

SUMMARY NOTES ON S106

VERSION 2

Subject only to confirmation from HCC in respect of the Joint Highways Mitigation paragraphs, which mirror those in the Appeal for Land South of Chiswell Green Lane, it is understood that the s106 is agreed with SADC and HCC in all respects, save for remaining disagreement with HCC over the following points both of which are included in the s106 under a 'blue pencil' clause:

Areas of Disagreement

Blue Pencil Clause is included in the s106 agreement at page 28 paragraph 12.

1) Primary Education Land Purchase Contribution

The provision of £38,396 towards the purchase of land for the provision of a primary school is agreed in circumstances where the Appeal on Land South of Chiswell Green Lane (APP/B1930/W/22/3313110) is also Allowed. However, the need for this only occurs in the event that HCC draw down on the land purchase for the school site in that Appeal. That land purchase is now understood to involve a financial contribution.

The sum of £38,396 sought and attributable to this Appeal (APP/B1930/W/22/3312277) is considered proportionate to the contribution in that circumstance. In the absence of both Appeals being allowed, the need for primary education required for this Appeal is provided for separately through the Primary Education Contribution which proposes the extension of Killigrew Primary School within its own site. As such no additional land purchase is required and the clause should therefore be deleted.

The land contribution is covered by page 13 Primary Education Land Purchase definition and Schedule 1 paragraphs 13.1 and 13.2.

If the Inspector considers this is necessary then it can be retained, if he considers it fails this test then a statement to that effect can remove this requirement under the 'blue pencil' clause.

2) Enforceability of the Deed against Individual Occupiers/Purchasers

The intention of the clause preferred by the Appellant, which is considered standard, is to ensure that none of the individual dwelling owners can be held liable for the very substantial financial obligations in the Deed, and that these are to be borne exclusively by the Owner. It is not reasonable or indeed feasible to expect the council to come after a house owner for millions of pounds of, for example, educational contributions.

The County Council wish the obligations to apply to individual property purchasers and amended para 9.12 of the agreement to that effect. The effect of these blue amendments runs a coach and horses through any such homeowner protection and cannot be acceptable. It is not reasonable or feasible in reality to expect the Council to come after individual homeowners for millions of pounds of education and other contributions which are staged throughout the development. It will pose a significant issue for property searches and mortgage availability.

While an indemnity can sometimes be offered, this does not itself negate the negative impact on the marketing and sale of affordable homes and inevitably will be flagged as a risk in any prospective purchase. The clause as drafted by HCC currently provides that there is no recourse against dwelling owners for obligations (except obligations as to restrictions on Occupation which is correct) **once the obligations have been complied with**. This is considered by the Appellant to be meaningless, as once the obligations have been complied with, the council will have no recourse against anyone. Given the staged nature of payments, it will be relevant negative issue throughout much of the development and sales process.

The clause should in the Appellant's view be reinstated as originally drafted.

Hence it is proposed that there are two alternative clauses, and these are subject to the discretion of the Inspector as to which to adopt using the 'blue pencil clause' (page 28, para 12):

Either:

As proposed by the Appellant 9.12a:

"The obligations in this Deed will not be enforceable against owners of individual Dwellings nor against those deriving title from them nor their mortgagees or charges save for where there are restrictions on the Occupation of the Dwellings then such restrictions on Occupation shall bind the owners occupiers or tenants of the Dwellings who shall not Occupy any Dwelling in breach of such restrictions."

Or by the HCC as 9.12b:

"Once the obligations in this Deed have been complied with then such obligations will not be enforceable against owners of individual Dwellings nor against those deriving title from them nor their mortgagees or charges and where there are restrictions on the Occupation of the Dwellings such restrictions on Occupation shall bind the owners occupiers or tenants of the Dwellings who shall not Occupy any Dwelling in breach of such restrictions."