

[REDACTED]

From: [REDACTED]
Sent: 23 September 2016 10:18
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Chilmington S106 Parties and Queries regarding mini S106 Approach and property interests [FLAD-iMan_NR.FID858566]
Attachments: Table of signatories to full s.106.DOCX

Thanks Brendan.

Firstly, my apologies that the updated s.106 has not yet been returned to you. I understand that Chris is waiting for a couple of points from Peter Reed and I have chased for these this morning. In the meantime, I thought it would be include the updated parties and recitals in the attached document. This feeds into the responses below.

Taking your points in turn:

1. I have updated the table to make a few corrections and have also added in Close Brothers who are an additional lender;
2. confirmed – HDAL will acquire that part of K631376 from Ward Homes which forms Access D;
3. the transfer to BDW of the first tranche of their land will occur **immediately before** the s.106 agreement is completed (although as discussed previously, this will all happen simultaneously, for the purposes of the recitals and the completion steps, the transfer will happen first). The second two tranches of land will be transferred at a later date and therefore BDW will only have the benefit of a contract to acquire these as at completion;
4. the charging structure is as follows:
 - all land owned by HDAL will be charged to the HCA;
 - all land owned by CGDL will be charged to the HCA;
 - all land owned by CG One will be charged to Titlestone;
 - all land owned by CG Two will be charged to Close Brothers;
5. the proposal, as I understand it, is that HDAL, CGDL and CG Two will be paying parties (but CG One will not). In practice, HDAL is acting as the infrastructure developer and the other entities are house-builders. HDAL is the borrower under the HCA facility which is being used to pay for the various contributions required pursuant to the s.106 agreement;
6. I understand that this is the point on which Chris is awaiting instructions from Peter. I will leave this for him to respond when he sends back the updated agreement;
7. it is not intended that BDW should have any financial obligations other than in Schedule 2;
8. HDAL, as developer and with the benefit of the infrastructure funding from the HCA, will take responsibility for providing the bonds;
9. noted, both companies should be incorporated by the end of the day and I will provide details of incorporation as soon as they are available;
10. noted, I will speak with each of the counter-parties to ensure that they are comfortable with these being disclosed and redact them where necessary. I will aim to provide these to you in the course of the next week; and
11. noted, as I mentioned previously, my client is not a party to this document. I will speak again with the lawyers for Pullens and BDW to try and secure its release. There is nothing in the document which is being hidden from you or that may affect your decision on the mini s.106.

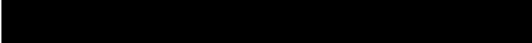

I appreciate that the addition of the new companies has not made this particularly straightforward, but I hope that my explanation above and in the documents attached has clarified matters. If you do want to talk through any of this, please let me know – I would also be happy to come down to see you in person and talk through the structure with the plans if that would be of assistance.

All best wishes

Nick

Nick Mumby | Partner
for Fladgate LLP
16 Great Queen Street | London WC2B 5DG



From: Brendan Gollogly 
Sent: 22 September 2016 17:46
To: Mark Harnett; Nick Mumby; 'Rees, Christopher'
Cc: 'Govan Bramley'; Lois Jarrett; 'Richard Alderton'; Paul Courtine 
Subject: Chilmington S106 Parties and Queries regarding mini S106 Approach and property interests

This email and any enclosures, are from the Council's Legal Services Unit and are legally privileged, confidential and exempt from disclosure under the Freedom of Information Act 2000. If you are not the intended recipient of this email or any part of it, please telephone us immediately upon receipt (01233 330606). You should not disclose the contents to any other person or take copies.

Dear Mark/Nick/Chris

On a without prejudice basis to the basic 'mini S106' proposition, I have been reviewing the information Nick has supplied and to a lesser extent Chris' drafting sent to ABC on 18th August.

I'd be grateful of clarification regarding the following points please:-

- 1. the attached plan is Nick/Mark's plan setting who is intended to own what areas of the application site post expiry of the JR period. The attached table summarises my understanding of who will own what at that point in time based on the plan and who will sell/acquire what areas of the application site immediately after the JR period expires and prior to the S106 being completed. Please would you review the table and confirm it's accurate or correct it as appropriate?
- 2. In particular, please clarify whether it is intended that Hodson Developments (Ashford) Limited will acquire a small strip of K631376 from Ward Homes Limited just adjacent to 'Access D' prior to signature of the main S106;
- 3. At the time the main S106 is to be signed, is it your intention that BDW will have the benefit of a contract to acquire 1) some of the land currently owned by Hodson Developments (Ashford) Limited, and/or 2) land to be acquired by Hodson Developments (CG One) Ltd and Hodson Developments (CG Two) Ltd from the Pullens and/or 3) land of any future or current owner?
- 4. I understand Tilestone Property Finance and the HCA are to take charges over the site or parts of it. Which parts of the site belonging to which owners (current and future) are they to take a charge over?
- 5. The attached plan shows that Alan will have 4 companies with an interest in the application site, Hodson Developments (Ashford) Limited, Chilmington Green Developments Ltd, Hodson Developments (CG One) Ltd and Hodson Developments (CG Two) Ltd. This isn't reflected in Chris' draft of 18th August. I appreciate things may have moved on from Chris' draft, but we need clarity. Bearing in mind the mini S106 proposal was put forward on the basis Alan was going to purchase 100% of the Pullen land and was going to assume 100% of

the liability under the positive obligations to pay sums of money in the S106, what % of the positive obligations to pay sums of money are you proposing that each Hodson entity will assume liability for?

- 6. Chris' draft of 18th August sets out in Schedule 1 which entities are proposed to be responsible for the positive obligations to deliver the remaining 30 conventional AH units within the VVR Phase 1 land. However, given that Nick's plan sets out that entities owning various chunks of Viability Phase 1 are now to be different from those entities set out in Chris' draft, which of those entities detailed by Nick's plan as owning land within Viability Review Phase 1 are you proposing will assume liability to deliver what number of conventional AH units (30 in total) on the land they own in Viability Review Phase 1?
- 7. Please clarify whether it is your intention that BDW Trading are to enter into positive obligations to pay any financial contributions other than those in Schedule 2;
- 8. Although I haven't discussed this particular aspect with KCC's lawyers yet, one of the potential attractions of the 'mini S106' approach to KCC could be that Alan undertook that that he would assume liability for providing 100% of the value of each bond required by KCC for education and highways purposes in the exact form KCC require. In that context, and given the various companies owned by Alan that you are telling us will now have an interest in the application site, which of these companies are you now proposing will enter into the positive obligations to provide a bond?
- 9. According to Companies House, neither Hodson Developments (CG One) Ltd nor Hodson Developments (CG Two) Ltd exist. When is it intended to create these entities? Without stating the obvious they would need to be created prior to the signature of the 'mini' S106. Please clarify/confirm timescales;
- 10. Again without stating the obvious, if the 'mini S106' approach is accepted by KCC and ABC, we will need sight of the final drafts or ideally completed contractual property documentation committing the relevant parties to the various transfers resulting in the ownership outlined by Nick's plan before the mini S106 is signed. Any acceptance of the proposed 'mini S106' approach would be on the strict understanding that it is limited to the circumstances you have described to us and on the basis that the ownership of the site will be what you say it will be (which will hopefully result in delivery of development on the ground). Any decision to accept the proposed 'mini S106' approach would need to be based on evidence that those circumstances will actually come to pass in order for such a decision to be reasonable. The documents can be suitably redacted of course. Please confirm timescales for receipt of the relevant contracts / documentation.
- 11. I look forward to receipt of a copy of the current BDW option over the Pullens' land. I've asked for this now on at least three separate occasions and am frankly surprised it isn't forthcoming. As mentioned before, it can be redacted. Is there something you wish to hide from us in that document that you think may affect our decision to accept the 'mini S106' approach?

Many thanks in advance. I'm happy to talk through the above if that would assist.

regards

Brendan

This e-mail , including any attachments, is intended for the named addressee(s) only and may contain marked material up to RESTRICTED and should be handled accordingly.

Unless you are the named addressee (or authorised to receive it for the addressee) you may not read, copy or use it, or disclose it to anyone else. Unauthorised use, copying or disclosure is strictly prohibited and may be unlawful.

Precautions have been taken to ensure that this is a virus free message but recipients are responsible for carrying out their own checks. This Council accepts no responsibility for loss or damage to any hardware, software or data resulting from this e-mail

If you have received this transmission in error please contact the sender, and .delete message.



The contents of this e-mail and any attachments are CONFIDENTIAL to the named recipient(s) and may be legally privileged. If you are not a named recipient please notify us and ensure that this e-mail is deleted and not read or copied or disclosed to anyone else. E-mail may be corrupted, intercepted or amended and so we do not accept any liability for the contents received unless they are the same as sent by us. E-mail sent or received using our system may be monitored, intercepted or read by us before or after it reaches the recipient; if you reply to this message you consent to this activity in relation to your response. Fladgate LLP is a limited liability partnership, registered in England and Wales with registered number OC334334. It is authorised and regulated by the Solicitors Regulation Authority, number 484783. The term partner is used to refer to a member of Fladgate LLP. A list of members is available at the above registered office.

For more information please visit <http://www.fladgate.com>
