

Heads of Terms for s106 Agreement to support application for the change of use of buildings 74 and 583

The application is to enable the delivery of a free school in building 74 and the use of building 583 for Class D1 use.

The application will trigger a requirement for a s106 Agreement to address the following issues:

1. Delivery of the free school and the consequent release of the provisions of the existing s106 Agreement dated 22 December 2011 (as subsequently varied) ("the Existing Agreement") relating to the delivery of a Primary School on the School Site (as therein defined) or off-site and the payment of contributions towards secondary education.
2. The envisaged mechanism will require the landowner to notify the County Council before the start of any construction works as to whether it intends to proceed with the provision of a free school. The notice will only be able to be served once the necessary agreement is in place between the landowner, the School Trust, the Department for Education and the Education Funding Agency to deliver the School (planning permission will be granted as a result of this application). In the event that such a notice is served, the free school must be provided in accordance with the requirements of any agreement. If such notification is made then the provisions of Parts 1 to 8, 10 and 12 of Schedule 12 to the existing s106 Agreement will cease to apply to the site. Other provisions in Schedule 12 will need to be varied to accommodate the changes.
3. The s106 Agreement will include a mechanism for the funding of the construction of the school if deemed necessary in the light of any agreement for its delivery.
4. The restriction that has been placed against the title of the School Site pursuant to paragraph 35 of Schedule 12 of the Existing Agreement will need to be removed
5. Provisions contained in Schedule 13 of the Existing Agreement relating to the marketing of building 74 as a Care Home will cease to have effect if the landowner proceeds with the Free School
6. In the event that the landowner proceeds with the provision of the Free School a further 1.07ha of land to the west of Building 583 will be provided as sports pitches. The s106 will apply the same mechanism currently set out in Schedule 5 of the Existing Agreement to ensure its delivery
7. Schedule 4 of the Existing Agreement identifies areas of formal pitches/courts including the pitch and running track to the south of Building 583 (Plan D.029_75-4). The Schedule indicates that these should be retained for the purposes of public open space unless and until they are required for development pursuant to the planning permission or the existing planning permission or land in their vicinity is required for development such that it is unsafe to allow their continued use. In the event that the Free School is provided, this area will now be partly used by the Free School and the community rather than open to the public at all times. Amendments will be required to clarify the nature of that use.

8. Amendments will be required to Schedule 7 of the Existing Agreement in the event that the County Council is notified that the Free School is to be provided. Building 583 will be used as a gym facility in connection with the Free School and shared with the community as the Indoor Sports Facilities for the purposes of Schedule 7. In those circumstances, building 583 will be transferred to the School Trust on those terms rather than to the District Council and amendments will be required to paragraph 12 of Schedule 7 to allow this.

Further minor amendments may be needed to the Existing Agreement to give effect to these arrangements and will be the subject of further detailed discussion with the Council and the County Council as required.