

Client: Hopkins Homes Limited and BDW Trading Limited
Land at Humber Doucy Lane, Ipswich
Planning Applications Reference: DC/24/0771/OUT (East Suffolk Council) IP/24/00172/OUTFL (Ipswich Borough Council)
Planning Appeal Refs: APP/X3540/W/24/3350673 (Lead Case) and APP/R3515/W/24/3350674



PROPOSED HEADS OF TERMS – EARLY YEARS SCHOOL SITE

This document sets out a proposed mechanism for the delivery and securing of the Early Years Site (“**Early Years Site**”) at Humber Doucy Lane, Ipswich (“**Site**”) as part of the Section 106 Agreement to be entered into pursuant to the Appeal (“**S106**”).

We consider that the proposed mechanism below will allow flexibility for early years providers to deliver the required early years facility, whilst ensuring that the Suffolk County Council (“**County**”) can have complete comfort that the early years facility will be secured for as long as it is needed.

This is, in particular, because: a) the proposed covenants within any transfer and in the S106 itself that may restrict the Early Years Site for education uses only (which will continue to bind the land and all successors in title in perpetuity); and b) the proposal that County may always have the opportunity to take a transfer of the Early Years Site if an operator is not able to continue the use.

These proposed heads of terms have been prepared to aid discussions with the County and are subject to final instructions. Once the principles in this document are agreed, we may provide the necessary drafting within the draft s.106.

Please note that unless otherwise provided for, the defined terms in these heads of terms should be read alongside the draft S106.

LAND RESERVATION

- 1 The Early Years Site is to be [a minimum of 0.32ha].
- 2 The location of the Early Years Site is to be submitted to County [prior to or concurrently with the submission of the first reserved matters].
- 3 The use of the Early Years Site is to be restricted in the S106 to educational uses (restricted to childcare and pre-school education use in particular).

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MECHANISM FOR PROVISION

- 4 Hopkins Homes Limited and BDW Trading Limited (“**Developer**”) will have the right to elect whether the Early Years Site will be offered first to the County or to an independent operator of early years facilities (“**Operator**”). Such election must be notified to the County [prior to or concurrently with the submission of the first reserved matters] (“**Election**”).
- 5 In summary, the mechanism in the S106 may operate as follows:
 - 5.1 **STEP 1:** Developer will offer to the County OR will market to Operators. If County refuse the offer or there is no interest from the marketing, Step 2 will apply.
 - 5.2 **STEP 2:** Developer will market to Operators (if already offered to County) OR will offer to the County (if already marketed to Operators). If County refuse the offer or there is no interest from the marketing, Step 3 will apply.
 - 5.3 **STEP 3:** Early Years Site will be released from all obligations in the S106 (including restrictions on use).
- 6 If the Early Years Site is offered to the County:
 - 6.1 The County will have an option period of [~~2~~-5 years] (either from the date of the Election if at Step 1 or from the date of the end of the Marketing Period if Step 2) (“**Option Period**”).
 - 6.2 The County will be required to serve notice on the Developer within the Option Period to require a transfer of the Early Years Site to itself or its nominee.
 - 6.3 Any transfer of the Early Years Site to the County will be on the Standard County Terms (see below).
 - 6.4 The Developer will be required to pay a contribution of £2,946.89 per Dwelling BCIS Index Linked as agreed between the Developer and the County (“**Early Years Contribution**”).
 - 6.5 The Early Years Contribution will be payable as follows:

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6.5.1 [5%] on transfer of the Early Years Site; and

6.5.2 [95%] on receipt of notice from the County [3 months] prior to the anticipated commencement of building of the early years facility on the Early Years Site.

[Note: triggers to be discussed and agreed. County requires 100% payable upon transfer. Staged payments may be suitable whereby a proportion to fund fees for feasibility, studies, technical reports etc is paid alongside transfer, followed by the balance once construction contracts are entered into.]

6.6 If the County do not accept the offer within the Option Period or confirm in writing they do not require a transfer of the Early Years Site, Step 2 or Step 3 will apply as relevant.

7 If the Early Years Site is to be marketed to an Operator:

7.1 The proposed marketing scheme (“**Marketing Scheme**”) is to be submitted to the County within [1 month] (either from the date of the Election if at Step 1 OR from the earlier of the end of the Option Period or the date the County confirm they do not want to take Early Years Site if at Step 2).

7.2 The County will be deemed to have approved the Marketing Scheme if no response is received within [~~4~~ 2 months] of submission by the Developer.

7.3 The Developer will undertake marketing for [3 months] in accordance with agreed Marketing Scheme:

7.3.1 If no interest is forthcoming as a result of the marketing, then Step 2 or Step 3 will apply as relevant.

7.3.2 If a potential Operator comes forward through the marketing:

7.3.2.1 The Early Years Site will be transferred to the Operator on Standard Operator Terms¹;

¹ Note that potential to lease Early Years Site may be considered

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7.3.2.2 The Operator will submit a scheme to the County for the design and implementation programme for the delivery of a facility on the Early Years Site for approval. Ultimately this shall ensure that County has some control over the specification in the event it inherits the Early Years Site following the further provisions below.

7.3.2.3 The Operator (or its contractor) will deliver the facility on the Early Years Site in accordance with the agreed scheme (and timetable therein).

FURTHER PROVISIONS

- 8 The transfer to an Operator and the S106 ~~may~~will include the following, to offer maximum comfort to SCC in terms of delivery of the Early Years Site and securing its operation in perpetuity:
 - 8.1 That if an Operator wishes to transfer the Early Years Site, they must notify the County of the identity of the new Operator from the County and must transfer on the Standard Operator Terms.
 - 8.2 That if an Operator ceases to operate the Early Years Site for more than a [3 month period] after completion of the facility on the Early Years Site, they must:
 - 8.2.1 Notify the County and offer to transfer the Early Years Site to County or their nominee on the Standard County Terms; and
 - 8.2.2 If the County do not accept the offer within [1 year], the obligations in the S106 in relation to Early Years Site will determine.
- 9 The “option period” for County to require transfer may be sufficiently long so as to allow County to undertake its own marketing exercise or find an alternative Operator should it not wish to take on the facility itself. It is for this reason that the agreement may make clear that any transfer to County may include its nominee.

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10 ~~In the event that no facility has been constructed or committed within [10] years of a transfer to the County, Any unspent or uncommitted balance of~~ the Early Years Contribution shall be repaid within 10 years if not used for the provision of a new early years facility. If no facility is provided, then ~~and~~ the site shall be transferred back to the person who transferred it to the County for £1, free of any obligations under the S106.

11 The following definitions are provided in general terms for clarity – to be further discussed with County:

“Standard County Terms” [unencumbered, for £1, with necessary easements, subject to a restriction on future use (for education use restricted to childcare and pre-school education use in particular) and to include compliance with County Council’s Education Land Specification²]

“Standard Operator Terms” [unencumbered, for £1, with necessary easements, subject to a restriction on future use (for education use restricted to childcare and pre-school education use in particular)) and with an obligation to notify the County of cessation of use]

Howes Percival LLP

5 December 2024

[Updated 10 January 2025]

[Updated 27 January 2025 – following SCC comments]

² Provided by Jonthan Lockington of Suffolk County Council on 5th December 2024