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5 July 2023

For the Attention of: Inspector R. Barrett

Appeal Reference APP/C3105/W/23/3315849 – Land at North West Bicester Scheme

1. We act for the Appellant in this matter.
2. As you are aware this inquiry ran from the 6th to the 14th June 2023. At the close of the Inquiry you generously provided the parties with 21 days to provide the executed Section 106 Agreement (the “**Agreement**”).
3. As the parties prepared the Agreement for execution it became apparent that it would not be possible to procure the signatures of A2Dominion South Limited, Elmsbrook (Crest A2D) LLP, Crest Nicholson Operations Limited and A2Dominion Developments Limited (“the **Elmsbook Parties**”) within the required timeframe.
4. The Elmsbook Parties had originally been included in the draft of the Agreement as land within their ownership falls within the red line boundary of the proposed development (for reasons of access) and whilst the obligations were being negotiated it seemed prudent to anticipate that they would be required as signatories.

Partners: Elizabeth Christie, Mary Cook, Duncan Field, Clare Fielding, Michael Gallimore,
Raj Gupta, Meeta Kaur, Victoria McKeegan, Simon Ricketts, Patrick Robinson, Louise Samuel, Spencer Tewis-Allen

5. However, in order to ensure that the Agreement was completed in time and in light of the final obligations that were presented to the Inquiry, the Appellant and the Councils have considered the legal necessity of the Elmsbrook Parties being parties to the Agreement.

The nature of the Elmsbrook Parties' interest in the development site

6. A2Dominion South Limited is the freehold owner of the part of the site registered with freehold title absolute under title numbers ON335607, ON324173 and ON350377. Titles ON335607 and ON324173 make up the area of the Elmsbrook development within which the spine road is included within the central and southern part of the application red line ("**Area One**").
7. Elmsbrook (Crest A2D) LLP is the freehold owner of the part of the Site registered with freehold title absolute under title number ON339195. This title and title ON350377 owned by A2Dominion South Limited make up the area of the Elmsbrook development within which some roads and footways are included within the northern part of the application red line ("**Area Two**"). Crest Nicholson Operations Limited and A2Dominion Developments Limited together hold a registered charge over title ON339195.
8. Parameter Plan 1 shows that there is no development approved within either Area One or Area Two. Therefore, there is no risk that any of the Elmsbrook Parties could carry out any part of the development.
9. There are some requirements shown on Parameter Plan 3 for access and movement zones and connections within Area One and Area Two. Obligations relating to these areas are contained in the Tenth Schedule of the Section 106 Agreement for highway works and pedestrian/cycle connection points to be carried out partly within Area One and Area Two.
10. The highway works are to be secured by way of highways agreements which must be in place and completed prior to certain restrictions, which are all in respect of the Implementation or Occupation (as defined in the Agreement) of the development on the part of the site owned by Firethorn Bicester Limited or SGR (Bicester 2) Limited. Therefore, the proposed development could not occur without the relevant highways agreements being place.

The legal context

11. Section 106 (1) of the Town and Country Planning Act 1990 provides as follows:

“Any person interested in land in the area of a local planning authority may, by agreement or otherwise, enter into an obligation (referred to in this section and section 106A as “a planning obligation”), enforceable to the extent mentioned in subsection (3)—

(a) restricting the development or use of the land in any specified way;

(b) requiring specified operations or activities to be carried out in, on, under or over the land;

(c) requiring the land to be used in any specified way; or

(d) requiring a sum or sums to be paid to the authority (or, in a case where section 2E applies, to the Greater London Authority) on a specified date or dates or periodically.”

12. The purpose of a section 106 planning obligation secured by agreement or undertaking is to secure any legally binding commitments that can't be secured by way of planning condition and which are necessary to make the proposed development acceptable in planning terms.
13. The requirement in section 106(1) is the only legal requirement as to the parties to a section 106 agreement or undertaking. There is no blanket rule or requirement that all those with an interest in the land need to be a party to a planning obligation in respect of such land.
14. Often it will be the case that a meaningful part of the development cannot be carried out by an individual landowner of part of the site in a way that would be problematic. As such, if that owner were not a party to the agreement it would not result in any meaningful difference in the operation or enforceability of the agreement. Relevant considerations for whether it is appropriate for an individual owner to be a party to the agreement include:
 - (a) What can be built pursuant to the approved plans on the relevant parcel?
 - (b) Is there any other reason why there is in fact no risk of the mitigation not being provided pursuant to the section 106 agreement or undertaking as intended?
15. Recent case law has reinforced this interpretation of the requirements for planning obligations. For example in *R (McLaren) v Woking Borough Council* [2021] EWHC 698, the local planning authority had granted planning permission on the basis of a section 106 agreement that did not include as a party the landowner of approximately 50% of the site. In dismissing a legal challenge brought by that landowner, the High Court confirmed:

“21. In my view, this ground does not raise an arguable legal or public law error. The s.106 agreement follows the requirements of s.106 of the Town and Country Planning Act 1990 . It is in the form of a deed. It identifies, by the definitions referred to, the land in which the person entering

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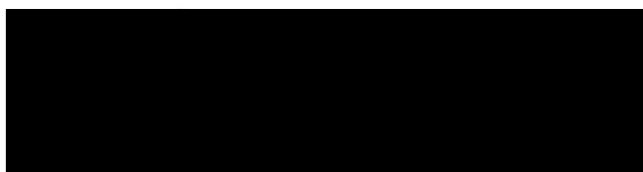
the obligation, i.e. New Central, is interested, and the interest which the person entering into the obligation has. [...]

22. Further, I cannot see any legal requirement that a s.106 obligation ought to bind all material interests in a planning application site. [...] The fact is that the obligation binds a sufficient part of the site, namely, that belonging to New Central, to preclude development unless its purposes are met. I would add that the claimants have not been excluded from the agreement; they may unilaterally bind themselves at any time to its obligations if they choose to do so."

Conclusion

16. On the basis of the above and on a review of the final obligations set out in the Agreement, the Appellant, Cherwell District Council and Oxfordshire County Council have concluded that as the obligations in the Agreement are only enforceable against the development on the part of the site owned by Firethorn Bicester Limited and SGR (Bicester 2) Limited, the Elmsbrook Parties are not required to be parties. It is on this basis that the enclosed executed agreement is submitted to the Planning Inspectorate.
17. Removing the Elmsbrook Parties has inevitably meant that there have been some changes made to the front end of the Agreement as against the version of the Agreement that was presented at the Inquiry. These are shown on the enclosed document comparison which shows changes to the recitals and the definition of "the Site" to reflect the removal of additional titles. The updated Plan and Application Site Plan (to show those parts of the Site which are not bound by the Agreement) are at the First Schedule of the Agreement. All other plans and appendices remain as previously agreed. There are also a number of proof reading changes shown in the document comparison which have been agreed by all of the parties.
18. The approach set out above, and this letter has been approved by Cherwell District Council and Oxfordshire County Council. We trust that the above and enclosed are acceptable but please do let us know if you have any queries.

Yours faithfully



Town Legal LLP