
Dated:

16th January

2017 *18*

- (1) BARNSELY METROPOLITAN BOROUGH COUNCIL
 - (2) ASOS.COM LIMITED
-

Agreement

under section 106 of the Town and Country Planning Act 1990 relating to land off Park
Spring Road, Little Houghton, Barnsley S72 7GX

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THIS AGREEMENT is made on 16th 2017 January 2018

BETWEEN:

- (1) **BARNSELEY METROPOLITAN BOROUGH COUNCIL** of Wellington House, Wellington Street, Barnsley S70 1WA ("the Council"); and
- (2) **ASOS.COM LIMITED** (registered number 03584121) whose registered office is at Greater London House, Wellington Street, Barnsley S70 1WA ("the Developer").

BACKGROUND

- (A) For the purposes of the 1990 Act, the Council is the local planning authority for the area within which the Site is located and the person who is entitled to enforce the obligations contained in this Agreement.
- (B) The Landowner is the freehold owner of the Site.
- (C) The Developer has entered into a contract with the Landowner to buy the Site subject to the grant of Planning Permission.
- (D) Pursuant to the Planning Application the Developer has applied to the Council for planning permission for the Development.
- (E) On 21 November 2017 the Council's Planning Committee resolved to grant the Planning Permission subject, among other things, to the completion of this Agreement.
- (F) The parties have agreed to enter into this Agreement with the intention that the obligations contained in this Agreement may be enforced by the Council against the Developer and its successors in title.

OPERATIVE PROVISIONS

1. INTERPRETATION

- 1.1 In this Agreement, the following words and expressions have the following meanings:

"1990 Act" the Town and Country Planning Act 1990;

"Biodiversity Commuted Sum" Twenty Five Thousand Pounds (£25,000.00);

"Commencement Development" of means commencement of the Development on the Site through the carrying out pursuant to the Planning Permission of a material operation as specified in section 56(4) of the 1990 Act PROVIDED THAT Commencement of Development will not be triggered by the carrying out of site investigations or surveys and "Commence Development" shall be construed accordingly;

"Development" the development of the Site as a car park;

"Edderthorpe Flash" the Edderthorpe Flash wetland site located to the north west of the Site;

"Landowner" Harworth Estates Investments Limited;

"Plan 1" the plan contained in **Schedule 2** to this Agreement entitled "Site Location Plan" carrying the drawing number 6057-002;

"Plan 2"	the plan contained in Schedule 2 to this Agreement entitled "Proposed Car Park Layout – showing Access Routes";
"Planning Application"	an application for planning permission for the carrying out of the Development made on behalf of the Developer on 6 June 2017 and validated by the Council on 11 September 2017, carrying the reference 2017/0782;
"Planning Permission"	the planning permission that may be granted in pursuance of the Planning Application in the form set out in Schedule 1 to this Agreement;
"Site"	the freehold property known as land to the west of Park Spring Road, Little Houghton, Barnsley S72 7GX forming part of the property registered at HM Land Registry under the Title Numbers and shown for identification edged red on Plan 1;
"Specialist"	has the meaning given to it in clause 8.2 ; and
"Title Numbers"	SYK554101 and SYK164058.

1.2 In this Agreement:

- 1.2.1 the clause headings do not affect its interpretation;
- 1.2.2 unless otherwise indicated, references to clauses and Schedules are to clauses of and Schedules to this Agreement;
- 1.2.3 references to any statute or statutory provision include references to:
 - 1.2.3.1 all Acts of Parliament and all other legislation having legal effect in the United Kingdom as directly or indirectly amended, consolidated, extended, replaced or re-enacted by any subsequent legislation; and
 - 1.2.3.2 any orders, regulations, instruments or other subordinate legislation made under that statute or statutory provision;
- 1.2.4 references to the Site include any part of it;
- 1.2.5 references to any party in this Agreement include the successors in title of that party. In addition, references to the Council include any successor local planning authority exercising planning powers under the 1990 Act;
- 1.2.6 "including" means "including, without limitation";
- 1.2.7 any covenant by the Developer not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing;
- 1.2.8 where two or more people form a party to this Agreement, the obligations they undertake may be enforced against them all jointly or against each of them individually; and
- 1.2.9 if any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of the Agreement is to be unaffected.

- 1.3 The parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it other than the Royal Society for the Protection of Birds ("RSPB") under **paragraph 1 of Schedule 4**.

2. EFFECT OF THIS AGREEMENT

- 2.1 This Agreement is made pursuant to section 106 of the 1990 Act. To the extent that they fall within the terms of section 106 of the 1990 Act, the obligations contained in this Agreement are planning obligations for the purposes of section 106 of the 1990 Act and are enforceable by the Council.
- 2.2 To the extent that any of the obligations contained in this Agreement are not planning obligations within the meaning of the 1990 Act, they are entered into pursuant to the powers contained in section 111 Local Government Act 1972, section 1 Localism Act 2011 and all other enabling powers.
- 2.3 Nothing in this Agreement restricts or is intended to restrict the proper exercise at any time by the Council of any of its statutory powers, functions or discretions in relation to the Site or otherwise.
- 2.4 This Agreement will be registered as a local land charge by the Council.
- 2.5 Nothing in this Agreement prohibits or limits 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 Planning Application, granted after the date of this Agreement, whether or not pursuant to an appeal.

3. EFFECTIVE DATE

- 3.1 The obligations contained in this Agreement come into effect upon the date of this Agreement.

4. OBLIGATIONS OF THE PARTIES

- 4.1 The Developer agrees with the Council to comply with the obligations set out in **Paragraph 1 of Schedule 3 and Schedule 4** in relation to the Development.
- 4.2 The Council agrees with the Developer to comply with the obligations set out in **Paragraph 2 of Schedule 3**.
- 4.3 The Council agrees with the Developer that it will issue the Planning Permission upon completion of this Agreement.
- 4.4 The Council agrees with the Developer to act reasonably, properly and diligently in exercising its discretion and discharging its functions under this Agreement. In particular, where any notice, consent, approval, authorisation, agreement or other similar affirmation is required under the terms of the Agreement, the Council will not unreasonably withhold or delay such notice, consent, approval, authorisation, agreement or other similar affirmation.
- 4.5 No person will be liable for any breach of the terms of this Agreement occurring after the date on which they part with their interest in the Site or the part of the Site in respect of which such breach occurs, but they will remain liable for any breaches of this Agreement occurring before that date. Neither the reservation of any rights or the inclusion of any covenants or restrictions over the Site in any transfer of the Site will constitute an interest for the purposes of this **clause 4.5**.

5. **TERMINATION OF THIS AGREEMENT**

- 5.1 This Agreement will come to an end if the Planning Permission is quashed, revoked or otherwise withdrawn at any time so as to render this Agreement or any part of it irrelevant, impractical or unviable.
- 5.2 Where the Agreement comes to an end under **clause 5.1** the Council is to vacate or cancel the entry made in the Local Land Charges register in relation to this Agreement or otherwise to record the fact that it has come to an end and no longer affects the Site.

6. **NOTICES**

- 6.1 Any notice, demand or any other communication served under this Agreement will be effective only if delivered by hand or sent by first class post, pre-paid or recorded delivery.
- 6.2 Any notice, demand or any other communication served is to be sent to the address of the relevant party set out at the beginning of this Agreement or to such other address as one party may notify in writing to the others at any time as its address for service.
- 6.3 Unless the time of actual receipt is proved, a notice, demand or communication sent by the following means is to be treated as having been served:
- 6.3.1 if delivered by hand, at the time of delivery;
 - 6.3.2 if sent by post, on the second working day after posting; or
 - 6.3.3 if sent by recorded delivery, at the time delivery was signed for.

6.4 If a notice, demand or any other communication is served after 4.00 pm on a working day, or on a day that is not a working day, it is to be treated as having been served on the next working day.

6.5 For the avoidance of doubt, where proceedings have been issued in the Courts of England and Wales, the provisions of the Civil Procedure Rules must be complied with in respect of the service of documents in connections with those proceedings.

7. **COSTS OF THIS AGREEMENT**

7.1 Upon completion of this Agreement the Developer is to pay to the Council its reasonable and proper legal costs of £1,000 in connection with the preparation, negotiation and completion of this Agreement.

8. **DETERMINATION OF DISPUTES**

8.1 Subject to **clause 8.7**, if any dispute arises relating to or arising out of the terms of this Agreement, either party may give to the other written notice requiring the dispute to be determined under this **clause 8**. The notice is to propose an appropriate Specialist and specify the nature and substance of the dispute and the relief sought in relation to the dispute.

8.2 For the purposes of this **clause 8** a "Specialist" is a person qualified to act as an expert in relation to the dispute having not less than ten years' professional experience in relation to developments in the nature of the Development and property in the same locality as the Site.

8.3 Any dispute over the type of Specialist appropriate to resolve the dispute may be referred at the request of either party to the President or next most senior available officer of the Law Society who will have the power, with the right to take such further advice as he may require, to determine the appropriate type of Specialist and to arrange his nomination under **clause 8.4**.

8.4 Any dispute over the identity of the Specialist is to be referred at the request of either party to the President or other most senior available officer of the organisation generally recognised as being responsible for the relevant type of Specialist who will have the power, with the right to take such further advice as he may require, to determine and nominate the appropriate Specialist or to arrange his nomination. If no such organisation exists, or the parties cannot agree the identity of the organisation, then the Specialist is to be nominated by the President or next most senior available officer of the Law Society.

8.5 The Specialist is to act as an independent expert and:

8.5.1 each party may make written representations within ten working days of his appointment and will copy the written representations to the other party;

8.5.2 each party is to have a further ten working days to make written comments on the other's representations and will copy the written comments to the other party;

8.5.3 the Specialist is to be at liberty to call for such written evidence from the parties and to seek such legal or other expert assistance as he or she may reasonably require;

8.5.4 the Specialist is not to take oral representations from the parties without giving both parties the opportunity to be present and to give evidence and to cross-examine each other;

8.5.5 the Specialist is to have regard to all representations and evidence before him when making his decision, which is to be in writing, and is to give reasons for his decision; and

8.5.6 the Specialist is to use all reasonable endeavours to publish his decision within 30 working days of his appointment.

8.6 Responsibility for the costs of referring a dispute to a Specialist under this **clause 8**, including costs connected with the appointment of the Specialist and the Specialist's own costs, but not the legal and other professional costs of any party in relation to a dispute, will be decided by the Specialist.

8.7 This **clause 8** does not apply to disputes in relation to matters of law or the construction or interpretation of this Agreement which will be subject to the jurisdiction of the courts.

9. **JURISDICTION**

9.1 This Agreement is to be governed by and interpreted in accordance with the law of England and Wales.

9.2 The courts of England and Wales are to have jurisdiction in relation to any disputes between the parties arising out of or related to this Agreement.

10. **EXECUTION**

The parties have executed this Agreement as a deed and it is delivered on the date set out above.

SCHEDULE 1

Draft Planning Permission

Draft Decision Notice

2017/0782

AJA Architects LLP
1170 Elliott Court
Herald Avenue
Coventry Business Park
Coventry
CV5 6UB

Mr Richard Wilkinson
c/o Agent

Formation of car park
Land off Park Spring Road (opposite ASOS)
Little Houghton
Barnsley
S72 7GX

- 1 The development hereby permitted shall be begun before the expiration of 3 years from the date of this permission.
Reason: In order to comply with the provision of Section 91 of the Town and Country Planning Act 1990.
- 2 The development hereby approved shall be carried out strictly in accordance with the plans (6057-009, 6057-006, 6057-002, 2113-PL001 and E01) and specifications as approved unless required by any other conditions in this permission.
Reason: In the interests of the visual amenities of the locality and in accordance with LDF Core Strategy Policy CSP 29, Design.
- 3 No development shall take place unless and until full foul and surface water drainage details, have been submitted to and approved in writing by the Local Planning Authority. Thereafter no part of the development shall be occupied or brought into use until the approved scheme has been fully implemented. The scheme shall be retained throughout the life of the development unless otherwise agreed in writing with the Local Planning Authority.
Reason: To ensure the proper drainage of the area and comply with Core Strategy Policies CSP 3 and CSP4.
- 4 No surface water shall be discharged to the drainage system from any areas of the site used by vehicles, without the use of petrol/oil/grit interceptors, the details of which shall have been submitted to and approved in writing by the Local Planning Authority before any work on site commences.
Reason: To prevent pollution of the water environment in accordance with Core Strategy Policy CSP 40.
- 5 Prior to the commencement of development, suitable site investigation works (as per those recommended in the supporting material) must be undertaken to fully investigate mining legacy risks and ensure the car park is suitably designed and constructed. The site investigation and subsequent development should be undertaken in compliance with CIRIA publication 32 where applicable.
Reason: To comply with NPPF paragraphs 120/121 Land Stability.

- 6 Prior to the commencement of use of the car park full details of the mitigation measures identified in the Ecological Survey(s), including a timetable for their implementation, shall be submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved details.
Reason: To conserve and enhance biodiversity in accordance with Core Strategy Policy CSP 36.
- 7 The parking/manoeuvring facilities, indicated on the submitted plan, shall be surfaced in a solid bound material (i.e. not loose chippings) and made available for the manoeuvring and parking of motor vehicles prior to the development being brought into use, and shall be retained for that sole purpose at all times.
Reason: To ensure that satisfactory off-street parking/manoeuvring areas are provided, in the interests of highway safety and the free flow of traffic and in accordance with Core Strategy Policy CSP 26, New Development and Highway Improvement.
- 8 All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which die within a period of 5 years from the completion of the development, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with other of similar size and species.
Reason: In the interests of the visual amenities of the locality and in accordance with Core Strategy Policy CSP 36, Biodiversity and Geodiversity.
- 9 All surface water run off shall be collected and disposed of within the site and shall not be allowed to discharge onto the adjacent highway.
Reason: In the interests of highway safety in accordance with Core Strategy Policy CSP 40, Pollution Control and Protection.
- 10 Prior to the commencement of use of the car park a draft Travel Plan shall be submitted to and approved in writing by the Local Planning Authority. The plan shall indicate measures that will be put in place to encourage sustainable travel and travel by modes other than the private car, including the potential for cycle spaces and the installation of Electric Vehicle Charging Points, and allow for regular reporting and monitoring to be undertaken. Subsequently, within six months of the site becoming operational, a detailed travel plan shall be submitted to the Local Planning Authority and once approved, it shall be fully implemented and retained as such thereafter
Reason: In the interest of promoting use of public transport, in accordance with Core Strategy Policy CSP 25.
- 11 Prior to the commencement of development, details shall be submitted to and approved in writing by the Local Planning Authority of arrangements which secure the following highway improvement works:
- a) Physical measures to prevent parking on the highway
 - b) Measures to facilitate pedestrian access across the A6195
- The works shall be completed in accordance with the approved details and a timetable to be submitted to and approved in writing by the Local Planning Authority.
Reason: In the interest of highway safety, in accordance with Core Strategy Policy CSP 26.

- 12 Prior to the commencement of use of the car park a Car Park Management Plan shall be submitted to and approved in writing by the Local Planning Authority. The plan shall indicate measures that will be put in place to monitor and manage staff car parking on the site, linked to sustainable travel measures in the Travel Plan and address safety concerns regarding parking on the surrounding highway. The Plan will must be submitted to the Planning Authority and once approved, it shall be fully implemented and retained as such thereafter.
Reason: In the interest of highway safety and promoting the use of public transport, in accordance with Core Strategy Policies CSP 25 and CSP 26.
- 13 The Palisade Panel Fencing and gates around the car park boundary shall be painted green, the specific shade to be agreed with the Local Planning Authority and applied prior to the commencement of use of the car park.
Reason: In the interests of good design and to accord with Core Strategy Policy CSP 29.

21 November 2017

SCHEDULE 2

Plans

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SCHEDULE 3

Biodiversity Commuted Sum

Obligations of the Developer

1. The Developer covenants with the Council as follows:
 - 1.1 to pay the Biodiversity Commuted Sum to the Council upon completion of this Agreement;
 - 1.2 not to Commence Development or permit Commencement of Development until the Biodiversity Commuted Sum has been paid to the Council; and
 - 1.3 within 7 days following the Commencement of Development serve notice upon the Council of the date of Commencement of Development ("Commencement Notice").

Obligations of the Council

2. The Council covenants with the Developer:
 - 2.1 not to expend the Biodiversity Commuted Sum until either:
 - 2.1.1 the Developer has served a Commencement Notice upon the Council pursuant to paragraph 1.3 of this Schedule; or
 - 2.1.2 Commencement of Development has occurred.
 - 2.2 to expend the Biodiversity Commuted Sum solely for the purpose of carrying out biodiversity enhancement works or measures in relation to nature conservation sites within a 5km radius of the Site and for no other purpose; and
 - 2.3 in the event that the Planning Permission expires and Commencement of Development has not occurred to return the Biodiversity Commuted Sum together with any interest accrued since the date of payment to the payer.

SCHEDULE 4

Access to Edderthorpe Flash

Obligations of the Developer

1. The Developer covenants to permit employees of or persons authorised by the RSPB to pass through the Site on foot and/or with vehicles and use the access gates marked on Plan 2 in order to access the adjacent Edderthorpe Flash for the purpose of inspecting, maintaining and improving Edderthorpe Flash PROVIDED THAT:
 - 1.1 not less than 48 hours' written notice is given to the Developer in advance of each visit to the Edderthorpe Flash nature conservation site;
 - 1.2 on each occasion when an employee of or person authorised by the RSPB visits the Site s/he shall report to the Asos.com offices upon arrival at the Site before entering Edderthorpe Flash;
 - 1.3 the Developer may refuse access in circumstances where it is not reasonably practicable for access to be permitted across the Site for operational reasons or for health and safety reasons;
 - 1.4 the Developer does not intend to create any permanent right of access through the Site.

Executed as a deed by affixing
the common seal of
**BARNSELY METROPOLITAN
BOROUGH COUNCIL**
in the presence of:

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)
)
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~~Executive Director Core Services/Legal Services~~
~~Director/Authorised Signatory~~

P.23 21/11/17 Mh 74

No. 767
IN REGISTER

AUTHORISED
SIGNATORY

Signed as a deed by
ASOS.COM LIMITED
acting by one director
in the presence of:-

)
)
)
)
)



Signature of director

Signature of witness



Witness name: DANIEL LINSEULT

Witness Address:

Asos.com

Witness occupation:

Greater London House, Hampstead Road, London NW1 7FB
ASOS.com Ltd. Registered in England 03584121

CATELOW MANAGER