

Developer Contributions
Eastleigh Borough Council
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22 MAR 2021

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Your ref:

18 March 2021

Our ref: CH/SJS/2590

Dear Sirs

Section 106 Agreement – Monarchs Keep, Bursledon – F/17/79863

We act for BDW Trading Limited (BDW), the owners and developers of the above site.

The section 106 Agreement dated 30 June 2017 and made between Eastleigh Borough Council (EBC) (1) Hampshire County Council (HCC) (2) and BDW as carried pursuant to a deed of variation dated 18 October 2019 and made between EBC, HCC, BDW and Vivid Housing Limited (the **Section 106 Agreement**).

BDW are on the verge of completing the construction and subsequent sale of the residential dwellings. This is due by the end of March 2021. The Section 106 Agreement imposes a number of obligations on BDW in relation to public open space and trees. BDW are obliged to make the following contributions:

1. **On-Site Tree Maintenance Contribution** of £779 per new tree, up to £1,900 per mature retained tree and up to £345 per square metre of shrub bed;
2. **On-Site Open Space Commuted Maintenance Contribution** of £97,305.87 which is Index Linked;
3. **Off-Site Play Area Maintenance Contribution** of £38,362.11 which is Index Linked.

The On-Site Tree Maintenance Contribution is payable upon the adoption of the estate roads and footpaths (Paragraph 5 of Schedule 5 of the Section 106 Agreement) and the On-Site Open Space Commuted Maintenance Contribution and the Off-Site Play Area Maintenance Contribution are each payable on completion of the transfer of the On-Site Open Space Land by BDW to EBC (paragraph 6 of Schedule 5 of the Section 106 Agreement).

In email correspondence between EBC and BDW dated 21 October 2020 it was confirmed that EBC will not be taking a transfer of the On-Site Open Space Land. As such the trigger for the payment of the On-Site Open Space Commuted Maintenance Contribution and the Off-Site Play Area Maintenance Contribution will not be triggered. EBC has confirmed that it does not require the payment of the On-Site Open Space Commuted Maintenance Contribution but will still require the Off-Site Play Area Maintenance Contribution to be paid notwithstanding that the trigger for making the payment has not occurred. BDW have no issue in making the payment however BDW require an invoice from EBC for the Off-Site Play Area Maintenance Contribution. It has been confirmed that £43,693.53 is payable once the

indexation has been applied to the original contribution figure of £38,362.11. Please can EBC provide an invoice for the Off-Site Play Area Maintenance Contribution as soon as possible following receipt of this letter?

In the same correspondence, EBC confirmed that they require a letter from BDW to confirm that the On-Site Open Space Land will only be used as open space in accordance with the provisions of the Open Spaces Act 1906. Please accept this letter as confirmation that BDW will, while they retain ownership of the On-Site Open Space Land ensure that it is only used as public space, in accordance with the provisions of the Open Spaces Act 1906.

The On-Site Tree Maintenance Contribution will also not be payable as a result of the estate roads and footpaths not being adopted. EBC have confirmed that they are not expecting the On-Site Tree Maintenance Contribution in the correspondence dated 21 October 2020.

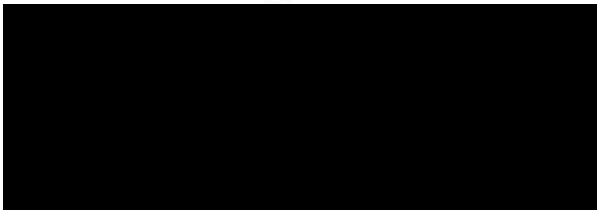
EBC have advised BDW that they do not believe that a further variation to the Section 106 Agreement is required to reflect the fact that the estate roads are not going to be adopted and that the On-Site Open Space Land is not going to be transferred to EBC. There is no need to vary the Section 106 Agreement specifically in relation to the payment of the various contributions however a formal acknowledgement that these contributions are not due would be beneficial to all parties.

there is a need for a variation of the various occupation restrictions associated with the transfer of the On-Site Open Space Land. Paragraphs 5 and 6 of Schedule 7 to the Section 106 Agreement requires the On-Site Open Space Land to be transferred to EBC prior to the occupation of the 166th Dwelling and prevents the occupation of more than 165 Dwellings until that transfer has completed. These provisions will need to be removed as there will no be no transfer to EBC. Without a variation remove these obligations BDW would not be able to occupy their final unit. This must be resolved so that BDW are free to occupy without being in breach of the terms of the Section 106 Agreement.

Finally BDW will not be holding the estate roads or open space in perpetuity. Their intention is to transfer the balance of the estate following the sale of the final unit to a management company for them to maintain. The managing agent will be ERM Limited. The transfer to the managing agent will be on the same basis as the transfer to EBC as envisaged by paragraph 4 of Schedule 7 of the Section 106 Agreement and will include the covenant relating to the use of the On-Site Open Space Land as open space. As part of the variation to remove the restriction on occupation prior to the transfer of the On-Site Open Space Land it would be helpful for an acknowledgement that BDW will be transferring the On-Site Open Space Land to a management company to be included.

We would be more than happy to draft the necessary documentation to effect the variations and deal with the acknowledgments outlined above.

Yours faithfully,



Christopher Hourihan

For and on behalf of

SJS Law

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