

## **HCC Position Statement Responding to Outstanding S106 Matters**

Appeal references: APP/B1930/W/22/3312277& APP/B1930/W/22/3313110

### Land North of Chiswell Green Lane

#### 1) Primary Education Land Purchase Contribution

The education land that is being provided on the Land South of Chiswell Green Land is identified as necessary.

The funding agreement for the site is that 39.5% of its value will be provided to Hertfordshire County Council (HCC) at nil cost, as the child yield anticipated from that development site, at Land South of Chiswell Green Lane, is anticipated to be 0.79FE (39.5% of a 2FE school). HCC has agreed with the developers of Land South of Chiswell Green Lane that it will, at the time of land transfer, pay 60.5% of the site's value to acquire the land.

The value of the purchase transaction has been fixed at £98,851.50. HCC will seek developer contributions from other sites in that would be mitigated on the new school site to fund this purchase. In this case, the development produces a modelled child yield of 0.47FE (or 23.5% of a 2FE school) so we would seek £38,396 as a proportion of the purchase cost. The value should be index linked to 1Q2022BCIS. The point is explained fully in our Statement of Case(s).

#### 2) Enforceability of the Deep against Individual Occupiers/Purchasers

HCC's position on walkaway clauses is an adopted position by its members in accordance with the chief legal officer. It should be noted that the obligations will only impact successors in title if the owners fail to comply with them. Excusing the owners' successors in title in such circumstances leaves the obligations unenforceable. HCC believes that making the obligations binding only on the current owners (and not their successors) places the authority at undue risk with the likelihood that infrastructure to support the development may have to be funded out of the public purse in event of insolvency or unwillingness to comply with obligations on the part of the owners. There are of course actions that the owners could take to cover-off any impact of the obligations on its successors including providing a bond to the county council, indemnifying those successors etc.

This position was consulted on as a part of HCC's consultation on its Guide to Developer Infrastructure Contributions prior to the Guide being endorsed in 2021.

The position is set out fully here: <https://www.hertfordshire.gov.uk/media-library/documents/environment-and-planning/planning/developer-infrastructure-contributions-guide/legal-pack.pdf>

## Land South of Chiswell Green Lane

- 1) Request to delete reference to “demolition” amounting to “Commencement” for the purposes of the s106 Agreement – not agreed by the County

The demolition of the site will have an impact on the delivery of HCC services. Demolition is sought for by the planning permission and the process behind that will have an impact on the county council that will need mitigation. The demolition works will cause journeys on the highways network that will require mitigation. There may be an influx of additional residents moving into the area, into temporary accommodation, while waiting for the completion of homes that have been bought off plan. To minimise this risk, HCC should be able to collect obligations from the development and have the appropriate forward funding clauses in the agreement to allow that money to be spent. HCC does not consider this requirement will have a material impact on the applicant because demolition forms part of its application and would be the clearest evidence that it has commenced the development. On the contrary, HCC services will be placed at ‘risk’ once demolition, a visible/tangible engineering operation, takes place.

- 2) Serviced Land Definition request to add “as otherwise agreed in writing” in relation to any changes that may be agreed to the specification annexed to the deed – not agreed by the County Council

HCC does not feel that proviso is required. It has experience of school delivery and feels that the specification included in the agreement has the appropriate servicing requirements that make the school site deliverable. The specifications are derived from its long-standing experience and requirements which also draw from national standards. There are no alternative specifications that may be agreed in due course. Therefore the requirement is only likely to lead to an uncertain obligation. To open this up to change in the future is not necessary and the county council should not be obligated to re-enter negotiations on the specification of school land.

- 3) Clause 9.12 – request to amend so that individual purchasers are bound by relevant occupation restrictions only rather than all the obligations – agreed by District Council but not by County Council, currently drafted without requested amendment

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4) Definition of Sustainable Travel Improvement Works - The County's solicitor has deleted drawing numbers which need to remain, to be consistent with agreed planning condition<sup>14</sup>, this should just be a point of clarification

Accepted.