

From: Amanda Scholes on behalf of Planning.Responses
Sent: 28 June 2017 08:39
To: Planning Scanning
Subject: FW: Planning Consultation on: Y/35/17/PO
Attachments: final memo.doc

Follow Up Flag: Follow up
Flag Status: Flagged

From: Delwyn Jones
Sent: 27 June 2017 15:40
To: Planning.Responses
Subject: RE: Planning Consultation on: Y/35/17/PO

Delwyn Jones | Planning Solicitor and Deputy Monitoring Officer , Legal Services, [Arun District Council](#) | Location: First Floor, Arun Civic Centre, Maltravers Road, Littlehampton, BN17 5LF DX 57406 Littlehampton

Visit Arun's web site at www.arun.gov.uk



Save the environment - think before you print.

From: [REDACTED]
Sent: 20 June 2017 16:34
To: Delwyn Jones
Subject: Planning Consultation on: Y/35/17/PO

To: Solicitor - Legal Services

NOTIFICATION FROM ARUN DISTRICT COUNCIL

The Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992 (As Amended)

Removal of a Planning Obligation

APPLICATION NO: Y/35/17/PO

Registered: 26th May 2017
Site Address: Land at Goodhew Close Yapton

Grid Reference:

Description of Works: Application to modify planning obligation approved under reference Y/81/10 relating to West Sussex County Highways

providing a payment in-lieu of Cycle Way

The Council have received the above application. I shall be pleased to receive any observations you may wish to make.

[Click here to view the application details](#)

Should you have any comments to make, these should be sent by replying to this email by 20-JUL-17.

You can also monitor the progress of this application through the Council web site:

Please be aware that any comments you may make will be available on our website so please do not insert personal details or signatures on your reply.

In the absence of a reply within the period stated, I shall assume that you have no observations to make.

The application will be determined having regard to the development plan policies (if any are relevant) and other material considerations. The development plan can be accessed via the website as can the leaflet which deals with material planning considerations.

Should the application go to appeal the Planning Inspectorate will publish any comments made to the Council on their website:

[REDACTED] but they will protect personal details.

The officer dealing with this application is Richard Temple who can be contacted on telephone number 01903 737591.

Regards
Planning Officer

consultee_email

28 June 2017

FROM:

Delwyn Jones Planning Solicitor
Resources Department
Tel 737737 Ext

TO:

Richard Temple
Planning Officer

CONSULTATION ON DISCHARGE OR VARIATION OF PLANNING OBLIGATION /S52 AGREEMENT

ADDRESS Land at Goodhew Close Yapton

REF Y/35/17/PO

Application to discharge planning obligation approved under reference Y/81/10 relating to West Sussex County Highways providing a payment in- lieu of Cycle Way

GENERAL

Thank you for your recent consultation memo now returned together with the file on which alone this advice is based.

This comes from a request from the developer ----with apparent approval by WSCC ---see emails attached and copied ---- agreeing that :-

[a] the cycle way proposed by clause 6 bullet point 3 in the s106 deed dated 17 November 2011 isnt needed

[b] a contribution can be substituted

I refer in particular to the email dated 2 February from WSCC Mr Akmenkalms :-

From: Mark Akmenkalms [REDACTED]

Sent: 02 February 2017 14:28

To: Endersby, Karl

Subject: RE: PSI/3056 Burndell Road, Yapton - Section 278/38 Agreement - WSCC Request 17-01-27

Karl,

On speaking with Ian Gledhill I understand this issue was made clear some time ago. It was agreed some time ago that WSCC did not want the cycleway scheme and would accept a contribution instead. The principle of this has been agreed, see attached email from Ian to Stuart Jones dated 18th March 2014.

The outstanding point to agree is the value of the contribution.

Regards, [my underlining]

On this basis I think the application can proceed ASAP with a discharge and variation of the cycleway and a substitution of the capital sum of £80,503.40 referred to in the further emails below in the Annex

COPY DEED

I enclose a copy of the deed which shows it is dated 17 November 2017

PLANNING OBLIGATION MADE POST 9 NOVEMBER 1992 COVERED BY SS106A AND 106B FIVE YEARS ELAPSED SINCE OBLIGATION MADE AND WHETHER “USEFUL PURPOSE” STILL SERVED

The usual position here may not apply given the evidenced and willing agreement of WSCC to agree the changes

FURTHER EVIDENCE

I rely on you to show me any new or further evidence which may change the tenor of this advice.

Please provide an instruction form so a legal file can be opened and drafting commence on the deed of variation “DOV”

Ref/Igdr/legprec/pl/podisch

NPPG Extracts

Can an agreed planning obligation be changed?

Planning obligations can be renegotiated at any point, where the local planning authority and developer wish to do so. Where there is no agreement to voluntarily renegotiate, and the planning obligation predates April 2010 or is over 5 years old, an application may be made to the local planning authority to change the obligation where it “no longer serves a useful purpose” or would continue to serve a useful purpose in a modified way (see section 106A of the Town and Country Planning Act 1990).

Sections 106BA to 106BC of the 1990 Act used to provide an application and appeal procedure for the review of affordable housing obligations based on economic viability without taking into account other aspects of the planning consent. These provisions were repealed at the end of 30 April 2016. Guidance concerning applications made under section 106BA continues to apply to applications received before the end of April 2016.

Paragraph: 009 Reference ID: 23b-009-20160519 Revision date: 19 05 2016 See previous version

Annex

WSCC /developer exchanged emails

Dave,

Please see below, can we discuss how we formalise this with the planners as it may require a deed of variation to the S106 Agreement.

Thanks

Karl Endersby
Technical Director

Persimmon Homes South Coast
Parkview House
100 Wickham Road
Fareham
PO16 7HT

From: Mark Akmenkalns [REDACTED]
Sent: 08 May 2017 12:29
To: Endersby, Karl
Subject: PSI/3056 Burndell Road, Yapton - Section 278/38 Agreement - WSCC Update 17-05-08

Karl,

Thank you for your email. I have now received confirmation from WSCC strategic planning and can confirm your cost appraisal and contribution figure is acceptable.

With regards to the S278 agreement this will now need to be drafted and signed. We therefore will require the following information:

- Surety name, address, contact details.
- Your contractor estimation of timescales i.e. No. of weeks/months to complete.
- 15 No. copies of the technical approved drawings as per the TA letter request.
- Balance of fees being 9% of estimated value of the of £164,086.59 = £14767.79 (less your initial payment).

Our legal team will be instructed once the above is received in full.

Please come back to me should you have any queries.

Regards,

Mark Akmenkalns | Infrastructure Engineer (Consultant), Implementation Team, Strategic Planning, Communities and Infrastructure, West Sussex County Council
Location: Ground Northleigh, County Hall, Chichester PO19 1RG

From: Endersby, Karl [REDACTED]
Sent: 21 April 2017 15:22
To: Mark Akmenkalns
Subject: RE: PSI/3056 Burndell Road, Yapton - Section 278/38 Agreement - WSCC Request 17-02-02

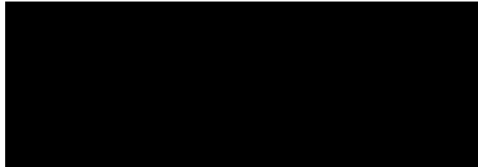
Dear Mark,

I wondered if you had been able to review my email below and if we were now in a position to move matters forward?

Kind regards

Karl Endersby
Technical Director

Persimmon Homes South Coast
Parkview House
100 Wickham Road
Fareham
PO16 7HT



From: Endersby, Karl
Sent: 05 April 2017 10:47
To: 'Mark Akmenkalns'
Subject: RE: PSI/3056 Burndell Road, Yapton - Section 278/38 Agreement - WSCC Request 17-02-02

Dear Mark,

Sorry for my delay in replying, I have spent some time reviewing the S106 Agreement and the various files we have.

The S106 obligations set down within Section 6 of the S106 Agreement dated 17th November 2011 are as follows: -

1. Bus stop improvements (new Kassel-type high kerbing) and footway improvements adjacent to two bus stop locations on Burndell Road, as indicated on drawing number 2009/1082/015);
2. Resurfacing and Lighting Works to Footpath (No 200/2) between site and Downview Road, including new uncontrolled crossing of Downview Road (as indicated on drawing number 2009/1082/014);
3. Shared foot/cycleway along Burndell Road from Goodhew Close to village centre including uncontrolled crossings at Downview Road and public car park access and crossing of Burndell Road between Goodhew Close and PROW on southern side of Burndell Road (as indicated on drawing numbers 2009/1082/011, 012, 018, 019);
4. Formation of the access to site from Goodhew Close, including road marking improvements to Goodhew Close.

If my understanding is correct Persimmon are now only being asked to complete the works set down in points 1, 2 and 4 above all of which would be included within the S278 agreement as per drawing 2013-1795-151 E and 152 E for which technical approval has been granted.

On this basis item 3 is to be removed from the obligations list and is to be dealt with via a contribution. Assuming I am correct in this regard the cost provided by our contractor to undertake the works set out in point 3 above do amount to £78,103.40 as previously advised and I apologise for any confusion caused in my earlier emails where this figure was reduced. I am advised that this figure does include all signing and lining for the footway/cycleway improvements however did not cost for the street lighting relocations which I am advised is £2400 taking the overall figure to £80,503.40.

On this basis are you able to agree to the sum of £80,503.40 being paid as a contribution in lieu of undertaking the works set out in item 3 above, which if acceptable will enable us to proceed with the Deed of Variation to the S106 Agreement.

In turn are you also able to authorise release of the S278 Agreement for the balance of the works as per the attached technical approval with a bond value of £164,086.59 being the overall works value of £244,589.99 less the £80,503.40 contribution.

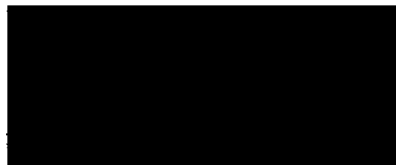
I look forward to your reply so that the variation can be formalised, the S278 Agreement issued and the works completed.

Thank you for your assistance and patience in relation to this matter.

Kind regards

Karl Endersby
Technical Director

Persimmon Homes South Coast
Parkview House
100 Wickham Road
Fareham
PO16 7HT



From: Mark Akmenkalns [REDACTED]
Sent: 02 February 2017 15:08
To: Endersby, Karl
Subject: PSI/3056 Burndell Road, Yapton - Section 278/38 Agreement - WSCC Request 17-02-02

Karl,

There seems to be a history of emails, altered drawing proposals and numerous vastly differing cost estimates being declared.

Before we can agree I would request that a comprehensive cost estimate be provided with a break down and supporting summary. This should clarify ALL changes from the planning approved scheme i.e. removal controlled crossing further westbound, etc. On the face of it £40K seems light.

Regards,

Mark Akmenkalns | Infrastructure Engineer (Consultant), Implementation Team, Strategic Planning, Communities and Infrastructure, West Sussex County Council
Location: Ground Northleigh, County Hall, Chichester PO19 1RG

[REDACTED]

From: Endersby, Karl [REDACTED]
Sent: 02 February 2017 14:37
To: Mark Akmenkalns
Subject: RE: PSI/3056 Burndell Road, Yapton - Section 278/38 Agreement - WSCC Request 17-01-27

Hi Mark,

Thanks for the email.

In relation to the figure details were submitted with a cost of £40k payable to WSCC in lieu of the cycleway works.

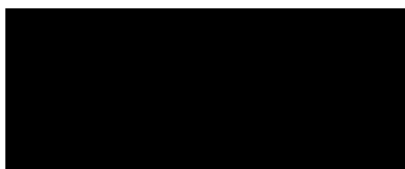
If this is acceptable we can get the S106 agreement amended and the S278 completed.

Who within WSCC will make a decision on the contribution?

Kind regards

Karl Endersby
Technical Director

Persimmon Homes South Coast
Parkview House
100 Wickham Road
Fareham
PO16 7HT



From: Mark Akmenkalns [REDACTED]
Sent: 02 February 2017 14:28
To: Endersby, Karl
Subject: RE: PSI/3056 Burndell Road, Yapton - Section 278/38 Agreement - WSCC Request 17-01-27

Karl,

On speaking with Ian Gledhill I understand this issue was made clear some time ago. It was agreed some time ago that WSCC did not want the cycleway scheme and would accept a contribution instead. The principle of this has been agreed, see attached email from Ian to Stuart Jones dated 18th March 2014.

The outstanding point to agree is the value of the contribution.

Regards,

<u>Mark Akmenkalns</u> Infrastructure Engineer (Consultant), Implementation Team, Strategic Planning, Communities and Infrastructure, <u>West Sussex County Council</u> Location: Ground Northleigh, County Hall, Chichester PO19 1RG [REDACTED]
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From: Endersby, Karl [REDACTED]
Sent: 27 January 2017 16:23
To: Mark Akmenkalns
Subject: RE: PSI/3056 Burndell Road, Yapton - Section 278/38 Agreement - WSCC Request 17-01-27

Hi Mark,

Sorry for the delay in responding, we are in a chicken and egg situation here.

What we need to proceed is written agreement from WSCC highways that you no longer want the cycleway improvements to be included as part of the S278 works and that you are in agreement with the figures previously put forward, see attached email from 9th June 2014.

If we can have this agreement I can approach the council for a deed of variation to get this element formalised and we can then in parallel get the S278 agreement finalised ready for completion as soon as the deed is completed.

I look forward to your reply.

Kind regards

Karl Endersby
Technical Director

Persimmon Homes South Coast
Parkview House
100 Wickham Road
Fareham
PO16 7HT



From: Mark Akmenkalns [REDACTED]
Sent: 27 January 2017 15:13
To: Endersby, Karl
Subject: PSI/3056 Burndell Road, Yapton - Section 278/38 Agreement - WSCC Request 17-01-27

Karl,

Following your email dated 8th Dec 16, we have now received a number of complaints as works have taken place on the Public Highway in the absence of a formal S278 agreement.

Please can you ensure this matter is resolved promptly.

Regards,

<u>Mark Akmenkalns</u> Infrastructure Engineer (Consultant), Implementation Team, Strategic Planning, Communities and Infrastructure, <u>West Sussex County Council</u> Location: Ground Northleigh, County Hall, Chichester PO19 1RG [REDACTED]
--

From: Endersby, Karl [REDACTED]
Sent: 08 December 2016 10:55
To: Mark Akmenkalns
Subject: RE: PSI/3056 Burndell Road, Yapton - Section 278/38 Agreement

Hi Mark,

Thanks for the reply, sorry for not calling I have been caught up in meetings, I will give you a call next week.

Kind regards

Karl Endersby

Sent from my Windows Phone

From: Mark Akmenkalns
Sent: 08/12/2016 10:44
To: Endersby, Karl
Subject: RE: PSI/3056 Burndell Road, Yapton - Section 278/38 Agreement

Karl,

It has been a long time since this project was live. Technical approval was granted however WSCC are still awaiting an agreement to be reached with regards to the S278 contribution with WSCC allowing us to progress the S278 legal agreement.

Regards,

Mark Akmenkalns | Infrastructure Engineer (Consultant), Implementation Team, Strategic Planning, Communities and Infrastructure, West Sussex County Council
Location: Ground Northleigh, County Hall, Chichester PO19 1RG

From: Endersby, Karl [REDACTED]
Sent: 29 November 2016 10:54
To: Mark Akmenkalns
Subject: RE: PSI/3056 Burndell Road, Yapton - Section 278/38 Agreement

Dear Mark,

I wonder if you can shed any light on whether the S278 Agreement for the above development has been finalised?

As you may be aware responsibility for the development was passed to our Thames Valley office, although it has now been passed back to the South Coast office but due to personnel changes I don't seem to be able to ascertain what the status of the agreement is.

Thanks in advance for any assistance you can give.

Kind regards

Karl Endersby
Technical Director

Persimmon Homes South Coast
Parkview House
100 Wickham Road
Fareham
PO16 7HT

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Annex 2 Mr Dave *Dave Buczynsky/Senior Development Planner emails dated 26 June*

Dear Delwyn,

Thank you for taking my call earlier during which we agreed I would email the details of the proposed amendment to you for consideration of how the matter is to proceed.

The specific clause that requirement varying related to the Highway Works referred to within paragraph 6.1 of the agreement are currently being arranged and implemented. Persimmon has been liaising with West Sussex County Council to finalise and enter into an appropriate s278 agreement. Technical approval has been granted but WSCC highways no longer want the cycleway improvements stated within the s106 to be included as part of the S278 works. As such, the s106 agreement needs to be subject to a Deed of Variation to be in line with the proposed s278 agreement. The variation will need to enable a contribution of £80,503.40 to be paid in lieu of the Cycleway works – this has been accepted by Mark Akmenkalns via email 08.05.17 and is attached.

Could you advise on the protocol for drafting of the agreement; I am happy for my Solicitor to draft the agreement and can have this turned around within a week or so I am also and happy to place the Council in funds to check the DoV. Alternatively, I am happy for Arun or WSCC to draft the DoV, provided this is done expediently, and I am happy to cover the reasonable cost of this.

If WSCC or Arun would like to undertake the drafting of the DoV, could you advise of potential cost and how much I would need to raise a cheque for to place you in funds.

Additionally, given the DoV only relates to s278 works, I consider only Persimmon Homes and WSCC need to be party to the DoV.

Kind regards,

Dave

Dave Buczynskyj
Senior Development Planner

Persimmon Homes South Coast
Parkview House
100 Wickham Road
Fareham
PO16 7HT

