to include bell mouth to store

all of which are more particularly shown on the attached Drawing, entitled "S.278 Agreement Plan" and marked "Drawing No. 5006 Revision C04"

Executed as a **DEED** by)
affixing the Common Seal of)
CUMBERLAND COUNCIL)
in the presence of:-)

Authorised Signatory.....

Executed as a **DEED** by)
affixing the Common Seal of)
ALDI STORES)
in the presence of:-)

Authorised Signatory.....

DATED

2025

CUMBERLAND COUNCIL

And

ALDI STORES LIMITED

A G R E E M E N T

Re: Preston Street, Whitehaven

Chief Legal and Monitoring Officer,
Cumberland Council,
Cumbria House,
117 Botchergate,
CARLISLE, CA1 1RD