

Commercial Estates Group

Land east of Clitheroe Road, Whalley

Planning Application 3/2013/0137

Section 106 of the Town and Country Planning Act 1990

Draft Heads of Terms of Planning Obligations relating to Education Provision

17th May 2013

1. Introduction

- 1.1 This document sets out the draft Heads of Terms of potential planning obligations relating to education provision, which may be entered into in connection with the proposed development pursuant to Section 106 of the Town and Country Planning Act 1990. This document is a revision to the Heads of Terms dated 8th February 2013 which were submitted with the planning application.
- 1.2 The Heads of Terms will inevitably be the subject of further discussions once the Council has had the opportunity to fully appraise the planning application. These Heads of Terms should therefore be viewed as a basis for those discussions and the negotiation and progression of a Section 106 Agreement, rather than a committed set of obligations. A first draft of a proposed Section 106 Agreement will be produced once the matters set out below have been finalised.
- 1.3 In addition, the Heads of Terms will need to take account of any decision by the Council to progress a Community Infrastructure Levy.
- 1.4 In the light of the above, the applicant reserves the right to amend the Heads of Terms as discussions progress during the course of determination of the planning application.
- 1.5 In order to comply with the requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010, each obligation will need to be directly related to the development and, necessary in order for the development to proceed and fairly and reasonably related in scale and kind to the development.

2. Interaction with Planning Conditions

- 2.1 It is important that any S106 Agreement sits alongside and is read in conjunction with the conditions attached to any planning permission granted. Therefore, the applicant will seek to discuss the schedule of draft planning conditions alongside the S106 negotiations and it may be that some of the matters addressed below can be dealt with (wholly or partly) via planning condition instead.

3. General

- 3.1 The S106 Agreement will contain standard provisions relating to conditionality (linked to the grant and implementation of planning permission).
- 3.2 The planning obligations will be specifically tied to any planning permission granted pursuant to the planning application.
- 3.3 Other standard provisions will be included in the S106 Agreement, including (but not limited to) provisions relating to release from obligations in the event of disposal of interests and consequences on the lapsing, revocation or modification of the planning permission, excluding third party rights to enforce etc.
- 3.4 Obligations will be placed upon both the Owner and the Council. For example, the Council will be obliged to ensure that all payments made will be applied towards their stated purpose. Repayment and accounting provisions will be included in order to address the circumstances in which this does not happen.
- 3.5 Obligations will be drafted so as to relate to various trigger points/timings within the carrying out of the development.

4 School Land

- 4.1 The Owner and the County Council will agree the precise location and boundaries of the Primary School Land within the Site prior to the occupation of [x] dwellings.
- 4.2 Once the location is agreed, the Primary School Land shall be reserved and held by the Owner for the Reservation Period of [x] years solely for the construction and operation of a Primary School.
- 4.3 During the Reservation Period but in any event not before the Occupation of [x] Dwellings the County Council may seek proposals for the establishment of a Primary School upon the Primary School Land.
- 4.4 During the Reservation Period the County Council can call for the transfer of the Primary School Land if, as a result of it seeking proposals, the Secretary of State has entered into Academy Arrangements for the establishment of a Primary School upon the Primary School Land or there is any other Determination to establish a Primary School on the Primary School Land.
- 4.5 The Section 106 Agreement shall set out the terms of any transfer of, and the consideration for, the Primary School Land.
- 4.6 In the alternative, the Owner may enter into a contract for the transfer of the Primary School Land to a non-profit company limited by guarantee which has entered into a Funding Agreement with the Secretary of State to establish a Free School (Academy). If this happens then the Owner shall inform the County Council and at

that point the ability of the County Council to call for the transfer of the Primary School Land falls away.

- 4.7 The Primary School Land will be released from the s.106 obligations if the Reservation Period expires without the County Council calling for the land or the Owner transferring the land to a non-profit company for the establishment of a Free School.

5 Primary Education Contribution

- 5.1 A Primary Education Contribution shall be payable in respect of the development and the provisional sum is £1,150,449 subject to:
- (a) The total number of 260 dwellings being finalised through reserved matters;
 - (b) The precise figure being calculated in accordance with the methodology set out in the Lancashire County Council response of 25th February 2013; and
 - (c) An agreed deduction being made for the valuation of the Primary School Land in the event that the Primary School Land is transferred to the local education authority.
- 5.2 The Primary Education Contribution will be payable as follows:
- 25% pre-commencement;
 - 25% prior to occupation of no more than 75 dwellings;
 - 25% prior to occupation of no more than 150 dwellings; and
 - 25% prior to occupation of no more than 225 dwellings.
- 5.3 In the first instance the Primary Education Contribution will be ring fenced so that it may be applied only towards the delivery of a Primary School upon the application site.
- 5.4 However if the Reservation Period expires without the County Council calling for the land or the Owner transferring the land to a non-profit company for the establishment of a Free School then the County Council may use the Primary Education Contribution towards the provision of extra primary school places at Whalley Church of England Primary School, Barrow Primary School and Langho and Billington St. Leonard's CofE Primary School.
- 5.5 In the event that the Owner serves notice upon the County Council confirming that a Free School is to be established upon the Site (see paragraph 5.6 above) then the Owner shall not be required to pay any of the Primary Education Contribution to the County Council and the County Council shall be obliged to return to the Owner any part of the Primary Education Contribution already paid by the Owner.

6 Secondary Education Contribution

- 6.1 A Secondary Education Contribution shall be payable in respect of the development and the provisional sum is £805,572 subject to:
- (a) The total number of 260 dwellings being finalised through reserved matters;

(b) The precise figure being calculated in accordance with the methodology set out in the Lancashire County Council response of 25th February 2013

6.2 The Secondary Education Contribution will be payable as follows:

25% pre-commencement;
25% prior to occupation of no more than 75 dwellings;
25% prior to occupation of no more than 150 dwellings; and
25% prior to occupation of no more than 225 dwellings.

6.3 The Secondary Education Contribution shall be applied by the County Council towards the provision of extra secondary school places at St. Augustine's Roman Catholic High School Billington and Ribblesdale High School/Technology College.