

From: Richard Wright, Principal Planner
(Development Management)

To: Tim Salter, Planning Inspectorate

Ext: 01329 824758

CFS Ref: APPEAL REF: APP/A1720/W/21/3271412

Date:
18 August, 2021

**LAND SOUTH OF ROMSEY AVENUE, PORTCHESTER
RESPONSE TO INSPECTOR'S QUERIES CONCERNING SUBMITTED UNILATERAL
UNDERTAKING**

Introduction

In the inquiry sitting on 17th August 2021, Inspector Lesley Coffey requested further information and clarification on a number of points arising from her scrutiny of the unilateral undertaking submitted by the Appellant on 13th August. The Council notes that the Appellant has already provided a response (Inquiry Document INQ 29). This note seeks to complement that response on any other matters with further detail from the Borough Council and County Council.

County Council Monitoring Fee

Q: How is this monitoring fee justified? Why do the obligations need monitoring?

A: Hampshire County Council's solicitor has advised as follows:

"The Council requires us to secure a monitoring fee to monitor obligations under a s106 – see the attached HCC cabinet decision report [Appendix A to this note]. In theory that fee is needed to monitor the developer obligations for the life cycle of the s106 (potentially 15 years or more in this case – [x] years for reserved matter approvals plus [x] years to commence plus 10 year spend period from receipt of a contribution). The fee is also needed to fund the annual infrastructure statement work needed to be done to report upon the monitoring and compliance with s106 deeds. See para 36 of the NPPF <https://www.gov.uk/guidance/planning-obligations> 'How can local authorities fund the reporting on planning obligations?'. The methodology for payment is set out in the attached report."

A: Hampshire County Council's Principal Transport Engineer has added the following:

“The policy was introduced after the changes in legislation, specifically The Community Infrastructure Levy (Amendment) (England) (No. 2) Regulations 2019, which allowed contribution collection authorities to collect monitoring fees on s106 obligations.

<https://www.legislation.gov.uk/ukxi/2019/1103/regulation/10/made>

The term ‘monitoring’ encompasses a variety of tasks that we need to carry out, which includes management of contributions throughout their entire lifecycle.

The fee is used to fund time spent monitoring for commencement of development and occupation levels at regular intervals, typically over a number of years, to ensure that each instalment of a contribution or fee is paid on time, at the appropriate trigger points, without the developer incurring late payment interest charges unnecessarily.

When payment trigger points are reached, we typically need to calculate the indexation and interest payable on each instalment, raise invoices, as well as any other administrative work necessary before payment is received (setting up new customers on the finance system etc).

Once paid the contributions are passed on to the relevant teams to spend. However they still need to be monitored and reported on through the annual Infrastructure Funding Statement, which depicts how much of each contribution was received, where its allocated, how much is spent etc.

We also need to monitor the spend window stipulated in the agreement and return any unspent money back to the developer if not spent in time.”

Schedule One – Affordable Housing

Q: Where is the justification for the affordable housing mix given on p14 of the submitted unilateral undertaking?

A: Fareham Borough Council’s Head of Housing Delivery has advised as follows:

“The size mix for Social and Affordable Rent properties is principally formulated from an understanding of quantitative data held on the Council’s Housing Register. This records the type/size of property needed and geographical areas of preference for those in need. All new build Social and Affordable Rent properties are allocated to from this Register so it provides the most accurate starting point to understanding affordable housing need locally. Alongside this we also use an understanding of forthcoming new affordable housing in the pipeline (i.e. sites already permitted and/or under construction) to avoid potential over/under supply of any particular property size.

On this occasion the Housing Register has been analysed to understand the need for affordable homes in the Portchester area and this acts as the main starting point. Regular discussion with the Council’s Allocations Officer (who puts forward perspective tenants for all new affordable homes as per our Allocations Policy) also takes place to enable a qualitative understanding of supply vs. need. On this occasion (as with many current applications) resulting in a slightly reduced provision of 2-bed properties as these come up regularly and many more are already in the

pipeline across the Borough. In comparison 4+ beds are well provided for (as these are the families that typically wait far longer to be housed due to less supply and less churn).

The nature/character and scale of the development proposed would be expected to reflect local affordable need and include larger family affordable homes.

The need for affordable home ownership/intermediate is more generalised as there is an element of market demand and choice. The split by property size is informed by previous housing need studies.”

Schedule Four – Education

Q: How has the pupil yield and therefore the contribution been calculated?

A: The County Council's Strategic Development Officer (Children's Services) has advised as follows:

“Based on 225 dwellings the pupil yield as per our calculation of 0.3 pupils per dwelling of two beds or more, equates to 67 primary age pupils. As we would not build just that number of additional spaces the contribution sought was based on the estimated cost, at that time, of a 0.5 form of entry (105 places) expansion. So for this development, this represents a contribution of £17,641 per pupil space with the £1,181,947 as a proportion of the overall cost to build a 0.5 FE expansion of £1,852,323 as per the Developer's Contribution Policy For Children's Services Facilities dated August 2018.”

Q: What is the difference between obligations 1 and 2?

A: The County Council solicitor has advised:

“The ‘to pay’ obligation is an obligation under s106(1)(d). The ‘not to do’ obligation is an obligation under S106(1)(a). The s106(1)(a) obligation ‘not to do’ is enforceable by injunction under S106(5). The S106(1)(a) obligation to pay is not enforceable by injunction under S106(5) - although the ‘to pay’ obligation is a planning obligations as well;, you cannot secure the statutory remedy of an injunction for a breach of a ‘to pay’ obligation on ground of the equitable principle that an injunction cannot be secured where damages would be an adequate remedy. The ‘to pay’ obligation can be enforced by a debt claim only. We need to express the obligations in both ways to be able to rely upon all legal remedies open to the Councils in the event of breach. We may not be able to apply for an injunction due to ‘laches’ – delay or on ground of any exclusion under a s106 deed against preventing enforcement against owner/occupiers of individual dwellings etc. The ‘to pay’/‘not to do until..’ format is how planning obligation are usually secured in the best interests of the Councils. Securing it both ways is lawful under s106(1).”

Schedule Five – Countryside Service

Q: How has the amount of contribution been arrived at?

A: The County Council's Countryside Planning Officer has advised as follows and a plan has been provided at Appendix B to demonstrate the proximity of the public rights of way network:

"Please find attached Countryside Service's additional comments to FBC breaking down the costs of the Countryside contributions. Due to increased staff, fuel, materials and other costs we have requested the Wicor Countryside Site Contribution requested in 2018 was increased by as total of 5% to £11,812 .

1. *Contribution of £11,250 towards management of the Wicor Countryside Service Site.*
2. *£26,262 towards surfacing of 296m of Fareham Footpath 110.*
 - a. *£ 19,240 Footpath construction*
 - b. *£ 5,772 Maintenance*
 - c. *£ 1,250 Officer time element at 15%.*
3. *£52,260 towards surfacing of 589m of Fareham Footpath 111a.*
 - a. *£ 38,285 Footpath construction*
 - b. *£ 11,486 Maintenance*
 - c. *£ 2,489 Officer time element at 15%."*

Schedule Six – Transport

Q: Travel Plan Approval and Monitoring Contribution – is there an overlap? How is this justified? What is being monitored?

A: The County Council's Principal Transport Engineer has advised as follows:

"These fees are to fund HCC Officer time specifically associated with approving the required Full Residential Travel Plan and monitoring implantation of this plan, once approved, over the 5 year life of the Residential Travel Plan. As outlined in Paragraph 113 of the National Planning Policy Framework (NPPF), developments which generate significant amounts of transport movements are required to provide a Travel Plan. Not only does this plan reduce reliance on the private car from first occupation of the development, but also encourages and provides the necessary information and support for residents to take up and maintain alternative methods of travel for both work and leisure. The monitoring fees secured within the S106 Unilateral Undertaking are necessary for ensuring enforcement of the Travel Plan. Travel Plan assessment, monitoring and reviewing is a discretionary service, which the County Council provides; section 93 of the Local Government Act 2003 provides the power to charge for discretionary services. The monitoring fees go towards directly funding officers who assess and monitor the plan and attending regular steering group meetings as required.

Without payment of these fees, HCC would not be in a position to monitor Travel Plans. The monitoring fee is therefore a cost that is essential to the operation of the Travel Plan as it is in respect of work done evaluating the effectiveness of the Travel Plan in delivering the agreed action plan of measures over a period of years. The monitoring fee is a cost that is necessary to make the Travel Plan effective and so it is directly related to the scale and kind of development and a cost that is necessary to make the development acceptable in planning terms. The

aforementioned fees are therefore considered CIL compliant in that without their payment, the development would fall short of being considered sustainable.

There is no overlap between the Travel Plan monitoring fee (to monitor the Travel Plan) and the County Council's Monitoring Fee (to management of contributions throughout their entire lifecycle), these are for separate processes and involve different officers."

Q: What is the purpose of the Travel Plan Bond?

A: HCC's Officer advises:

"Should the developer default on their obligation and fail to deliver the Travel Plan measures, the County Council can call on the bond, receiving funds to deliver the required measures."

Q: The Transport Contribution includes school travel plan funding but that appears to already be in the education contribution at Schedule Four. Is this double counting?

A: HCC advise:

"The School Travel Plan contribution of £85,000 is specifically towards planning and measures to reduce private car travel to Wicor Primary School to mitigate the development impact on Hatherley Crescent in the vicinity of the school. The education provision includes an option to use further education contributions towards School Travel Planning should this be considered necessary."

Q: Why does the Travel Plan Bond need to be held for 5 years?

A: HCC advise:

"The length of the Travel Plan in terms of monitoring is 5 years, hence this is how long the bond is required. Given the likely buildout timescales, 5 years is considered a reasonable monitoring period for a development of this size in terms of the Travel Plan measures becoming well established and encouraging and instilling sustainable travel patterns in residents."

Appendices:

Appendix A – HCC Cabinet Decision Report 29.9.2020 – Major Developments and Infrastructure Funding

Appendix B – Plan showing proximity of public rights of way network