

APP/A1720/W/21/3283643 and APP/A1720/W/21/3284532

Planning Appeal in relation to Land south of Funtley Road, Funtley, Fareham

Section 106 Unilateral Undertaking

1 BACKGROUND

- 1.1 Fareham Borough Council ("the Borough Council"), Hampshire County Council ("the County Council"), Atherfold Investments Limited ("the Owner") and Reside Developments Limited ("the Developer") have worked closely and proactively together to agree the section 106 Unilateral Undertaking ("S.106 Unilateral Undertaking") in relation to the appeals with references APP/A1720/W/21/3283643 (the "Development Appeal") and APP/A1720/W/21/3284532 (the "Community Park Appeal").
- 1.2 Whereas the planning obligations are dealt with by unilateral undertaking, the obligations on the Owner within the S.106 Unilateral Undertaking have been agreed between the parties and the document is agreed subject only to the final title checks. All parties are satisfied that it deals with the necessary issues.
- 1.3 This note sets out the heads of terms in respect of the S.106 Unilateral Undertaking and is provided by the Developer [and agreed by the Borough Council and the County Council] with the intention of narrowing the issues that need to be discussed at the Inquiry.

2 CLAUSES 1 – 25

- 2.1 The definitions are set out in the front of the S.106 Unilateral Undertaking. These are considered further as and when necessary in the remainder of this note.
- 2.2 The drafting of the legal clauses at clause 1 – 25 are in standard and agreed form. It should be noted that:
 - (a) Contributions are subject to Indexation (other than the Bus Subsidy) and, in the case of late payment, all Contributions are subject to interest.
 - (b) The S.106 Unilateral Undertaking will bind successors-in-title and will be registered as a Local Land Charge by the Borough Council
 - (c) The Owner is obligated to pay the County Council Monitoring Fee (£7,500) and the Travel Plan Monitoring Fee (£15,000) to ensure that the obligations in the S.106 Unilateral Undertaking and the Travel Plan can be appropriately monitored.
 - (d) The S.106 Unilateral Undertaking includes what is known as a "blue pencil" clause at clause 19. This provides the Inspector with the opportunity to consider whether the obligations comply with the CIL Regulations. If the Inspector considers that any obligations does not comply with the CIL Regulations, it shall cease to have effect, but the remainder of the obligations in the S.106 Unilateral Undertaking will still apply.

3 FINANCIAL CONTRIBUTIONS

3.1 Bus Subsidy

- (a) The Bus Subsidy (£5,500 per annum) is payable once per annum for a maximum of five years on the basis that once the Bus Turning Area is provided and operational then no further annual payments beyond the second anniversary shall be payable.
- (b) The County Council agrees that the payment of the Bus Subsidy will help to cover the costs of using the bridge on Mayles Lane.

3.2 Community Park Maintenance Contribution

- (a) The Community Park Maintenance Contribution (£802,000) is payable on the date of the Transfer of the Community Park Land to the Borough Council. The Borough Council agrees that the Community Park Maintenance Contribution will help to provide a community park for local residents to use. (See also paragraph 9 of this note)

3.3 Education Contribution

- (a) The Education Contribution (£327,609.24) is payable in three instalments and is agreed between the parties to be proportionate and the County Council agrees that the payment of the Education Contribution will mitigate the impact of the development on the education system in Fareham.
- (b) There are both positive and negative triggers for the payment of the Education Contribution in three equal tranches on first Occupation; Occupation of 25% of the Residential Units; and Occupation of 75% of the Residential Units, respectively.

3.4 Footpath to School Contribution

- (a) The Footpath to School Contribution (£67,133) has been agreed between the parties. The purpose for which the Footpath to School Contribution is payable is set out in the definition of "Footpath to School Contribution" and the footpath and bridleways referred to are between the Land and Henry Cort Community College. The parties agree that the Footpath to School Contribution is proportionate and directly related to the impacts of the development.
- (b) 50% of the Footpath to School Contribution is payable prior to Commencement of Development. The remaining 50% is payable prior to first Occupation of a Residential Unit.

3.5 New Forest SPA Contribution

- (a) The New Forest SPA Contribution (£247.05 per Residential Unit) is calculated according to the number of dwellings and it has been agreed between the parties to be used to deliver measures aimed at delivering enhanced open space in Fareham.
- (b) There are both positive and negative triggers for the payment of the New Forest SPA Contribution. The full contribution is payable prior to the Commencement of Development.

3.6 Off-Site and On-Site CUB Contribution

- (a) The Owner is only required to pay one of the Off-Site CUB Contribution or On-Site CUB Contribution. The Off-Site CUB Contribution is payable if the Community Shop/Building is rejected by the Borough Council. The On-Site CUB Contribution will be paid if the Community Shop/Building is transferred to the Borough Council.
- (b) The Off-Site CUB Contribution (£500,000) has been agreed between the parties to be used by the Borough Council towards the provision or improvement of community use facilities in Funtley. It has been agreed these facilities will be class F.2 of the Town and County Planning (Use Classes) Order 1987.
- (c) The Off-Site CUB Contribution is only payable if the Borough Council rejects the Community Shop/Building Offer.
- (d) The On-Site CUB Contribution is calculated per square metre of floorspace that is to be used as a Community Space. It has been agreed between the parties that the sum payable shall not exceed £500,000. The On-Site CUB Contribution is payable either to:
 - a. The Borough Council if they accept the transfer of the Community Shop/Building; or
 - b. The Willing Purchaser in the event that the Community Shop/Building is transferred for use as a combined Local Convenience Store and Community Space. The contribution will not be payable if the Community Space is provided by the operator of the Local Convenience Store (or one of its group or related companies); or
 - c. The Willing Purchaser in the event that the Community Shop/Building is transferred for use as a Community Space only and the Owner does not elect to build it.

3.7 Open Space Maintenance Contribution

- (a) The Open Space Maintenance Contribution is calculated at £6 per square metre of Open Space which is provided on the Land. This figure is as set out in the Borough Council's Supplementary Planning Guidance. The parties have agreed the Open Space Maintenance Contribution is necessary and proportionate to allow for the maintenance of the Open Space.
- (b) There are both positive and negative triggers for the payment of the Open Space Maintenance Contribution. It is payable on the date of the Transfer of the Open Space and in any event before the Occupation of 85% of the Residential Units. (See also paragraph 8 of this note)

3.8 Play Area Contribution

- (a) The Play Area Contribution (£70,000) has been agreed between the parties. This figure is as set out in the Borough Council's Supplementary Planning Guidance. The purpose

of the Play Area Contribution is for the contribution to be used towards the provision by the Borough Council of the Play Area Equipment. The Developer may decide to deliver the Play Area in accordance with the approved scheme, instead of paying the Play Area Contribution.

- (b) There are both positive and negative triggers for the payment of the Play Area Contribution. It is payable on the date of the Transfer of the Play Area and in any event before the Occupation of 85% of the Residential Units.

3.9 Play Area Maintenance Contribution

- (a) The Play Area Maintenance Contribution (£38,000) has been agreed by the parties as being proportionate to allow for the maintenance by the Borough Council of the Play Area. This figure is as set out in the Borough Council's Supplementary Planning Guidance.
- (b) There are both positive and negative triggers for the payment of the Play Area Maintenance Contribution. It is payable on the date of the Transfer of the Play Area and in any event before the Occupation of 85% of the Residential Units.

3.10 Public Right of Way Commuted Sum

- (a) The Public Right of Way Commuted Sum (£112,200) has been agreed between the parties as proportionate and necessary to allow for the future maintenance by the County Council of the Public Right of Way.
- (b) There are both positive and negative triggers for the payment of the Public Right of Way Commuted Sum. It is payable prior to first Occupation.

3.11 School Travel Plan Contribution

- (a) The School Travel Plan Contribution (£42,000) has been agreed between the parties as proportionate. The purpose for which the School Travel Plan Contribution is payable is set out in the definition of "School Travel Plan Contribution", and the schools referred to are in the vicinity of the Land.
- (b) There are both positive and negative triggers for the payment of the School Travel Plan Contribution. It is payable prior to Commencement of Development.

3.12 Solent Recreation Mitigation Strategy Contribution

- (a) The Solent Recreation Mitigation Strategy Contribution is calculated by reference to the number and size of Residential Units comprised in the Development as set out in the definition of Solent Recreation Mitigation Strategy Contribution. It has been agreed between the parties to be proportionate and necessary to offset the impact of the Development. The figures used in the calculation are often used in planning obligations in Fareham.

- (b) There are both positive and negative triggers for the payment of the Solent Recreation Mitigation Strategy Contribution. It is payable prior to first Occupation.

3.13 Traffic Regulation Order Contribution

- (a) The Traffic Regulation Order Contribution (£5,000) has been agreed between the parties to be proportionate to be used towards the revision of an existing traffic regulation order to expand the 30mph speed limit zone on Funtley Road.
- (b) There are both positive and negative triggers for the payment of the Traffic Regulation Order Contribution. It is payable prior to Commencement of Development.

4 AFFORDABLE HOUSING

- 4.1 There is an obligation to provide 40% of the Residential Units as Affordable Housing. The Affordable Housing is required to be provided in accordance with the Affordable Housing Tenure Mix. The Affordable Housing Tenure Mix is set out in Schedule 5 paragraph 1.2. The Affordable Housing Tenure Mix is in accordance with the Borough Council's requirements. An Affordable Housing Plan must be submitted as part of the first Reserved Matters Application and the Affordable Housing must be delivered in accordance with that scheme.
- 4.2 The Affordable Housing is made up of Affordable Rent Units and Shared Ownership Units, as required by local and national planning policy. Provisions are included to ensure that Affordable Housing is retained as affordable in perpetuity and to ensure that they are Occupied by appropriate persons. The Affordable Rent Units and Shared Ownership Units need to be delivered through the HARP.
- 4.3 The Affordable Housing must be delivered early in the Development. 50% of the Affordable Housing must be constructed and transferred to the HARP by the time that 17 Open Market Units are Occupied and all the Affordable Housing Units must be constructed and transferred to the HARP by the time that 38 Open Market Units are Occupied.
- 4.4 The Developer is required to ensure integration of the Affordable Housing Units with the Open Market Units so that the Affordable Housing Units will be indistinguishable from the Open Market Units except in relation to garaging and parking.

5 HIGHWAY WORKS

- 5.1 Highway Works consist of the construction of a bellmouth junction, a crossing point, clearing scrub works and the footpath to Thames Drive is to be widened for shared use and a dropped kerb crossing is to be constructed on Thames Drive. The Highway Works are shown on drawing numbers 1908016-01 Rev E, 1908016-02 Rev C, 1908016-03 Rev A and 1712047-SK05 Rev C.
- 5.2 The Owner covenants to use reasonable endeavours to enter into a Highway Works Agreement with the County Council to facilitate the highway works, prior to the Commencement of Development. The Highway Works must be completed to the Highway Works Completion Standard prior to the Occupation of any Residential Unit. This will be evidenced by the issue of a certificate of completion.

6 PUBLIC RIGHT OF WAY

- 6.1 There is an obligation for a Public Right of Way for pedestrians and cyclists to be constructed and dedicated or created across land to the south of Funtley Road linking Funtley Road and Thames Drive. The route is shown in principle between points X and Y on the Plan and shown definitively between points Y and Z on the Plan. The exact route between points X and Y is not known at this stage, as the route is on an incline there will need to be some zig-zagging of the route in order to make the Public Right of Way accessible to those with wheelchairs or pushchairs.
- 6.2 A Public Right of Way Scheme must be submitted to the Borough Council and the County Council prior to Commencement of Development. The scheme will govern the way the Public Right of Way is laid out and constructed and shall include detail of the route of the Public Right of Way, the surface treatment of the Public Right of Way, the lighting of the Public Right of Way (if necessary), details of future ongoing maintenance arrangements and the section 228 Highways Act 1980 process. The Public Right of Way must be completed in accordance with the Public Right of Way Scheme and made available for use by members of the public prior to the Occupation of any Residential Unit.

7 UNREGISTERED LAND

- 7.1 The Public Right of Way is intended to pass over a small amount of land that is unregistered and in unknown ownership to the south of the M27 Bridge. The Owner is obliged to use reasonable endeavours to identify the owner of the Unregistered Land prior to Commencement of Development. This includes the publication of the Section 228 Gazette Notice in the form set out in Schedule 11 of the S.106 Unilateral Undertaking.
- 7.2 The Owner will report to the County Council and Borough Council the outcome of their investigation into the landownership of the Unregistered Land. If the landowner cannot be identified, located or contacted and there has been no response to the Section 228 Gazette Notice, the Owner shall undertake works pursuant to the Public Right of Way Scheme as street works on the Unregistered Land.
- 7.3 Pursuant to the obligations in Schedule 3, Paragraph 7 of the S.106 Unilateral Undertaking, the Owner will do everything that it can to ensure that the full route of the Public Right of Way, including the Unregistered Land, is dedicated as highway. The County Council cannot provide positive obligations in the S.106 Unilateral Undertaking in accordance with the agreement. Any actions required by the County Council will be in accordance with its statutory duty under S.228 of the Highways Act 1980 and fall outside the S.106 Unilateral Undertaking.
- 7.4 The Owner indemnifies the County Council in respect of the costs of maintenance of any of the works on the Unregistered Land.

8 OPEN SPACE

- 8.1 Part of the Land is to be used as Open Space, the size of which is to be calculated in accordance with Table 1 at Appendix 1 to the S.106 Unilateral Undertaking. The Open Space is to be governed by an Open Space Scheme of Works, which must be submitted to the Borough Council prior to Commencement of Development.

- 8.2 The Open Space shall be completed in accordance with the Open Space Scheme of Works and then transferred to the Borough Council for £1 prior to the Occupation of more than 85% of the Residential Units. The Open Space must be transferred with the necessary rights, access and easements to permit the Borough Council to access the Open Space for management and maintenance purposes and for the public to access the Open Space.
- 8.3 Until the Open Space is transferred to the Borough Council, the Owner must comply with the approved Interim Open Space and Play Area Management Plan, which will set out, amongst other things, how the Open Space will be managed and maintained prior to its transfer to the Borough Council.

9 COMMUNITY PARK

- 9.1 Part of the Land is to be used to provide a Community Park. The Developer has applied for planning permission for change of use of the Community Park Land from equestrian/paddock to community park, following demolition of existing buildings. The Community Park is to be governed by the Community Park Scheme of Works and the Interim Community Park Management Plan, which must be submitted to the Borough Council prior to Commencement of Development.
- 9.2 The Community Park must be completed prior to the Occupation of more than 50% of the Residential Units. The Community Park Land will be transferred to the Borough Council for £1 prior to the Occupation of more than 85% of the Residential Units. The Community Park Land must be transferred with the necessary rights, access and easements to permit the Borough Council to access the Community Park for management and maintenance purposes and for the public to access the Community Park Land.
- 9.3 3.72 hectares of land within the Community Park Land (as shown on the Mitigation Land Plan) is required to comply with Natural England's "Advice on Achieving Nutrient Neutrality for New Development in the Solent Region" Version 5 dated June 2020. Agricultural use of this Mitigation Land must cease prior to the Occupation of any Residential Unit.
- 9.4 Prior to the transfer of the Community Park Land to the Borough Council, a Tree Condition Survey will be carried out to inspect all of the trees on the Community Park Land to identify any defective or hazardous trees that require works to be carried out in order to make them safe. Until the Community Park is transferred, the Owner must comply with the Interim Community Park Management Plan.

10 COMMUNITY SHOP/BUILDING

- 10.1 The Owner is to provide a building of between 50 and 250 square metres of floorspace to be used as a Local Convenience Store and/or a Community Space. A Community Shop/Building Marketing Strategy must be submitted to the Borough Council (prior to the Occupation of more than 75% of the Residential Units) to govern how the Community Shop/Building Land will be marketed during the Community Shop/Building Marketing Period.
- 10.2 During the Community Shop/Building Marketing Period (a period of 12 months) the Owner will attempt to find a Willing Purchaser of the Community Shop/Building. If their attempts are successful, the Owner will use reasonable endeavours to transfer the Community Shop/Building

Land to the Willing Purchaser. Within 6 weeks of the transfer to the Willing Purchaser, a timetable for the implementation of the Community Shop/Building Proposal shall be submitted to the Borough Council for Approval. The Community Shop/Building shall be constructed, laid out and retained in accordance with the approved Community Shop/Building Proposal.

- 10.3 A different financial contribution will be required depending on whether the Community Shop/Building Land is transferred as a Local Convenience Store only, or whether it is transferred for use as a combined Local Convenience Store and Community Space.
- 10.4 If a Willing Purchaser is not found during the Marketing Period, the Owner shall make the Community Shop/Building Offer to the Borough Council within 28 days of the end of the Community Shop/Building Marketing Period. If the Borough Council accepts the Community Shop/Building Offer, the Owner shall transfer the Community Shop/Building Land for £1 and pay the On-Site CUB Contribution. If the Borough Council rejects the Community Shop/Building Offer the Owner will pay to the Borough Council the Off-Site CUB Contribution and then the Community Shop/Building Land can be used for any purpose permitted by planning permission.

11 Custom or Self Build Housing

- 11.1 The Owner will provide either Custom or Self Build Housing on the Land. Prior to the submission of the first Reserved Matters Application, the Owner will submit the Custom or Self Build Scheme, the Marketing Strategy and the Marketing Terms to the Borough Council for approval.
- 11.2 The Custom or Self Build Units will be Marketed Appropriately for the Marketing Period and on the Marketing Terms. The Marketing Period will not be for a period of less than twelve months.
- 11.3 The Custom or Self Build Units cannot be disposed of other than to purchasers at least one of which who are on the Custom Build Register at the time of completion of the transfer of the unit. If, at the end of the Marketing Period, a purchaser or purchasers on the Register have not come forward to purchase a Custom or Self Build Unit, the Owner may dispose of the remaining units free from the restrictions referred to in this paragraph and paragraph 1.4 of Schedule 6.

12 Travel Plan

- 12.1 The Owner is to provide a Travel Plan to be approved by the County Council prior to the Occupation of any Residential Unit. A Travel Plan Security Deposit (£28,750) will also be provided to the County Council. This deposit is made up of the sum of the cost of implementation and compliance with the targets and measures of the Travel Plan plus 10% thereof. This deposit is payable prior to the Occupation of any Residential Unit.
- 12.2 The Owner is to pay £1,500 to the County Council towards the costs to be incurred in approving the Travel Plan. This is payable before Commencement of Development. The Owner will also pay £15,000 to the County Council towards the costs incurred in monitoring the Travel Plan.
- 12.3 If the County Council considers the Owner has failed at any time to deliver or comply with any of the measures or targets in the Travel Plan, or becomes bankrupt, goes into liquidation or enters administrative receivership, the County Council can call upon the Travel Plan Security Deposit to pay any sum as may be certified by the County Council to be required up to the value of the Travel Plan Security Deposit. These funds shall be used in order to remedy the Owner's failure

to achieve and implement the agreed measures and targets or to pay any sum required in respect of such alternative measures as the County Council determines will achieve the overall aims of the Travel Plan.

13 Bus Vouchers

- 13.1 The Owner is to provide a voucher or vouchers or similar equivalent with a total value of £50 to each Residential Unit, the voucher must be capable of being used on local bus services.
- 13.2 The Owner cannot allow Occupation of any Residential Unit unless the Occupier of that unit has been provided with one Bus Voucher. In the event that the Bus Voucher is accepted by the Occupier, the Owner must provide it without delay.

14 Cycle Vouchers

- 14.1 The Owner is to provide a voucher or similar equivalent for £150 towards the cost of purchasing a bicycle from a local outlet.
- 14.2 The Owner cannot allow Occupation of any Residential Unit unless the Occupier of that unit has been provided with one Cycle Voucher. In the event that the Cycle Voucher is accepted by the Occupier, the Owner must provide it without delay.

15 Residents' Welcome Pack

- 15.1 The Owner is to provide a Residents' Welcome Pack containing the information described in the definition of Residents' Welcome Pack.
- 15.2 The Owner cannot allow Occupation of any Residential Unit unless the Occupier of that unit has been provided with the approved Residents' Welcome Pack.

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