
SECTION 106 AGREEMENT – PROPOSED HEADS OF TERMS

PARTIES¹

- 1 **EAST SUFFOLK COUNCIL** of East Suffolk House, Station Road, Melton, Woodbridge IP12 1RT (“**ESC**”).
- 2 **IPSWICH BOROUGH COUNCIL** of Grafton House, 15-17 Russell Road, Ipswich IP1 2DE (“**IBC**”).
- 3 **SUFFOLK COUNCIL** (Co. Reg. No. 5265451) of Constantine House, 5 Constantine Road, Ipswich, Suffolk IP1 2DH (“**County**”).
- 4 **HOPKINS HOMES LIMITED** (Co. Reg. No. 02875798) whose registered office is situated at First and Second Floor Blenheim House, Dettingen Way, Bury St. Edmunds IP33 3TU (“**Owner 1**”).
- 5 **BDW TRADING LIMITED** (Co. Reg. No. 03018173) whose registered office is situated at Barratt House, Cartwright Way, Forest Business Park, Bardon Hill, Coalville LE67 1UF (“**Owner 2**”).
- 6 Owner 1 and Owner 2 are collectively referred to as the “**Owners**”, or the “**Appellants**”, as appropriate.
- 7 IBC, ESC and County are collectively referred to as the “**Councils**”.

LAND INTERESTS

- 8 The site is known as land between Humber Doucy Lane and Tuddenham Lane, Humber Doucy Lane, Ipswich (“**Site**”). The Site is shown edged red on plan HDL-PRP-XX-XX-DR-A-08200 REV P01.
- 9 The Owners are the freehold owners of the Site under registered at the Land Registry under title number SK424276. There is no registered mortgage or charge.

¹ These heads of terms are not intended to be legally binding between the parties.

DESCRIPTION OF DEVELOPMENT

- 10 The development subject to this Appeal is as follows (“**Proposed Development**”):

“Hybrid Application – Full Planning Permission for the means of external access/egress to and from the site. Outline planning application (all matters reserved) for a mixed use development for up to 660 dwellings (Use Class C3), up to 400 sq m (net) of non-residential floorspace falling within Use Class E and/or Use Class F2(b), an Early Years facility, and associated vehicular access and highway works, formal and informal open spaces, play areas, provision of infrastructure (including internal highways, parking, servicing, cycle and pedestrian routes, utilities and sustainable drainage systems), and all associated landscaping and engineering works.”

JURISDICTION AND CIL

- 11 Two identical planning applications that were submitted to East Suffolk Council (‘ESC’) (DC/24/0771/OUT) and Ipswich Borough Council (‘IBC’) (IP/24/00172/OUT). The Site straddles between the boundary of both local authorities.
- 12 A single section 106 agreement is proposed for expediency and ease, albeit will contain separate schedules containing securing the necessary obligations to either ESC, IBC and/or County as appropriate.
- 13 ESC CIL Charging Schedule was adopted and came into effect on 1 August 2023.
- 14 IBC has not adopted a CIL Charging Schedule.

THE PLANNING OBLIGATIONS

- 15 These heads of terms include those items requested by the Councils to date, or through consultation responses. A draft is being prepared on this basis at this stage.
- 16 The Appellants are considering these in detail and ultimately reserves its position as to whether the obligations sought meet the necessary legal tests pursuant to Regulation 122 of the Community Infrastructure Levy Regulations 2010 (“**CIL Tests**”). Some may be subject to further discussion and negotiation, particularly following review of the CIL compliance statements from the Councils.
- 17 In particular, the Appellants are reviewing the education, library and healthcare contribution requests with EFM Consultants and may provide evidence on such matters in due course.

- 18 The usual “blue pencil” provisions will be included within the agreement to enable the Inspector to conclude that certain obligations do not meet the CIL Tests in the decision letter. In such circumstances, such obligations would have no effect.
- 19 The agreement shall contain a suitable “safeguard” mechanism to avoid risk of duplication between planning obligations and CIL, broadly as follows:
- 19.1 If a phase contains just residential development units relating to IBC this should not necessitate a CIL payment to ESC. The financial contributions would be payable under S106 for relevant infrastructure.
- 19.2 If CIL is applied (for whatever reason) to any residential units within IBC which are subject to a S106 contribution then upon any CIL demand notice being issued by ESC against any of those units, the obligation in the S106 should fall away and any money already paid should be returned within a suitable timescale.
- 19.3 If a development parcel contains residential units that fall within both IBC and ESC then the relevant financial contributions under S106 would only apply to those number of dwellings which fall within IBC. CIL would be payable in respect of the balance.
- 20 All obligations are to be secured, discharged and payable on a phased basis as appropriate.
- 21 The substantive provisions of the agreement shall be conditional upon the grant of the planning permission and the commencement of the development unless expressly stated otherwise².
- 22 Liability for the obligations in the agreement shall not be joint and several. The obligations may only be enforced against the owners of the land on which the obligations in question relate.
- 23 Usual clauses concerning third party disputes, notices, reasonableness, repayment of obligations etc to be included.

Affordable Housing

- 24 Policy compliant affordable housing. This is 33% for ESC³ and 30% for IBC⁴.

² For example there will be certain obligations that require submissions and approval before commencement of development (e.g. the affordable housing scheme). However, it will be clear in the S106 that if the permission expires (or is quashed or revoked without the consent of the owners) then the S106 falls away.

³ Policy SCLP5.10.

⁴ Policy ISPA4.

- 25 Affordable housing scheme to be agreed for each phase. If any phase contains land within both ESC and IBC, the affordable housing requirement shall be no less than 30% and no more than 33%. The provision is calculated based on the numbers of dwellings within each authority area, by reference to where the majority of a dwelling is located⁵.
- 26 Tenure mix and triggers for delivery and transfer to a registered provider to be agreed.

Open Space, On-Site BNG and SUDs

- 27 Standard open space and SUDs (to include any on-site BNG) provisions to be agreed, including agreement of a scheme, provision of the open space, and transfer to a nominated body for ongoing maintenance, e.g. management company.

Off-Site BNG

- 28 TBC. This may be most appropriately secured via Grampian condition.

Education

- 29 Education provision for dwellings in ESC's area should be covered full through CIL.
- 30 For those dwellings within IBC's area:
- 30.1 Primary Education: £28,760 per pupil based upon new build provision.
 - 30.2 Secondary Education: £37,433 per pupil based upon new build provision.
 - 30.3 Sixth Form: £29,095 per pupil based upon new build provision.
 - 30.4 Early Years: £36,050 per pupil based upon new build provision.
 - 30.5 SEND: SCC position TBC.

[Note: SCC propose the following estimated pupil yields]

⁵ To account for dwellings straddling an administrative boundary.

Dwelling Type	Primary pupil yield (2021/22)		Secondary pupil yield (2021/22)		Sixth Form pupil yield (2020/21 reporting year. DfE figures for the 2021/22 year are not available)	
	Per Dwelling	Per 100 Dwellings	Per Dwelling	Per 100 Dwellings	Per Dwelling	Per 100 Dwellings
Houses with 2 or more bedroom	0.32	32	0.15	15	0.055	5.5
Flats with 2 or more bedrooms	0.18	18	0.05	5	0.017	1.7
Flats with 1 bedroom	0.03	3	0.02	2	0.015	1.5

31 Early years school site, fully serviced to be transferred for £1.

32 Suitable triggers, on a phased based, to be agreed.

Library Contribution

33 Library provision in respect of dwellings within ESC area should be covered via CIL.

34 For those dwellings providing in IBC's area - £216 per dwelling. Trigger to be agreed.

Household Waste

35 Waste provision in respect of dwellings within ESC area should be covered via CIL.

36 For those dwellings providing in IBC's area - £138 per dwelling. Trigger to be agreed.

RAMS and HRA Mitigation

37 The standard Recreational Avoidance Mitigation Contribution (RAMS)⁶ be paid prior to commencement of development on a phase.

38 For those dwellings within "Zone A" - £142.27 per dwelling.

39 For those dwellings within "Zone B" - £374.29 per dwelling.

Healthcare

40 NHS seeking £380,200 for the Two Rivers Medical Centre.

⁶ <https://www.eastsuffolk.gov.uk/planning/developer-contributions/habitats-regulations-mitigation-rams/how-to-pay-rams/>

Councils' Monitoring Fees

41 TBC for IBC and ESC.

42 SCC have sought £476 per obligation.

Fire Hydrants

43 These should be secured via planning condition in the usual manner.

Public Transport Contribution, Offsite Highways Contribution, PROW Contribution, Traffic Regulation Order Contribution (extension of 30mph speed limit on Tuddenham Road)

44 TBC. No precise details from the Councils provided at this stage in the Statements of Case.

45 A financial contribution to fund a TRO may be most appropriate instead of the proposed planning condition suggested by County⁷. Payment of the funds would allow County to implement the TRO, which is a process outside the Appellant's control.

Travel Plan and Monitoring

46 Travel plan may be secured via planning condition⁸.

47 Monitoring contribution (TBC) to be secured under the S106.

Howes Percival LLP

18 November 2024

⁷ See Appendix 2, County Statement of Case (paragraph 1.3).

⁸ See Appendix 2, County Statement of Case.