

Your Ref:

Our Ref: BDA/RJ/FOR0371-0001

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Dear Sir/Madam

**Appeal against refusal of Planning Applications: 23/01175/FUL; 23/01186/FUL;
23/01177/FUL and 23/01184/FUL**

This brief note sets out the position in respect of the S106 agreements (**S106s**) to be entered into in respect of the four refused planning applications (being 23/01175/FUL (51 Dwellings on the **East Site**); 23/01186/FUL (16 Dwellings on the **East Site**); 23/01177/FUL (44 Dwellings on the **West Site**); and 23/01184/FUL (14 Dwellings on the **West Site**)). We refer to 21/00695/FUL and 22/01053/FUL as the **Original Permissions** and 23/01184/FUL and 23/01186/FUL as the **Extension Applications**. The reference numbers we use in this note differ from those in the Officer's Report which are erroneous.

Background

- Two S106s were completed in respect of the Original Permissions. It is clear from this that, whilst there is a clear link between the East Site and the West Site, they are discrete enough to warrant individual S106s.
- Whilst we draw a parallel between the approach of the Original Applications, we acknowledge that the appeals before the Inspector are different in that they are dealing with four applications and not two. However, as the LPA notes in the Officer's Report (in respect of the refusals):

"The applications are closely linked, and the four applications are submitted instead of a single revised application for 125 dwellings as this enables the applicant to take advantage of a zero fee for the resubmitted applications for the two permissions that have already been granted."

- The above extract sets out the reason for there being four applications and, whilst it is true that each application (if granted permission) could be independently implemented, the contiguity of the design shows that the Extension Applications are simply to increase the number of dwellings the subject of the Original Permissions. By having two S106s there will be triggers in relation to the planning obligations which will ensure that the Extension Applications cannot be implemented independently of the Original Permission

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and vice versa. It is worth bearing in mind that, were it not for the zero-fee allowance for revisions to the Original Permissions, the Appellant would have submitted two revised applications (encompassing what are the Original Permissions and the Extension Applications). This note refers to the East Site and the West Site as being independently deliverable.

Financial Contributions

- We would propose that any financial contributions due under the terms of the S106s be expressed as pro-rata amounts with suitable triggers to be based on the LPA's Compliance Statement for the Appeals which we have not yet seen. Within the S106s, the triggers will ensure that both the Extension Applications and Original Permissions are tied in so that development cannot simply be brought forward on, for example, the Extension Application on the West Site without its contiguous Original Permission also being brought forward. An example to illustrate:
 - The West Site is required to pay £6,000 for a financial contribution based on £100 per Dwelling.
 - The Extension Application for 16 Dwellings comes forward and contributes £1,600.
 - If, for example, by the 10th Occupation on the Extension Application or three years from Commencement of Development (whichever is sooner), the Original Application is not brought forward, the Extension Application is required to pay the remaining £4,400.
- In the unlikely event that just one of the Extension Applications was brought forward, the LPA has the power to serve a Completion Notice to require that development to be brought forward.

Affordable Housing

- In respect of provision of Affordable Housing (AH), where exactly within the Original Permissions and the Extension Applications the AH is sited will be a matter for the AH Scheme which under the terms of the S106s will be required to be submitted and approved by the LPA prior to Commencement of Development.
- Any AH Scheme would ultimately lead to a 20% AH provision overall, but it would, through an appropriate cascade mechanism, allow for an AH Contribution to be paid in the event of not being able to provide the required 20% AH on-site. Examples of potential delivery mechanisms include:
 1. 20% AH provision on each of the Original Permissions and Extension Applications; or
 2. 0% AH provision on the Extension Applications and a greater % of AH (to be policy compliant) on the Original Permissions;
 3. 0% - 20% AH provision of the Extension Applications and a greater % on the Original Permissions and/or a financial contribution for provision of AH elsewhere in Hinckley & Bosworth.

Public Open Space and LEAP

- The Public Open Space is to be provided on site or by way of either a financial contributions pro-rated in respect of each of the Original Permissions and Extension Applications. A LEAP will be provided to serve both developments, and this will, again be secured through the S106s with a mutual obligation on each of the East and West Site to collaborate to provide the LEAP. Whilst it is the intention of the Appellant to develop both the East Site and the West Site, if one of them is developed by a third party, it will be a matter of private contractual obligations to ensure how each of the developments deal with the LEAP: the S106s will require the LEAP to be provided.

The key point is that through the S106s there will be a watertight mechanism to ensure that each of the East Site and West Site deliver what is required to be policy compliant. There will be enforcement mechanisms in the S106s which will enable the Council to ensure that both the Extension Applications and the Original Permissions are brought forward and not only one or the other. As mentioned above, the Council also has the option of serving a Completion Notice in respect of any development consented but not brought forward.

Yours faithfully

A handwritten signature in grey ink that reads "Roythornes". The signature is written in a cursive, flowing style.

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