

IN THE MATTER OF THE TOWN AND COUNTRY PLANNING ACT 1990

AND IN THE MATTER OF LAND AT RANELAGH ROAD, HAVANT

OPINION



1. I am asked to advise Jacobs Foreman Developments Limited in respect of the implications of two new planning applications on the continuing effect of obligations in an existing s.106 obligation in respect of land at Ranelagh Road, Havant ('the site').
2. Planning permission APP/12/00772 for residential development on the site was granted subject to a s.106 obligation dated 30th July 2013. This imposes maintenance obligations on Portsmouth Water and Brockhampton Property Investments ('BPI') in respect of infrastructure provided off site.
3. APP/12/00772 has been commenced and much of it has been built out. Jacobs Foreman now intend to develop two unbuilt parts of the site under new permissions (a s.73 application and a new s.70 application). Havant Borough Council has indicated that it would wish to see Portsmouth Water and BPI as signatories of any s.106 obligation in respect of these two new applications in order to ensure the continued maintenance of the off-site infrastructure.
4. Having reviewed the terms of the existing s.106 obligation and the covenants imposed on Portsmouth Water and BPI, it is my opinion that it is not necessary for the new permissions to have these two as parties to new s.106 obligations.
5. By clause 7.1, the Schedules of the s.106 are conditional on the grant of permission. That has occurred. The Schedules in s.106 are, therefore, operative.
6. By clause 11.1, the s.106 would be terminated if the planning permission were varied before commencement. Commencement has already occurred, however. Clause 11.1, therefore, does not apply.
7. By clause 11.2 and 21.1, the s.106 expressly contemplates the grant of permission and/or development which differs from the Planning Permission as defined. Neither indicates that the terms of the s.106 would thereby cease to have effect.
8. The continuing maintenance obligations for off-site infrastructure are found in Schedule 3 at paragraphs 3.7 (Meyrick Road Open Space), 3.11 (Reptile Relocation Area) and 3.14 (Permissive Footpaths). In each case the trigger for the obligation is 'the laying out and the construction of the infrastructure in question. Once triggered, the obligation is an on-going one in accordance with approved details.
9. For the Meyrick Road Open Space and the Permissive Footpath, occupation is not permitted until the infrastructure has been provided (para's 3.5 and 3.12, respectively). For the Reptile Relocation Area, commencement of residential units is not permitted until the area has been provided (para. 3.9).

10. Residential units have been both commenced and occupied. I am instructed that the Meyrick Road Open Space has been laid out and constructed. I am instructed that the Permissive Footpaths have not yet been laid out and constructed - although by paragraph 3.12 of Schedule 3, that should have happened by now.

11. Accordingly, the maintenance obligations for the Open Space have already been triggered and continue to bite. Once the Permissive Footpaths have been laid out and constructed, in accordance with para. 3.12, their maintenance obligations will also be triggered.

12. Consequently, once this is done, whether the remainder of the site is developed under the existing permission, a s.73, an entirely new permission, or not at all, Portsmouth Water and BPI would remain bound to comply with the off-site maintenance obligations, which can continue to be enforced by the LPA under the existing s.106 undertaking. The result is that neither Portsmouth Water nor BPI would need to be parties to any new s.106 obligations in respect of the proposed new applications.

CHRISTOPHER BOYLE QC
19th February 2016

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