

IN THE MATTER OF THE TOWN AND COUNTRY PLANNING ATC 1990

**LAND AT BIRD IN EYE SOUTH,
LAND AT BIRD IN EYE NORTH,
LAND AT DOWNLANDS FARM,
UCKFIELD**

**LPA AND COUNTY COUNCIL COMMENTS
ON FINAL S. 106 OBLIGATIONS**

Downlands Main s. 106:

Definitions: “Annual Instalment” – should refer to Sch. 10 not Sch. 9

Definitions: “Contribution for Public Transport” – should not be “less fare income”; to do so would be departure from established ESCC practice which is to attribute any additional fare income to extend the subsidised bus period.

Definitions: “Primary School Construction Costs Contribution” – should be £2,373,840; Downlands appellants confirmed in inquiry that they sought to contribute whole of costs of construction if to be built on site, not just a figure based on child yield; this is necessary as Downlands child yield is less than would justify a whole school and ESCC would not be building one there but for development.

Definintions: “Contribution towards Rights of Way Improvements” – user should be amended to read “... within Uckfield and surrounding area...”

cl. 2.17; para 5 of Sch 2 and para. 2 of Part B of Sch. 9 - purports to impose obligation on non party (this is a unilateral obligation).

cl. 2.17(b) – trigger should be linked to payment of last instalment

cl. 4.5 – indexation formula should read:

- (i) “A = (BxC) / D”
[To avoid the need to define “x” and to correct stray closing bracket]
- (ii) “B is the original sum (or any part thereof) referred to in this Undertaking”
[to remedy omission]
- (iii) “C is the Construction Index for the quarter preceding the relevant Due Date;
D is the Construction Index for the first quarter of 2008”
[for clarity]

Sch. 2 – primary school site scheme cannot be complied with without amending scheme and seeking new permission; effect of s. 106 is to prevent implementation of permission.

Sch. 3, para 1 – “Early Years Site” is not defined; should read “... to provide the Early Years Facility”

Sch. 9 – a. ESCC would wish to see its drafting for Sch 9 adopted as simpler and more workable; appellants have continued with own drafting;

b. Part B requires ESCC to set up Escrow account; ESCC consider sum of £213,000 should be in Bond to overcome access difficulties and costs of Escrow

Sch. 10 part B, para. 1(c) – Snatts Road link (Down 8) route needs to be deliverable before commencement and delivered before 1st occupation; suggested alternative of “on-line” Snatts Road route unacceptable as road width too narrow and cannot expect TRO to be made to close Snatts Road to two-way flow; Pudding Cake Lane route is needed as well as Snatts Road (Down 8) route, not instead; Pudding Cake Lane route is not DDA compliant nor can it be made so due to eg steps.

Downlands Supplementary s. 106:

Definitions: “Contribution for Uckfield Wide Travel Plan Measures (Retrofit)” – term “Uckfield Wide Travle Plan” needs to be defined

cl. 2.13 - needs to exclude WDC and ESCC from disapplication of Rights of Third Parties Act as they are themselves not parties.

cl. 2.16 – seeks to impose covenants on non-parties

cl. 4 – indexation needs to be consistent with main s. 106, in particular to use Construction Index and maintain need for indexation within first 12 months

Sch. 1 – purports to require corresponding negative covenants to secure contributions; also payments should be prior to Commencement as ESCC need to put measures in place to create “headroom” within Uckfield ahead of occupations at site.

Needs Town Centre contribution. WDC/ESCC maintain (see evidence and Closing) this should be consistent with BIES/BIEN, but even on Downlands case (ie opposed to “hard” measures for town centre), need to fund soft scheme for post-headroom period. Downlands sought costs from ESCC; these were provided as WDC 26 [Initial stage £4-5m; total costing £14.6m]; Supplementary s. 106 makes no provision.

BIEN:

“Nursery Provision” – should be £611 perhouse/£92 per flat; WDC/ESCC had understood this to have been agreed by BIEN; it is consistent with BIES and takes account of the fact that provision for these developments could not be made by expanding existing facilities, but would have to be made by creating new ones

Definitions: “Contribution for Public Transport” and Sch 4 – delete reduction for fare income [see Downlands above]

Definitions: “Occupation”, “Occupy” and “Occupied” – should use definitions as per Downlands Main s. 106

Definitions: “Planning Permission” – should add “...and ‘Permission’ should be construed accordingly.”

cl. 4.2 – purports to amend s. 106 through operation of decision letter; consider correct approach is “minded to grant” decision and new s. 106 issued accordingly [see s. 106A(1)(a), (2) and (3)]

cl. 8.1(b) – erroneous reference to “Additional County Services”; should read “the relevant contributions specified in clause 8.1 (or any part thereof)”

Sch. 1 para. 2.1 - to ensure payment by reference to valuable development, should read “... and prior to the Occupation of the two hundredth (200th) Dwelling to be Occupied and in any event prior to the Occupation of the ninetieth (90th) Private Dwelling Unit to be Occupied...”

Sch. 1, para. 2.2 – to ensure payment by reference to valuable development, should read “...the two hundredth (200th) Dwelling to be occupied or the ninetieth (90th) Private Dwelling Unit whichever is the sooner until the instalment of the Contribution for Additional County Services...”

Sch. 2 – needs to have completion of highway works by first occupation

Sch. 3, para. 2.2 and Sch. 6, para. 2.1 – delete words “... not less than six (6) months prior to the date of such Occupations”.

Sch. 4, para. 1 – to ensure payment by reference to valuable development, the triggers need to be tied to the occupation of a maximum number of Private Dwelling Units per stage; the stages are 75th, 105th, 150th and 180th Private Dwelling Unit; the negative covenants are to be worded accordingly.

Sch. 4, para 2 – should delete reference to specific bus routes as too prescriptive.

Sch. 4, para's 4.1-4.2 – seeks to impose obligation on non-party and seeks disproportionately expensive accounting provisions; delete

Sch. 4, para. 4.3 – Council cannot agree this

Sch. 7, para. 3 - WDC/ESCC had understood that, on the basis of WDC 24, BIEN had agreed (on 17th July in the inquiry) to delete para. 3; instead, it seems to have been developed further; this para. should be deleted, with consequential deletion of reference to it in Definition of the “Contribution for Town Centre Solution” at Clause 1.1; further, para 2 (sic) of Sch. 7 should read “...Not to Occupy or cause or allow the Occupation of ...”.

Sch. 7 Contribution to Town Centre Scheme – figures are incorrect at 1.2, 1.3, 1.4 and 1.5: ‘£547,700’ should read ‘£574,700’; para. 1 then needs consequential amendment; NB Clause 1.1 definition has correct total at £3,193,000.

BIES:

No comments on s. 106 as such

Deliverability of pedestrian/cycleway link to Framfield Road is covered in Closing Submissions.

Inspector/CLG please note:

It will be apparent from the above that there are a number of areas where, despite extensive discussions and assistance being rendered to the appellants, the Councils have not been satisfied with the drafting.

Many, if not most, of these matters could be overcome by re-drafting the relevant provisions. However, the process to date has been extremely costly and labour intensive.

The Councils respectfully request that, should the Secretary of State issue a minded to grant decision subject to amendments of the provisions of the planning obligations, express provision be made for the appellants to undertake to meet the Councils' reasonable costs.