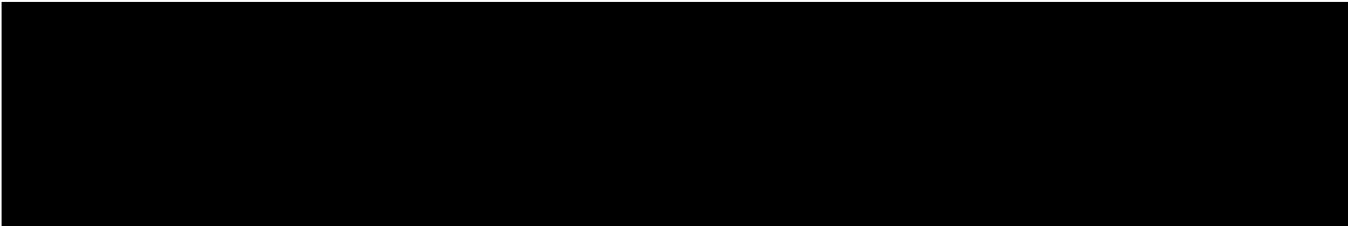


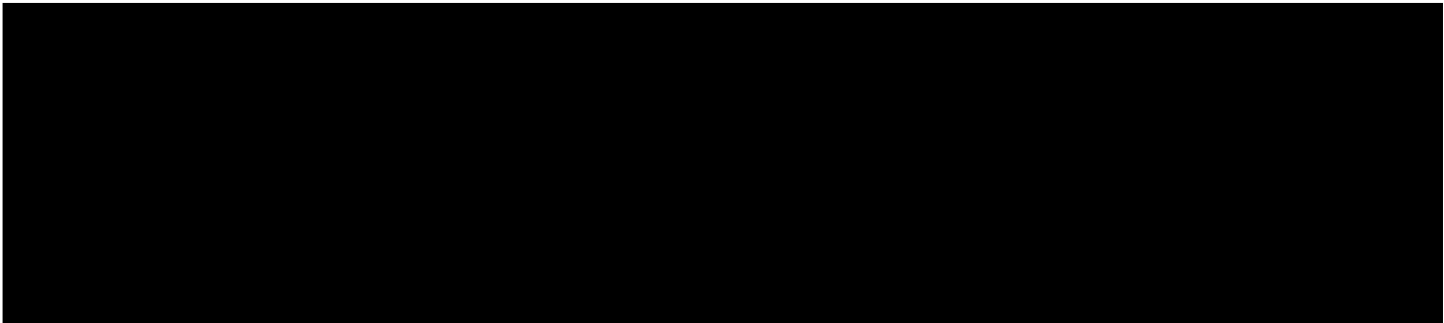


Can this be scanned into AB/88/19/PL please.

Thanks



Arun is a CIL Charging Authority, for more information go to www.arun.gov.uk/cil



Hi Elaine,

Just to follow up on discussions that have taken place here in respect of this matter.

Here is the advice we obtained from our Legal Officer:

Is it possible to use a condition to require an applicant to enter into a planning obligation or an agreement under other powers?

A positively worded condition which requires the applicant to enter into a planning obligation under section 106 of the Town and Country Planning Act 1990 or an agreement under other powers, is unlikely to pass the test of enforceability.

A negatively worded condition limiting the development that can take place until a planning obligation or other agreement has been entered into is unlikely to be appropriate in the majority of cases. Ensuring that any planning obligation or other agreement is entered into prior to granting planning permission is the best way to deliver sufficient certainty for all parties about what is being agreed. It encourages the parties to finalise the planning obligation or other agreement in a timely manner and is important in the interests of maintaining transparency. However, in exceptional circumstances a negatively worded condition requiring a planning obligation or other agreement to be entered into before certain development can commence may be appropriate, where there is clear evidence that the delivery of the development would otherwise be at serious risk (this may apply in the case of particularly complex development schemes). In such cases the 6 tests should also be met.

Where consideration is given to using a negatively worded condition of this sort, it is important that the local planning authority discusses with the applicant before planning permission is granted the need for a planning obligation or other agreement and the appropriateness of using a condition. The heads of terms or principal terms need to be agreed prior to planning permission being granted to ensure that the test of necessity is met and in the interests of transparency.

Paragraph: 010 Reference ID: 21a-010-20190723

Revision date: 23 07 2019 See [previous version](#)

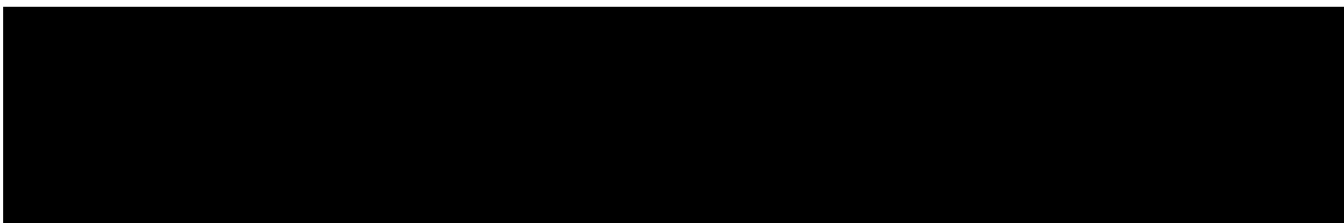
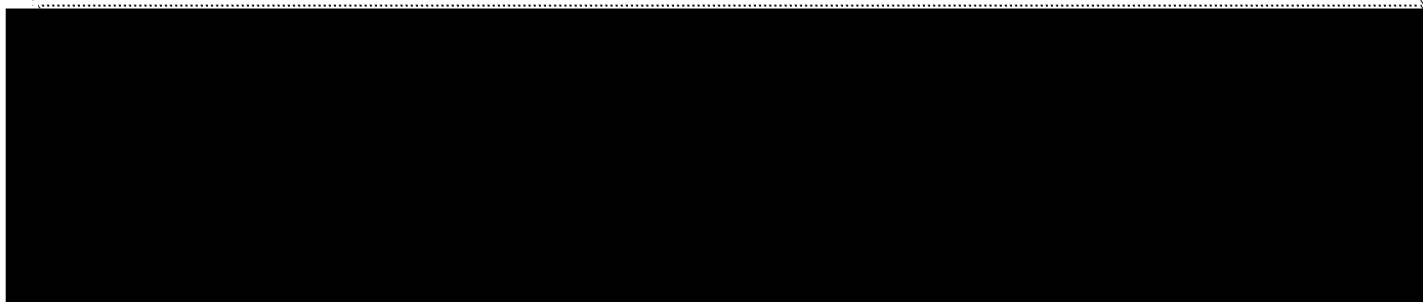
<https://www.gov.uk/guidance/use-of-planning-conditions>

- There is potential to get it wrong e.g. if it was not worded negatively, then it would fail on the enforceability test. If it is required, it should be entered into before permission is granted.
- Section 278 is used where the development will require works to be executed by the LA on the adopted highway. If the works are not required, then the condition is not required. We need certainty from WSCC as to whether the works are required or not in order to satisfy the condition tests.
- If WSCC are really unclear as to whether or not works will be required due to factors outside of their control, then I can understand asking for a s106 planning obligation requiring the applicant to do something in the event of xyz, however this is most unusual and an exceptional circumstance.
- This is not something I've come across before as usually consultees are able to provide clarity and certainty on what they require as a result of the development.

Therefore in light of the above, I have been advised by Neil Crowther that our approach should be to minimise the number of off-site S.106 as much as reasonably possible. Unless there is a very good reason why we should do a s106 on a specific case, we will use conditions.

Kind regards

Ros



Hi Ros

Glad it all makes sense. In certain circumstances a TRO at S278 stage can and has in the past gone wrong so we've streamlined and standardised our approach to negate that risk.

We also don't now proceed with a TRO unless the developer has paid upfront for it, otherwise we're out of pocket. WSCC policy is not to forward fund work because of the financial loss to us of course so the S106 wording ensures the money is paid up front.

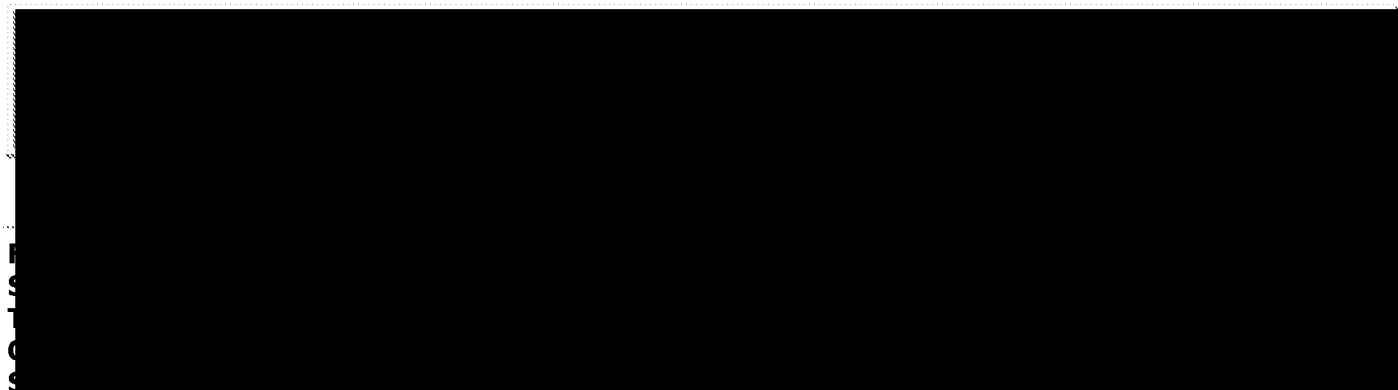
Conditions can't be financial so there couldn't be a straightforward condition requesting a TRO, it could only be written into the S278 and therefore reliant on the principle that a S278 is needed which isn't always the case.

Is the problem the fact that there's concern that a S106 might be needed simply for a TRO? I can understand wanting to avoid that scenario, but generally speaking there will be Highway Works required as well, the TRO will usually relate to the Highway Works so a S106 is usually needed anyway. Across the county it's been rare that a S106 is drawn up just for a TRO, and no further clauses or requirements on the developer from either us or the district involved.

Let me know how you get on with this

Thanks

Elaine.



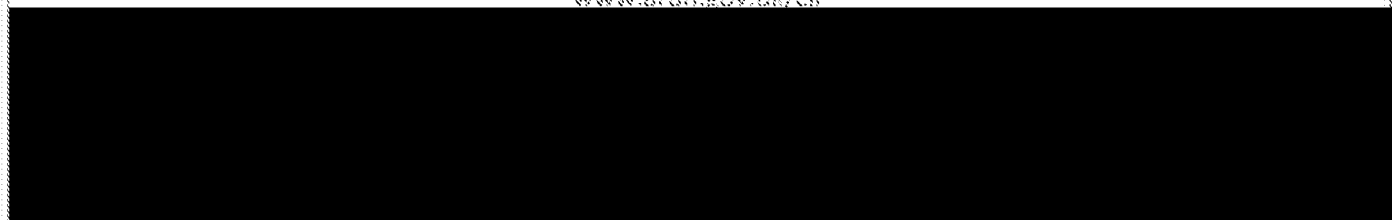
Hi Elaine,

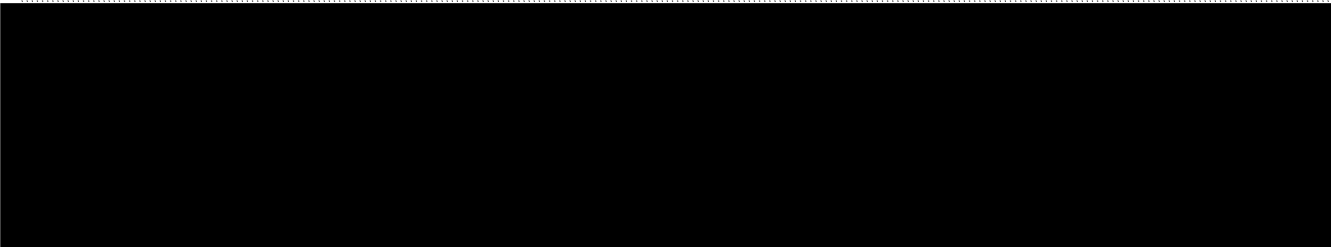
Thank you very much for explaining the process from the WS perspective, that does all make sense to me. I need to discuss it further our end, as it has been suggested that the planning officers should put a condition on their application to enter a S278 for a TRO rather than do a S106 for the TRO.

Many thanks

Ros

Arun is a CIL Charging Authority, for more information go to
www.arun.gov.uk/cil





Hi Ros

Good to hear from you, I'm fine and I hope you are too.

The TRO is there to cover our costs associated with implementing the TRO – such as the advertisement of the potential TRO and so on – but it will be required because the developer needs it in order to implement their works.

The TRO does need to be part of a S106 agreement, not a S278. The securing of the TRO needs to be done at the planning stage rather than the implementation stage; by implementation all matters such as the requirement for a TRO needs to already have been met. The point of the S278 is to deliver the package that was agreed upon at planning stage. This principle ensures that developers are not in a position, at the S278 stage, of arguing that they were unaware a TRO would be necessary or causing difficulties in establishing that a requirement is there, or the extent of that requirement.

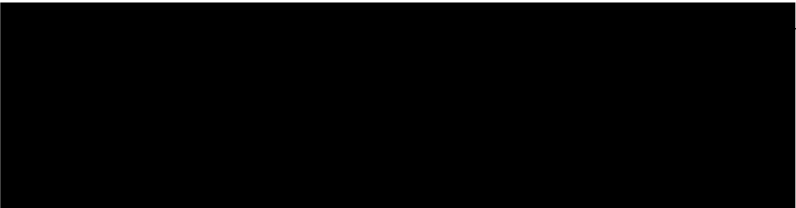
There are also instances whereby a TRO is needed, but a S278 is not required.

A TRO wouldn't be paid for from CIL, the payment is there to recoup specific costs for the County Council from the development. I think that the district council who's advised you that CIL could pay for a TRO is possibly referring to instances whereby a larger highways scheme being delivered by the district – such as a town centre regeneration – would require TRO's and CIL would be used for that. But that's to enable implementation of highway schemes led by the district, not to fund a TRO that a developer needs in order to make some changes to the highway for their development.

Hope that helps to understand the TRO mechanisms better. Across the county, with Districts already with CIL, we still seek TRO's to be included in S106 agreements.

Best Regards

Elaine.



Hi Elaine,

Hope you are keeping well in these difficult times.

I just wanted to double check something with you as I think I may have misunderstood! I may have wrongly thought that S278's were only there to cover the highway works to be done/commissioned by the developer and not for collecting contributions for WSCC Highways to do the work.

I was speaking to Caroline last week about whether TRO's will now come under CIL or S106 as they are direct site mitigation but not on-site as is required by our CIL charging schedule. She advised me that they should continue to be done by S106 contribution. However, officers here think they should be done under S278. Another WSCC District Council suggested that they should be covered by S106 but could be done under CIL if it is needed because of a cumulative effect of development in the area but they didn't mention how S278 may come into it!

Therefore do you know if a Section 278 Highways agreement can contain a contribution for WSCC to do a Traffic Regulation Order?

Do you monitor TRO's or similar for contributions under S278 for any other councils?

Sorry I am a bit confused, It's early days of CIL go live at Arun and I am questioning lots of things!

Kind regards

Ros

Arun is a CIL Charging Authority, for more information go to
www.arun.gov.uk/cil

<http://www.arun.gov.uk>

DX 57406 Littlehampton

You can view Arun District Council's Privacy Policy from <https://www.arun.gov.uk/privacy-policy>

Important Notice This e-mail is intended exclusively for the addressee and may contain information that is confidential and/or privileged. If you are not the intended recipient (or authorised to receive it for the addressee), please notify the sender and delete the e-mail immediately; using, copying, or disclosing it to anyone else, is strictly prohibited and may be unlawful. Any views, opinions or options presented are solely those of the author and do not necessarily represent those of Arun District Council. The information in this e-mail may be subject to public disclosure under the Freedom of Information Act 2000, therefore we cannot guarantee that we will not provide the whole or part of this e-mail to a third party. The Council reserves the right to monitor e-mails in accordance with relevant legislation. Whilst outgoing e-mails are checked for viruses, we cannot guarantee this e-mail is virus-free or has not been intercepted or changed and we do not accept liability for any damage caused. Any reference to "e-mail" in this disclaimer includes any attachments.

LEGAL DISCLAIMER

This email and any attachments are confidential and intended solely for the persons addressed. If it has come to you in error please reply to advise us but you should not read it, copy it, show it to anyone else nor make any other use of its content. West Sussex County Council takes steps to ensure emails and attachments are virus-free but you should carry out your own checks before opening any attachment.

<http://www.arun.gov.uk>

DX 57406 Littlehampton

You can view Arun District Council's Privacy Policy from <https://www.arun.gov.uk/privacy-policy>

Important Notice This e-mail is intended exclusively for the addressee and may contain information that is confidential and/or privileged. If you are not the intended recipient (or authorised to receive it for the addressee), please notify the sender and delete the e-mail immediately; using, copying, or disclosing it to anyone else, is strictly prohibited and may be unlawful. Any views, opinions or options presented are solely those of the author and do not necessarily represent those of Arun District Council. The information in this e-mail may be subject to public disclosure under the Freedom of Information Act 2000, therefore we cannot guarantee that we will not provide the whole or part of this e-mail to a third party. The Council reserves the right to monitor e-mails in accordance with relevant legislation. Whilst outgoing e-mails are checked for viruses, we cannot guarantee this e-mail is virus-free or has not been intercepted or changed and we do not accept liability for any damage caused. Any reference to "e-mail" in this disclaimer includes any attachments.
