



Supplementary Topic Statement

**In Relation to the Suffolk County Council CIL Compliance Statement
dated 17 March 2020 and the Suffolk County Council Garden Square
Adoption Note dated 13 March 2020**

**Our ref. PS-2018-0645/STS
LPA ref. DC/19/1499/FUL
PINS ref. APP/X3540/W/19/3242636
Date: May 2020**

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Foreword

A copy of a CIL Compliance Statement and a document entitled Garden Square Adoption Note were recently sent from Suffolk County Council to the Planning Inspector by emails dated 16th March 2020.

This statement addresses the issues raised by SCC. It is considered that the adoptability of the access road to the appeal site is an entirely resolvable issue and the remaining matters in both County Council statements, insofar as this appeal is concerned, have no direct bearings on the merits of the appeal or the discretion of the Inspector to allow the appeal.

Response to Appeal Documents Issued by the County Council

1.1 In paragraph 11 of the CIL Compliance Statement the County Council has made some comments in bold which the Appellants' respond to by way of the following three sections:

- i. *"To note that Garden Square and Gardenia Close are both unadopted roads and remain private roads. They were constructed by MSV Homes under planning reference C03/2362 which had an associated S106A dated 13 October 2004. However, MSV Homes did not provide a bond to the Highway Authority to cover the costs of the works under Section 38 of the Highways Act 1980. A bond or cash deposit can be called upon if the developer goes into liquidation or otherwise defaults on their responsibilities. MSV Homes have failed to bring the roads up to adoptable standards – refer to the separate note dated 13/03/2020 provided by the Highway Authority for the Inspector".*
- ii. *"On 3 February 2020 a petition by Suffolk County Council for a winding-up order against MSV Homes was granted by the Ipswich County Court as a result of the non-payment of the education contribution required by the planning obligation. The company is now in liquidation".*
- iii. *"The Official Receiver is looking into the company's affairs in an effort to recover money for the creditors. The county council has recently found out that Garden Square and Gardenia Close (previously assets of MSV Homes) have been transferred to Capital Community Developments Limited (a connected party). The Official Receiver is investigating if this is a breach of s238 of the Insolvency Act 1986 i.e. where a company has entered into a transaction at undervalue the Court can reverse the sale or movement of assets. Capital Community Development's title to this land is therefore in question until the Official Receiver makes his decision. This might have implications for the planning obligation if the land transferred from MSV to Capital Community Developments is 'reversed' i.e. the Official Receiver would then be in control of the assets known as Garden Square and Gardenia Close and would therefore need to agree to be a party to the planning obligation".*

i. The adoptable status of Garden Square

1.2 Having taken instructions from the Appellant I can state on its behalf that In July 2004 Babtie Group completed the detailed design for the adoptable highway according to SCC

Specification for Estate Roads (Oct 2003), and prepared a set of 12 drawings and a specification. MSV Homes submitted the drawings to SCC Highways Development Control in late 2004 for approval.

- 1.3 In January 2005 SCC Highways Development Control approved the drawings and passed them on to SCC Legal Services to prepare a Section 38 Agreement.
- 1.4 On 10 February 2005 Joanne Claridge of SCC Legal Services requested some information for the preparation of the Section 38 Agreement.
- 1.5 On 24 March 2005 Joanne Claridge of SCC Legal Services sent through a draft Section 38 Agreement and requested a bond of £207,000 and final inspection fees of 7.5pct of the bond value. The Agreement makes a distinction between Part 1 Works and Part 2 Works and allows for the bond amount to be reduced to 50 pct upon the completion of the Part 1 Works and to 10 pct upon completion of the Part 2 Works.
- 1.6 On 14 March 2006 Vicky Hazlewood of SCC Legal Services re-sent the draft Section 38 Agreement and requested a bond of £207,000.
- 1.7 On 15 March 2006 MSV Homes wrote to Bob Leonard, Senior Development Control Officer (Highways) at SCC to say the construction of the roads had substantially been completed except for the top wearing course (Part 2 Works) and queried the need for a bond amount of £207,000 at this advanced stage.
- 1.8 On 20 March 2006 Nikki Peck, Development Control Officer at SCC, replied to say that they still required a bond amount of £207,000.
- 1.9 There was no further progress.
- 1.10 On 16 May 2007 SCC Legal Services increased the bond amount to £331,200 'due to the amount of time that had elapsed'.
- 1.11 On 28 November 2007 Vicky Hazlewood of SCC Legal Services wrote to Richard Johnson of MSV Homes ask for approval of the draft Section 38 Agreement. On the same day MSV Homes replied: "Because we are a small builder, we have had difficulty in raising the funds for the large bond, but this situation may change in the early part of next year". The bond amount at that time was £331,200 and this was the beginning of the global financial crisis, two weeks after the collapse of Northern Rock. Having paid for the actual construction of the roads, the company found it difficult to find extra funds to put up a substantial bond to cover the eventuality of not completing the roads.
- 1.12 On 28 May 2008 Katherine Lowe of SCC Legal Services again requested approval of the draft Section 38 Agreement and repeated the bond amount of £331,200. In the same email she confirmed that SCC Highways Development had incurred costs of £5,000 in plan checking and inspections.
- 1.13 On 1 July 2008 MSV Homes discussed the matter with Chris Lister, Development Control Engineer at SCC, by phone. Mr Lister said that a David Stuart had inspected the roads during construction in 2005-06, but he had since retired, and SCC would need a fresh inspection. He arranged for Mark Youngman to inspect.
- 1.14 On 31 July 2008 Chris Lister phoned Richard Johnson of MSV Homes to say Mark Youngman had inspected the roads, and that as soon as the company were to complete the top wearing

course they would reduce the bond value to 10 pct (completion of Part 2 Works). In early September MSV Homes asked Chris Lister by telephone if it might be possible to complete the top wearing course and then enter into the Section 38 Agreement with the reduced bond value.

- 1.15 On 11 September 2008 Chris Lister replied to say SCC would require the inspection fees, legal fees, and commuted sums before completing the Section 38 Agreement.
- 1.16 On 2 October 2008 Chris Lister met with Richard Johnson and John Renwick of MSV Homes in Rendlesham. SCC proposed to reduce the bond amount from £331,200 to £207,000, and would require this initially, but reduce it to 10 pct or £20,700 as soon as the company were to complete the top wearing course (completion of Part 2 Works). SCC would also require a commuted sum of £20,000 and inspection fees of £15,525 (£207,000 x 7.5 pct).
- 1.17 There was no further progress from September 2008 to August 2011. On 18 August 2011 Richard Johnson of MSV Homes phoned Chris Lister to discuss the matter further. Chris Lister said he would explore the possibility of a lower bond amount of £51,750 or 25 pct initially, then reducing to 10 pct or £20,700 as soon as the company completed the top wearing course.
- 1.18 On 26 September 2011 MSV Homes phoned SCC and spoke to Stephen Cordery, Development Control Engineer at SCC. Chris Lister had moved to another office. Stephen Cordery said the County Council would require a new Section 38 Agreement but it would be possible for the bond amount to be 10 pct or £20,700 initially, provided that the roads were at a 'maintenance period standard'. He would need to inspect to see what work needed doing to bring the roads to a maintenance period standard.
- 1.19 On 29 September 2011 Stephen Cordery visited the site to inspect the roads. There was no further progress.
- 1.20 In conclusion there are some significant errors in the Garden Square Adoption Note:
 - *"As no agreement was entered into and no inspection fees were paid to SCC no site inspection were carried out by SCC".* Although there has not been a final inspection as part of a Section 38 Agreement, there have been several interim inspections: David Stuart in 2005-06 during construction, Mark Youngman in July 2008, and Stephen Cordery in September 2011.
 - *"For this reason, SCC have no information on the construction of the roads and exactly what was done when".* SCC received the drawings and specification prepared by Babbie Group in late 2004, and approved them in January 2005. SCC also carried out inspections in 2005-06 during construction, and in July 2008 and September 2011 after construction.
 - *"The current roads are not completed and would not be adoptable by SCC without considerable additional work ..."* The roads do require the top wearing course but this does not amount to "considerable additional work". On several occasions, although requiring the full bond amount for an initial period, SCC offered to reduce it quickly to 10 pct or £20,700 as soon as the company completed the top wearing course.
 - *"Therefore, we have to assume that all of the existing construction will need to be removed and replaced to current SCC standards, prior to adoption".* SCC approved the

detailed design in January 2005 and carried out several inspections during 2005-06, July 2008, and September 2011. The existing construction has been built to a fully adoptable standard.

- 1.21 The conclusion of the first section of paragraph 11 is also incorrect where it says: *“MSV Homes have failed to bring the roads up to adoptable standards”*. Although the Part 2 Works have not been completed, the Part 1 Works have been completed and are to adoptable standards.
- 1.22 Although the Part 2 Works have not been completed, Garden Square and Gardenia Close have been built to an adoptable standard, and throughout 2005-11 SCC have been willing to adopt the roads if the company were to enter into the Section 38 Agreement, provide the bond, pay the inspection fees, and complete the Part 2 Works.

ii MSV Homes and the Section 106 Agreement of October 2004

- 1.23 In the second section of paragraph 11 the County Council have directed the Inspector’s attention to the fact that MSV Homes is in liquidation due to the non-payment of a supplementary education contribution under a Section 106 Agreement. This is correct in so far as it goes, but it relates only a small part of the story and gives an unduly biased and negative picture.
- 1.24 MSV Homes entered into the Section 106 Agreement in October 2004 and disputed it from March 2009 onwards. The matter went to appeal in 2013. In paragraphs 22 to 24 of the Appeal Decision of August 2014 (copy available if wanted) the Planning Inspector concluded that:
- *“If the company had applied under reserved matters, the question of a supplementary education contribution would not have arisen in the first place.*
 - *“The district council had allowed the main developer to apportion the supplementary education contribution.*
 - *“The supplementary education contribution sought in the Agreement did not meet the three CIL tests for the validity of planning obligations.”*
- 1.25 Paragraph 24 is particularly striking to the Appellant:
- “I also agree that there is no evidence that the contribution sought in this case would meet the tests for planning obligations which are now required under Regulation 122 of the Community Infrastructure Levy Regulations 2010, or under paragraph 204 of the National Planning Policy Framework, introduced in 2012.”*
- 1.26 Nevertheless, the Inspector dismissed the appeal since the company had not challenged the Agreement in the prescribed period of time, ref paragraph 25:
- “However, none of these matters has any bearing on the legal criteria in Section 106A(6) of the 1990 Act. The grounds available under that section are limited to those that I have identified above. Whatever the merits of the obligation in the present case, it was entered into by the appellants freely, and the development was carried out in full knowledge of it.”*
- 1.27 In 2015 SCC sought to enforce payment (Claim B10YX061), and the company submitted a defence. However, in October 2016 Norwich Combined Court dismissed the defence,

essentially for the same reason as the Planning Inspector had dismissed the earlier appeal:

“... the proper, and only, route to challenge the validity of a section 106 obligation is by way of a judicial review challenge to the grant of the planning permission which is associated with that obligation. Such challenge must of course be brought within the appropriate limitation period.”

1.28 MSV Homes accepted the judgement in good heart.

1.29 In 2016-17 the company paid £80,000. From June 2017 to August 2019 SCC did not chase the balance of the debt. In August 2019 SCC issued a winding-up petition for the balance of the debt. The company made a proposal to pay a further amount over 8 quarters, but SCC rejected the proposal. The company was wound up on 3 February 2020.

iii The transfer of Garden Square to Capital Community Developments

1.30 In the third section of paragraph 11 the County Council have stated *“the county council has recently found out...”*.

1.31 There appear to be several errors of fact. I am instructed that:

- The Official Receiver is not investigating the alleged transfer of the roads at undervalue, and is not seeking to reverse the transfer. On 17 March 2020 the Official Receiver issued its Report to Creditors (copy available if wanted), and there is no mention of this. The Official Receiver is satisfied with the information that was submitted by MSV Homes.
- The transfer of the roads was not at undervalue. In February 2018 Akermans Surveyors carried out a valuation of the two roads (copy available if wanted) and concluded they had a value of £135,000 when completed, that there was a cost of £90,000 for bringing them to completion, and therefore the nett value in their existing condition was £45,000. This was the price the Appellant paid for the transfer in December 2018.
- The Appellant’s title to the two roads is not in question, The Appellant is the registered owner of the two roads, ref Land Registry title number SK391639 (copy available if wanted).

2.0 None of these matters bear on the Inspector’s discretion with respect to the appeal and any requirements needed to ensure that the access roads are completed to adoptable standard prior to occupation can be dealt with by way of legal agreement(s). On 10 May 2019, as part of the statutory public consultation responses, Ben Chester, Senior Development Management Engineer at SCC Highways Development Control, conformed that Garden Square *“although an unadopted road is under the control of the applicant and is within the red line of the site in this application”*. SCC Highways Development were consulted and did not raise any concerns about Garden Square as one of the two access roads into the proposed development. The Appellant intends to complete the Part 2 works required for the adoption of Garden Square and to build a minor access road through the new development to an adoptable standard, that links up the two access roads from Garden Square in the east and Tidy Road in the west.

Babtie Group
technical and
management
consultants

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Tel 01473 624326
Fax 01473 623021
ipswich@babtie.com

1 July 2004

For the attention of Mr J Renwick
Partnership for Natural Building Design
Beacon House
Woodley Park
Skelmersdale
Lancs
WN8 6UR



Dear Sirs,

Rendlesham – Area 5: Infrastructure Design

We refer to our letter of 24th October 2003 and our subsequent correspondence in connection with the above development.

Further to the issue of our draft drawings on 24th June 2004, we are pleased to submit our completed design for the adoptable highway, adoptable sewerage and private soakaways for your approval.

Please see enclosed the following drawings and documentation:

- Drg 0011077/002 – Sewerage, Site Plan
- Drg 0011077/003 – Sewerage, Longsections
- Drg 0011077/004 – Sewerage, Construction Details
- Drg 0011077/005 – Highway, Site Plan
- Drg 0011077/006 – Highway Drainage & Service Ducts
- Drg 0011077/007 – Highway, Longsections
- Drg 0011077/008 – Highway, Cross-Sections (Sheet 1 of 2)
- Drg 0011077/009 – Highway, Cross-Sections (Sheet 2 of 2)
- Drg 0011077/010 – Highway, Construction Details
- Drg 0011077/011 – Private Soakaways, Site Plan
- Drg 0011077/012 – Private Soakaways, Construction Details
- Drg 0011077/013 – Street Lighting
- CD-ROM of the above drawings
- Specification (Supplementary Clauses) for Sewerage and Private Soakaways
- Designer's Risk Assessment

The highway design is in accordance with the Suffolk County Council Specification for Estate Roads (Oct 2003). This specification is available on the SCC website, link: <http://www.suffolkcc.gov.uk/e-and-t/homepages/estrdspecs.html>

The adoptable sewerage has been designed in accordance with Sewers for Adoption (5th Edition) and Anglian Water's Additions/Deletions thereof. The soakaway design has been determined using the Building Research Establishment design guide BRE Digest 365.

The particular specification (supplementary clauses) relates to the Civil Engineering Specification for the Water Industry (5th Edition) as published by UKWIR Ltd.

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Babtie Group Ltd

Registered Office:
95 Bothwell Street
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No. 141100

Our ref 11077/1/JRE

Your ref



We are currently preparing the appropriate applications for adoption in relation to Section 38 of the Highways Act 1980 and Section 104 of the Water Industry Act 1991, and will forward these to Suffolk County Council and Anglian Water, respectively, in due course.

Please note that previous issues of draft drawings carried temporary numbers in the 700-series. To avoid any confusion, please destroy any copies of these draft drawings.

Copies of this correspondence and enclosures have been issued to Thrower & Rutland Ltd and David Futter Associates.

Should you have any queries concerning the above, please do not hesitate to contact the undersigned or Mr J Everitt on Tel. 01473 624326 or email john.everitt@babtie.com

Yours faithfully,

PP. Andrew Smith
Project Manager

Email: andrewm.smith@babtie.com

Attachments

As above.



Resource Management

Peter Miller
53 Streathbourne Road
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London SW17 8QZ

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Endeavour House
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Your Ref:
Our Ref: L/11116/JLC
Enquiries to: Miss Joanne Claridge
Direct Line: 01473 264198
Fax: 01473 216825
E-mail: joanne.claridge@legal.suffolkcc.gov.uk
Date: 10 February 2005

Dear Sirs,

**Highways Act 1980 – Proposed Section 38 Agreement and Bond
Development at Rendlesham Area 5, Suffolk
Developer: MSV Homes Limited**

I understand from the County Director of Environment and Transport that you act on behalf of MSV Homes Limited in connection with the proposed agreement and bond.

In order that I can prepare a draft agreement, please provide the following information:

1. What is your client's registered office address?
2. Is your client the owner of all the land shown edged red on the enclosed layout plan (no.11077/014B). If not, please state the name and address of the owner. If there is more than one owner, please supply six replacement layout plans coloured to show the boundaries of each ownership, and state the names and addresses of each owner.
3. Is your client the developer of this site? If not, please state the name and address of the developer and their solicitor.
4. The County Director of Environment and Transport requires a surety for £207,000 in respect of this agreement. This should be provided by the National House Building Council or one of the four main clearing banks or major insurance companies known to deal in this type of business. Please state the name and registered office address of the proposed surety if known.

I also understand that a commuted sum of £20,000 is required before completion of the agreement in respect of the highway soakaways.

Please retain the layout plan for the present and return it to me with the approved draft agreement in due course.

I look forward to your reply so that a draft agreement can be prepared.

Yours Faithfully

A handwritten signature in black ink, appearing to be 'Joanne Claridge', written in a cursive style.

Joanne Claridge
Legal Executive

Richard Johnson

From: "Joanne Claridge" <Joanne.Claridge@legal.suffolkcc.gov.uk>
To: <richard-johnson@msvhomes.co.uk>
Sent: 24 March 2005 11:20
Attach: Standard Agreement (14.03.05).doc
Subject: s38 agreement

Dear Richard,

Further to our telephone conversation I attach a copy of the standard s38 agreement.

You will notice Part 1 and Part 2 works are explained in the definitions. Clause 9 and 10 describe the commencement of works and the time limits for construction. Clause 16 (ii) explains the bond releases, as discussed over the phone, this should clarify matters for you.

Please contact me again if I can be of anymore help to you.

Regards

Jo Claridge
<<Standard Agreement (14.03.05).doc>>

Joanne Claridge

Legal Executive

Legal Services

Scrutiny & Monitoring Division

Endeavour House

8 Russell Road

Ipswich, Suffolk IP1 2BX

Tel: 01473 264198

Fax: 01473 216825

THINK BEFORE YOU PRINT

This email may be confidential and subject to legal privilege. If you are not the intended recipient, please delete it immediately without reading, copying or forwarding it. Thank you.

04/04/2005

AGREEMENT

THIS AGREEMENT is made the
thousand and Five **BETWEEN**

Two

- whose registered office is at

the pipes and media (shown by blue lines on

- the Plan) carrying surface water drainage from the New Highways only (up to the point of discharge into the main public sewer or other suitable outfall)
6. Undertaker as undertaker is defined in Section 48(4) of the New Roads and Street Works Act 1991
7. the Bond TWO HUNDRED AND SEVEN THOUSAND POUNDS (£207,000)
8. the Part 1 Works
- (i) the Surface Water Drains;
 - (ii) all other drainage and service media within the New Highways including the ducting for cable television or other media for the transmission of data;
 - (iii) all kerb foundations and kerbs within the New Highways including lowering at vehicle crossings and pram ramps;
 - (iv) all carriageways ways and footpaths within the New Highways up to and including base course surfacing level and any supporting structures thereto;
 - (v) demarcation of all sight lines and clearance of all visibility splays within the New Highways;
 - (vi) all concrete block paving within the New Highways; and,
 - (vii) all street lighting columns and cables
9. the Part 2 Works
- (i) wearing course level to all carriageways ways and footpaths within the New Highways
 - (ii) all visibility splays and verges within the New Highways;
 - (iii) all street furniture illuminated traffic signs street nameplates and road markings within the New Highways; and
 - (iv) all outstanding works under Clause 1 of this Agreement
10. the Legal Charges the Council's legal costs and disbursements in the preparation of this Agreement being THREE HUNDRED POUNDS (£300.00)

11. the Inspection Fees

the Council's Surveyor's inspection and administration charges at the rate of seven and a half per cent (7½%) of the Bond

W H E R E A S

- (1) the words of definition in the left hand column of the Schedule above shall subject to variation as hereinafter provided have the meanings ascribed to them by the words opposite them in the right hand column
- (2) the Council is the local highway authority
- (3) the Developer is the freehold owner of the New Highways on the Land
- (4) the Developer intends to develop the Land as a housing estate and to construct the New Highways and desires that after completion the New Highways on the Land shall be adopted as highways maintainable at the public expense

N O W I T I S A G R E E D as follows:

Pursuant to Section 38 Highways Act 1980 Section 33 Local Government (Miscellaneous Provisions) Act 1982 Section 50 and Schedule 3 New Roads and Street Works Act 1991 and all other powers enabling the parties:-

(1) LAYOUT AND STANDARD OF CONSTRUCTION

The Developer shall at its own expense fully complete the construction of the New Highways and the Surface Water Drains to the design and dimensions approved in writing by the Council's Surveyor in accordance with the Plan and the Details (subject to any variation of them agreed in writing in advance by the Council's Surveyor) and in accordance with the Council's "Specification for Housing Estate Roads" dated November 2004 so far as the latter is consistent with the Plan and the Details (subject to such agreed variations) making good to the requirements of the Council's Surveyor all damage caused thereby to existing highways maintainable at the public expense

(2) UNDERTAKERS APPARATUS

The Developer shall at its own expense undertake all necessary works in connection with Undertakers' apparatus laid or to be laid in the New Highways before they become highways maintainable at the public expense and if completion of the New Highways shall require the movement modification or replacement of any

Richard Johnson

From: "Victoria Hazlewood" <Victoria.Hazlewood@legal.suffolkcc.gov.uk>
 To: <richard.johnson@rnsvhomes.co.uk>
 Sent: 06 September 2005 12:53
 Subject: Section 38 agreement. Development at Rendlesham- Phase 5

Dear Mr Johnson,

I refer to an email sent by Joanne Claridge on the 24th March 2005 and the attached standard S38 agreement

Can you please advise whether you are still instructed to act in this matter and if you are could you please forward me your contact details.

I look forward to hearing from you.

Yours Sincerely,

Victoria Hazlewood
 Legal Executive
 Suffolk County Council- Legal Services
 Tel: 01473 264195
 Fax: 01473 216825

Change Drive - Video - 15/9/05

Suggested meeting to Steve Cordery - to explain - work - parties
 done - pr. income amount of work

Spoke to Steve Cordery -

Area Engineer was seen records of work.

Very unusual to change land - needs recording of agreement -
 don't want to do this! Needs to think about this - will call to
 change drive



Resource Management

Mr P Miller
53 Streathbourne Road
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DX 87951 IPSWICH

Your Ref:
Our Ref: L/11116/VH
Enquiries to: Vicky Hazlewood
Direct Line: 01473 264198
Fax: 01473 216825
E-mail: victoria.hazlewood@legal.suffolkcc.gov.uk
Date: 14 March 2006.

Dear Sirs,

**Highways Act 1980 – Proposed Section 38 Agreement and Bond
Development at Rendlesham, Area 5
Developer: MSV Homes Limited**

Thank you for your email received 1 March 2006.

The Area Highways Manager has advised that the roads subject to the above agreement and bond have not been substantially completed. Therefore the full bond of £207,000 will be required for completion of the agreement.

Please note that upon completion of the agreement, your client can request that the Area Highway Manager inspect the roads and if completed to the required Part 1 and/or Part 2 standards, the relevant certificates will be issued and the bond money reduced as detailed in Clause 16.

I therefore look forward to hearing from you with approval of the draft agreement and details of the proposed surety.

Yours Faithfully

Vicky Hazlewood
Legal Executive



Resource Management

Mr P Miller
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Your Ref:
Our Ref: L/1116 /VH
Enquiries to: Vicky Hazlewood
Direct Line: 01473 264198
Fax: 01473 216825
E-mail: victoria.hazlewood@legal.suffolkcc.gov.uk
Date: 1 December 2005

Dear Sirs,

**Highways Act 1980 – Proposed Section 38 Agreement and Bond
Development at Rendlesham, Area 5
Developer: MSV Homes Limited**

I refer to previous correspondence in this matter ending in March 2005.

Your client has been in contact with our Environment and Transport department with regards to the bond amount being reduced. However I have been advised that the full bond of £207,000 is required for completion of the agreement.

I therefore enclose two draft copies of our standard agreement. Your clients should note that the terms of the agreement are standard for all developers and the County Council is not generally willing to consider any variation unless the particular circumstances of the development require it.

Layout plan number 11077/14B was enclosed with our letter of the 10th February. Please confirm that the colouring on it agrees with definitions 3,4 and 5 of the agreement and return the plan to me.

Details of the Council's legal fees and the County Director of Environment and Transport's inspection and administration charges are set out on page 2 and 3 of the draft. Payment of both will be required before completion. Legal charges may be increased if the agreement and the correspondence in connection with it are more complicated than is usually expected.

Please also note clause 28 that relates to the commuted sum in respect of soakaways that will also need to be paid before completion.

I look forward to hearing from you with the return of the layout plan and one copy of the draft.

Yours Faithfully

Vicky Hazlewood
Legal Executive

Section 38 Highways Act 1980

whose registered office is at

1.	the Plan	the annexed <u>plan numbered 11077/14B</u>
2.	the Details	the annexed detail drawings numbered <u>11077/006B, 11077/007E, 11077/010C</u>
3.	<u>the Land</u>	<u>the land at Rendlesham, Area 5, Suffolk shown edged red on the Plan</u>
4.	<u>the New Highways</u>	the roads ways and footpaths shown marked on the Plan by grey shading (to indicate carriageways) yellow colouring (to indicate footways and footpaths) and green colouring (to indicate verges and other grassed or planted areas) together with the street lights shown by red dots on the Plan

5. the Surface Water Drains

the pipes and media (shown by blue lines on the Plan) carrying surface water drainage from the New Highways only (up to the point of discharge into the main public sewer or other suitable outfall)

6. Undertaker

as undertaker is defined in Section 48(4) of the New Roads and Street Works Act 1991

7. the Bond

TWO HUNDRED AND SEVEN THOUSAND POUNDS (£207,000)

8. the Part 1 Works

- (i) the Surface Water Drains;
- (ii) all other drainage and service media within the New Highways including the ducting for cable television or other media for the transmission of data;
- (iii) all kerb foundations and kerbs within the New Highways including lowering at vehicle crossings and pram ramps;
- (iv) all carriageways ways and footpaths within the New Highways up to and including base course surfacing level and any supporting structures thereto;
- (v) demarcation of all sight lines and clearance of all visibility splays within the New Highways;
- (vi) all concrete block paving within the New Highways; and,
- (vii) all street lighting columns and cables

9. the Part 2 Works

- (i) wearing course level to all carriageways ways and footpaths within the New Highways
- (ii) all visibility splays and verges within the New Highways;
- (iii) all street furniture illuminated traffic signs street nameplates and road markings within the New Highways; and
- (iv) all outstanding works under Clause 1 of this Agreement

- | | | |
|-----|---------------------|---|
| 10. | the Legal Charges | the Council's legal costs and disbursements in the preparation of this Agreement being THREE HUNDRED POUNDS (£300.00) |
| 11. | the Inspection Fees | the Council's Surveyor's inspection and administration charges at the rate of seven and a half per cent (7½%) of the Bond |

W H E R E A S

- (1) the words of definition in the left hand column of the Schedule above shall subject to variation as hereinafter provided have the meanings ascribed to them by the words opposite them in the right hand column
- (2) the Council is the local highway authority
- (3) the Developer is the freehold owner of the New Highways on the Land
- (4) the Developer intends to develop the Land as a housing estate and to construct the New Highways and desires that after completion the New Highways on the Land shall be adopted as highways maintainable at the public expense

N O W I T I S A G R E E D as follows:

Pursuant to Section 38 Highways Act 1980 Section 33 Local Government (Miscellaneous Provisions) Act 1982 Section 50 and Schedule 3 New Roads and Street Works Act 1991 and all other powers enabling the parties:-

(1) LAYOUT AND STANDARD OF CONSTRUCTION

The Developer shall at its own expense fully complete the construction of the New Highways and the Surface Water Drains to the design and dimensions approved in writing by the Council's Surveyor in accordance with the Plan and the Details (subject to any variation of them agreed in writing in advance by the Council's Surveyor) and in accordance with the Council's "Specification for Housing Estate Roads" dated November 2004 so far as the latter is consistent with the Plan and the Details (subject to such agreed variations) making good to the requirements of the Council's Surveyor all damage caused thereby to existing highways maintainable at the public expense

(2) UNDERTAKERS APPARATUS

The Developer shall at its own expense undertake all necessary works in connection with Undertakers' apparatus laid or to be laid in the New Highways before they become highways maintainable at the public expense and if completion of the New Highways shall require the movement modification or replacement of any Undertakers' apparatus in any existing highway maintainable at the public expense such works shall not be executed without first obtaining a street works licence therefor as defined in Section 50 of the New Roads and Street Works Act 1991 and otherwise fully complying with the requirements of such Act and until the Developer has deposited with the Council the cost thereof (as estimated by the Council's Surveyor) and the Developer hereby indemnifies the Council against any additional such cost

(3) DEVELOPERS WARRANTY

The Developer warrants that at the date hereof:

- (i) it is the freehold owner of the New Highways on the Land with full power to enter into this Agreement and to dedicate the New Highways on the Land to the public use; and
- (ii) it has full power to grant or assign in accordance with Clause 4 hereof all necessary rights and easements for the passage of surface water from the New Highways through the Surface Water Drains (including where in land outside the Developer's freehold ownership) and for the cleansing maintenance repair and replacement thereof

(4) SURFACE WATER DRAINAGE RIGHTS

The Developer hereby grants and (where the Surface Water Drains are laid or to be laid either wholly or partly through land outside the Developer's freehold ownership) assigns to the Council for the benefit of the New Highways full right and liberty over such part or parts of the Land and any other land through which any part of the Surface Water Drains are laid to use the same for the passage or discharge of surface water from the New Highways and to enter onto such part or parts of the Land and such other land to cleanse repair maintain and replace the same and any conveyance of any

Richard Johnson

From: "Richard Johnson" <richard-johnson@msvhomes.co.uk>
To: <bob.leonard@et.suffolkcc.gov.uk>
Cc: "Renwick, John" <john.renwick@msvhomes.org.uk>
Sent: 15 March 2006 20:32
Subject: Rendlesham Area 5 - Section 38 Agreement

Dear Mr Leonard

Following our telephone conversation yesterday, I write to confirm that the roads to be adopted on Area 5 at Rendlesham have been constructed although the top wearing course has yet to be added.

The plans for the roads, drainage and lighting have been approved by Steve Cordery and I understand that a member of his team has inspected the work as it was constructed.

In view of this, I would be grateful if you would confirm the situation relating to the surety of £207,000 that appears to be required by the County Director of Environment and Transport.

I look forward to hearing from you.

Yours sincerely

Richard Johnson
Director
MSV Homes Ltd
7 Garden Square
Rendlesham
Suffolk
IP12 2GW

Tel: 01394 461499

Paul Jones -

Suffolk CC Inspector: David Steward - Stewart

Left message 13/3/06



Richard Johnson

From: "Nicola Peck" <Nicola.Peck@et.suffolkcc.gov.uk>
To: <richard-johnson@msvhomes.co.uk>
Sent: 20 March 2006 09:01
Subject: RE: Rendlesham Area 5 - Section 38 Agreement

Dear Mr Johnson,

Suffolk County Council's area inspector has confirmed that we will be seeking the full Bond for the above site. I believe our legal executive Vicky Hazlewood has, or will be advising your solicitor accordingly.

Regards, Nikki Peck
Development Control Officer

-----Original Message-----

From: Bob Leonard
Sent: Thursday, March 16, 2006 8:19 AM
To: Nicola Peck
Subject: FW: Rendlesham Area 5 - Section 38 Agreement

R Leonard
Snr Development Control Officer
01473-264756
01473-216877 (fax)
Endeavour House (L4-B1-27)
8 Russell Road
Ipswich IP1 2BX

reply to: bob.leonard@et.suffolkcc.gov.uk

-----Original Message-----

From: Richard Johnson [mailto:richard-johnson@msvhomes.co.uk]
Sent: Wednesday, March 15, 2006 8:32 PM
To: bob.leonard@et.suffolkcc.gov.uk
Cc: Renwick, John
Subject: Rendlesham Area 5 - Section 38 Agreement

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Richard Johnson

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Regards, Nikki Peck
Development Control Officer



21/3/06

Part 1 - M25 street lighting - working
Part 2 - for 502 reduction

-----Original Message-----

From: Bob Leonard
Sent: Thursday, March 16, 2006 8:19 AM
To: Nicola Peck
Subject: FW: Rendlesham Area 5 - Section 38 Agreement

R Leonard
Snr Development Control Officer
01473-264756
01473-216877 (fax)
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I look forward to hearing from you.

Yours sincerely

5

20/03/2006

Ansdell Office Service

From: "Richard Johnson" <richard-johnson@msvhomes.co.uk>
To: "Victoria Hazlewood" <Victoria.Hazlewood@legal.suffolkcc.gov.uk>
Cc: "Miller, Peter J" <Pete [REDACTED]>; "John Renwick" <john.renwick@msvhomes.org.uk>; "Hardy, Anthony" <an [REDACTED]>
Sent: 28 November 2007 12:05
Subject: Re: Rendlesham Area 5

Dear Vicky

Thank you for the reminder. I would be grateful if you would maintain the file for a further six months. Because we are a small builder, we have had difficulty raising the funds for the large bond, but this situation may change in the early part of next year and then we would be in a position to enter into an agreement for adoption of the roads.

I hope this gives you sufficient information to enable the file to remain open for the further period.

Many thanks
Yours sincerely

Richard Johnson
Director
MSV Homes Ltd

----- Original Message -----

From: Victoria Hazlewood
To: 'richard-johnson@msvhomes.co.uk'
Cc: Christopher Lister ; David Steward
Sent: Wednesday, November 28, 2007 11:27 AM
Subject: Rendlesham Area 5

Dear Sirs,

I write in respect of the proposed section 38 agreement and bond for Area 5, Rendlesham. I note from my file that we are still waiting to hear back from you with approval to the draft agreement.

Please note that if we do not receive a substantial response from you with regards the draft agreement by the end of December 2007, we shall be closing our file and the estate roads shall remain private.

Yours Faithfully,

Vicky Hazlewood
Legal Executive
Scrutiny and Monitoring Division
Resource Management Directorate
Suffolk County Council
Endeavour House
Ipswich. IP1 2BX
Tel: 01473 264198
Fax: 01473 216825
DX 87951 IPSWICH

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28/11/2007

Resource Management

Mr P Miller
53 Streathbourne Road
Tooting Bec
London
SW17 8QZ

Also sent by email to
peter.miller@pjmillers.co.uk

Legal Services
Scrutiny & Monitoring Division
Endeavour House
8 Russell Road
IPSWICH
Suffolk
IP1 2BX

DX 87951 IPSWICH

Enquiries to: Katherine Lowe
Tel: 01473 264198
Fax: 01473 216825
Email: katherine.lowe@legal.suffolkcc.gov.uk
Web: <http://www.suffolkcc.gov.uk>

Your Ref:
Our Ref: L/1116/KL
Date: 28 May 2008

Dear Sirs,

**Highways Act 1980 – Proposed Section 38 Agreement and Bond
Development at Rendlesham, Area 5
Developer: MSV Homes Ltd**

I refer to previous correspondence with you ending on 16 May 2007.

Can you please confirm whether you still act for MSV in the above matter?

I look forward to hearing from you.

Yours faithfully

Katherine Lowe
Trainee Legal Executive

Resource Management

Mr P Miller
53 Streathbourne Road
Tooting Bec
London
SW17 8QZ

Also sent by email to
peter.miller@pjmiller.co.uk

Legal Services
Scrutiny & Monitoring Division
Endeavour House
8 Russell Road
IPSWICH
Suffolk
IP1 2BX

DX 87951 IPSWICH

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Your Ref:
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Dear Sirs,

**Highways Act 1980 – Proposed Section 38 Agreement and Bond
Development at Rendlesham, Area 5
Developer: MSV Homes Ltd**

I refer to previous correspondence with you ending on 16 May 2007.

Can you please confirm whether you still act for MSV in the above matter?

I look forward to hearing from you.

Yours faithfully

Katherine Lowe
Trainee Legal Executive

Ans dell Office Service

From: "Peter J. Miller" <P[REDACTED]>
To: "Richard P. Johnson" <Rich[REDACTED]>
Cc: "Anthony J W Hardy" <A[REDACTED]>; "John Renwick"
 <[REDACTED]>
Sent: 28 May 2008 16:00
Attach: Letter Mr P Miller 28.05.08.doc
Subject: FW: MSV Homes Limited - Proposed Section 38 Agreement - Rendlesham Area 5

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If you receive this message in error, please email the writer or call our office at the numbers below.

From: Katherine Lowe [katherine.lowe@legal.suffolkcc.gov.uk]
Sent: Wednesday, May 28, 2008 2:15 PM
To: '[REDACTED]'; '[REDACTED]'
Subject: Proposed Section 38 Agreement - Rendlesham Area 5

Dear Sirs,

Highways Act 1980 - Proposed Section 38 Agreement
Development - Rendlesham Area 5
Developers - MSV Homes Ltd

Please find attached a letter relating to the above.

<<Letter Mr P Miller 28.05.08.doc>>

Yours sincerely
Katherine Lowe
Trainee Legal Executive
Legal Services, Scrutiny & Monitoring Division,
Resource Management Directorate,
Suffolk County Council,
Endeavour House,
8 Russell Road,
Ipswich, Suffolk,
IP1 2BX
DX87951 Ipswich
Tel: 01473 264198
Fax: 01473 216825
E-mail: katherine.lowe@legal.suffolkecc.gov.uk

Richard Johnson

From: "Katherine Lowe" <katherine.lowe@legal.suffolkcc.gov.uk>
To: <richard-johnson@msvhomes.co.uk>
Cc: "Christopher Lister" <Christopher.Lister@et.suffolkcc.gov.uk>
Sent: 28 May 2008 11:29
Subject: Proposed Section 38 Agreement - Rendlesham Area 5



Dear Sirs,

Highways Act 1980 - Proposed Section 38 Agreement and Bond
Development - Rendlesham Area 5
Developers - MSV Homes

I refer to previous correspondence with you ending in 29 November 2007.

I write to enquire whether you are now in a position to move the above matter forward. I see from that our file that Victoria Hazelwood emailed you on the 28 November 2007 requesting the return of the approved Section 38 Agreement. Your reply indicated that you were having trouble raising the funds for the Bond amount but that the situation was to change in the early part of 2008.

Notification was sent to your solicitors in the 16 May 2007 that the bond figure was going to have to be increased to £331,200.00 due to the amount of time that had lapsed and the original bond figure no longer being sufficient enough security for the agreement. This will also mean that the inspection fees will now be £24,840.00 being 7.5 per cent of the bond figure.

The Council will be happy to enter into a Section 38 Agreement to adopt the roads if you able to come up with the bond figure and inspection fees. I have taken instruction from my client department and they have advised me to ask for £5,000.00 to cover the plan checking and inspections they have already carried out and this will be deducted from the final inspection fee amount.

I look forward to hearing from you so that this matter can finally progress.

Yours sincerely

Katherine Lowe

Trainee Legal Executive

Legal Services, Scrutiny & Monitoring Division,
 Resource Management Directorate,
 Suffolk County Council,
 Endeavour House,
 8 Russell Road,
 Ipswich, Suffolk,
 IP1 2BX

DX87951 Ipswich

Tel: 01473 264198

Fax: 01473 216825

E-mail: katherine.lowe@legal.suffolkcc.gov.uk

Emails sent to and from this organisation will be monitored in accordance with the law to ensure compliance with policies and to minimise any security risks.

25/06/2008

Ansdell Office Service

From: "Richard Johnson" <richard-johnson@msvhomes.co.uk>
To: "Hardy, Anthony" <anthony.hardy@mpiuk.com>; "John Renwick" <john.renwick@msvhomes.org.uk>; "Wilson, Henry" <[REDACTED]>
Sent: 11 September 2008 17:16
Subject: Fw: Rendlesham Area 5

----- Original Message -----

From: Christopher Lister
To: 'richard-johnson@msvhomes.co.uk'
Sent: Wednesday, September 10, 2008 1:26 PM
Subject: Rendlesham Area 5

Hi Richard.

I can confirm that inspection fees, legal fees and commuted sums are required before completion. We will not complete agreements without these payments.

I hope the above clarifies the situation. In order to speed things along, is it worth having a meeting to finalise and discuss fees and bonds?

Regards

Chris Lister
Development Control Engineer
Suffolk County Council
Endeavour House
Russell Road
Ipswich
Suffolk
IP1 2BX

01473 260412

Emails sent to and from this organisation will be monitored in accordance with the law to ensure compliance with policies and to minimise any security risks.

Ansdell Office Service

From: "Richard Johnson" <richard-johnson@msvhomes.co.uk>
To: "Hardy, Anthony" <ar[REDACTED]>
Sent: 23 September 2008 10:50
Subject: Fw: Rendlesham Area 5

FYI

----- Original Message -----

From: Christopher Lister
To: 'Richard Johnson'
Sent: Tuesday, September 23, 2008 10:38 AM
Subject: RE: Rendlesham Area 5

Richard

See you then! I am ok for transport as I park at Camsea Ashe for Wickham Market!

Thank you

Chris

From: Richard Johnson [mailto:richard-johnson@msvhomes.co.uk]
Sent: 23 September 2008 10:05
To: Christopher Lister
Cc: Hardy, Anthony; John Renwick
Subject: Re: Rendlesham Area 5

Dear Chris

This week is a bit difficult. Would Monday afternoon (29 September) be convenient - 3.45pm? You can still paint your house at the end of the week! Do you want us to pick you up from the station? If so what time and from where? Melton?

Regards

Richard

----- Original Message -----

From: Christopher Lister
To: 'Richard Johnson'
Sent: Monday, September 22, 2008 11:52 AM
Subject: RE: Rendlesham Area 5

Hi Richard

I am now back in the county!

This week. Better not think of Monday! Tuesday possible PM better. Wednesday 1st thing - need to be in Melton by 10, later PM ok. Thursday PM. Not Friday - in west of the county (must take passport and visa!). Afternoons after 330 are good as that ties in the trains.

Week commencing 27th September is clear, but I might slide off on Thursday or Friday to paint the house! Need a long weather forecast!!

23/09/2008

Chris Lister: Section 38 Agreement. Rs, JR 2/10/08.

Plan of Planning Permission - Sect. 38 Agreement.

Road, infrastructure - adopted by SCC + street lights.

Drainage - this is up to adopter's standard.

As - Joint Sewers - Sec. 104 -

Adopted soakaways - Sec. 38 - easement to the soakaways.

Street Lighting - moved - Chris L - taken

Part 1 anticipated values held by 50% - has course -

Footpath - on Gardenia Close -

? Cost. - Rates - for

Ground fees: £207,000 Previous cost.

£331,000 Improved estimate.

Fees for SCC + committed costs.

Elaine: If we stick to £207,000 -

Sec 38 -

20,000 committed costs, inspection fees: £15,500. -

£35,500 - total figure for agreement. -

Cost to Part II completion: Day 1 road

Street lighting -

90% completion: 10% £20,700 - bond.

£20,000 - goes to SCC for future road maintenance. -

- Topping of roads £10K.
Ground lighting: £5K etc.

① £5,000 security - thing is his on basis currently being discussed.

② 2 letters 38's? Garden Sq. + Gaudencia Ave -

• EOR - lighting - Gd. Sq.

• Topping off - £8,000. - Ketter - repairs -

U/b 13/10/00 - £5,000.

Springing 2 for 38's -

Chris Lister Section 38 Agreement RJ, JR 2/10/08

[Meeting with Richard Johnson and John Renwick]

Part of planning permission – Sect. 38 Agreement

Road, infrastructure – adopted by SCC and street lights

Developer - brings it up to adoptable standard

AW [Anglian Water] – foul sewers - Section 104

Adopted soakaways – Section 38 - easements to the soakaways

Steve Cordery - moved - Chris Lister - taken over

Part 1 Certificate reduces bond by 50 pct – base course – footpath on Gardenia Close

Costs? – rates

Lowered fee: £207,000 previous estimate

£331,000 current estimate

Fees for SCC and commuted sums

C Lister: If we stick to £207,000

Section 38

£20,000 commuted sums, inspection fees £15,500

£35,500 total figure for agreement

Get to Part 2 Completion: top off road, street lighting

90 pct completion: 10 pct or £20,700 – bond

£20,000 [commuted sums] go to SC for future road maintenance

Topping off roads £10,000

Street lighting £5,000

£5,000 surety – keep it live on basis currently being discussed

2 Section 38's? Garden Square and Gardenia Close

EDF – lighting – Garden Square

Topping off - £8,000 – kerbs – repairs

Week beginning 13/10/08 - £5,000

Split up of Section 38's

Adoption Costs. as at Dec 08.

Cost of creating bond: £207,000 ?

90% completion - down to 10% bond £20,700.

Committed sum: £20,000 for 1 yr's maintenance & leakage.

Topps off: £10,000

Inspection: £15,500

Restoration: £2,000

Street lighting: £5,000

£52,000 + Bond.

[REDACTED] . Suffolk CC Highway.

18/8/11 Reminded us!

- Will look at estimate for road - £207,000 (went up to £331,000) + see if can hold to lower quote.
- Promised sum of £20,000 - for soakaways - One off payment.
- Inspection fees based on estimate for road
- Will look at whether they would accept a lower band - 25% initially + then reduce to 10% -
- Explained this was explanatory - nothing decided yet - just assembling the facts.
- CL is moving to inspectorate - going to Harmondsworth office - 1st Sept.
- Called CL. 22/8/11 to see if any progress. On holiday - back 30/8/11
- Called 26/9/11 Spoke to Stephen Lording - 11 for for maintenance - band of 10% for full value fees - for full band.

Stephen - 264749.
Lording

7 1/2% inspection.

- Agreed:
- (1) Better value - he has as £207,000
 - (2) Need new agreement - requiring only 10% band provided roads are up to 'maintenance period' standard
 - (3) Chris to inspect roads to see what needs doing to bring them up to the maintenance period -

* [REDACTED]

Thursday 25/9/11 at 10am

Chris Lister, Suffolk CC Highways

18/8/11 Remembered us!

Will look at estimate for road - £207,000 (was up to £331,000) and see if can hold to lower quote.

Commuted sum of £20,000 – for soakaways – one-off payment.

Inspection fees based on estimate for road.

Will look at whether they would accept a lower bond – 25 pct initially and then reduce to 10 pct.

Explained this was exploratory – nothing decided yet – just assembling the facts.

CL is moving to inspectorate – going to Saxmundham office – 1st September.

Called CL 22/8/11 to see if any progress. On holiday – back 30/8/11

Called 26/9/11 Spoke to Stephen Cordery

If fit for maintenance – bond of 10 pct of full value. Fees for full bond.

7.5 pct inspection [fees]

Agreed (1) Full value – he has as £207,000

(2) Need new agreement – requiring only 10 pct bond provided roads are up to 'maintenance period' standard

(3) Chris to inspect roads to see what needs doing to bring them up to the maintenance period

*Chris Lister coming Thursday 29/9/11 at 10 am