

BY EMAIL

Ms Caroline Ford
Cherwell District Council
Planning Department
Bodicote House
Bodicote
Banbury
OX15 4AA

21347/A3/AW
1 August 2018

Dear Caroline

NORTH WEST BICESTER EXEMPLAR (PLANNING APPLICATION REFERENCE 10/01780/HYBRID): SECTION 106 DEED OF VARIATION

Introduction

On behalf of A2Dominion Group Limited (A2Dominion), on 12 December 2017 Barton Willmore submitted an application to vary the extant Section 106 Legal Agreement dated 9 July 2012 pertaining to planning permission 10/01780/HYBRID. The planning permission is for:

“Development of Exemplar phase of NW Bicester Eco Town to secure full planning permission for 393 residential units and an energy centre (up to 400 square metres), means of access, car parking, landscape, amenity space and service infrastructure and outline permission for a nursery of up to 350 square metres (use class D2), a community centre of up to 350 square metres (sui generis), 3 retail units of up to 770 square metres (including but not exclusively a convenience store, a post office and a pharmacy (use class A1)), an Eco-Business Centre of up to 1,800 square metres (use class B1), office accommodation of up to 1,100 square metres (use class B1), an Eco-Pub of up to 190 square metres (use class A4), and a primary school site measuring up to 1.34 hectares with access and layout to be determined.”

We met with Cherwell District Council (CDC) and Oxfordshire County Council (OCC) Officers on 5 February 2018 to discuss the proposed variation. Further to this meeting, Caroline Ford sent an email dated 9 February 2018 setting out CDC’s comments. A2Dominion has since submitted updated draft Heads on 6 June 2018. CDC provided comments on 15 June 2018 (enclosed at **Appendix 1**). We have yet to receive comments from OCC.

Please find set out below A2Dominion’s response to CDC’s comments.

7th Schedule: Ecological and Landscape Management, Open Space and Play Areas

The signed S106 Agreement requires an annual RoSPA report in respect of the area of strategic open space and play area until the date of transfer of the area to the District Council (7th Schedule, Clause 1.14). As CDC is aware, A2Dominion will not be transferring these areas to the District. A2Dominion therefore sought to amend this obligation.

In CDC's comments, Officers have queried whether more frequent inspections will take place, the scope of inspections and who undertakes these.

We can confirm that A2Dominion undertakes regular routine inspections of strategic open space and play areas. These inspections take place on a monthly basis and are undertaken by a competent inspector. Please find enclosed an example of the regular routine inspections undertaken. The signed S106 Agreement does not include reference to regular inspections. We do not intend to introduce a Clause as part of the Deed of Variation.

In terms of annual inspections, A2Dominion can confirm that these will be undertaken by Just Ask. Officers have flagged that there should be no limit to these inspections. We therefore propose to update the draft Heads to state:

"The Owner shall undertake inspections every 12 months by a suitably qualified person and thereafter share the report with the District Council if requested. Each inspection shall cover the entire play area or strategic open space subject to review."

This approach has been accepted by Local Authorities elsewhere where A2Dominion successfully manages the inspection of play areas and open space (see enclosed example of Fearn's House, Tewkesbury Road, located in the London Borough of Ealing).

We note that CDC has yet to circulate the Council's Landscape Team's comments. Can these please be forwarded on as soon as possible.

8th Schedule: Non-Residential Retail/ Office/ Nursery/ Community Hall/ Public House

The revised draft Heads submitted to CDC on 6 June 2018 set out a requirement for a review of the form and uses of the local centre (8th Schedule, Clauses 1.6 and 1.7). In CDC's comments dated 15 June, Officers advised that the proposals give rise to significant uncertainty over the local centre in terms of form and timescales. The Council cannot therefore accept the proposed amendments to the legal agreement. The short point is that the local centre as consented is not viable and insistence that the units are constructed will not ensure occupation. Indeed, we would suggest that it would be more damaging to the project as a whole to provide a failing centre. If agreement cannot be reached with the Council now as to a way forward, whereby we can test further the options and ideally, reach an agreed solution, development will need to cease on site.

We therefore propose that an alternative local centre proposal is brought forward through the preparation of a planning application in 2018. A2Dominion proposes entering into a Planning Performance Agreement ('PPA') with CDC, which will scope out matters to be tested in an alternative scheme, scope of planning application and programme for submission. The planning application would be accompanied by a programme of implementation running from the date of consent. We have written to CDC separately on this matter. On this basis we propose that the application to amend the Exemplar Section 106 Agreement proceeds excluding the amendments to the local centre, which can be addressed separately.

13th Schedule: Construction Standards

We note that CDC has accepted the proposed amendments to Clauses 1.5, 1.6, 1.8 and 1.9 of the 13th Schedule, excluding the energy centre as a non-residential building from being constructed to BREEAM Excellent and the timescales around CEEQUAL.

In relation to Code for Sustainable Homes (Clauses 1.2, 1.3 and 1.4), CDC has accepted the general principle of amending timescales, however, queried the time limit for submission of final certificates at 6 months following a phase completion. A2Dominion has advised that the assessor can confirm compliance more frequently, however, certificates can only be issued once the BRE have audited the process. This happens at the end of a phase. A2Dominion has no control over the BRE audit timescales, including issue

of the final certificates. Based on previous experience A2Dominion has therefore sought to amend the trigger to state 6 months post completion of a phase.

As CDC is aware, the BRE assessment takes place in several stages. Before work starts there is a design stage assessment. The design stage assessment is a certificate issued by an assessor prior to construction which confirms whether or not a building will achieve a standard. Note in the Section 106 Agreement, there is an obligation for A2Dominion to provide to the District Council the design stage assessment (see Clause 1.6). This should provide CDC with the assurance that dwellings are on track to meet Code Level 5.

17th Schedule: Off-Site Highways Works

A2Dominion has proposed to move the cycle parking located within the bus lay-by. Please find enclosed the cycle location plan as requested for CDC and OCC's consideration.

18th Schedule: On-Site Highways Works

In our meeting on 5 February 2018 we discussed the bus only link with Officers. The amendment to the requirement for cameras to monitor the bus route is a matter of debate between CDC and OCC as to who is responsible for the long term monitoring and management of the cameras. Previously CDC and OCC had discussed the removal of this requirement for such equipment, but should this option be progressed, the design of the route would need to be reviewed. In response to CDC and OCC's uncertainty in respect of the bus only link and to minimise risk of stalling development, we had updated draft Heads to include the requirement for the submission of a bus link design scheme. CDC has not accepted this approach, advising that this Clause cannot be amended until a solution is agreed.

A2Dominion questions whether agreement can be reached in a timely manner between parties, allowing the Deed of Variation to progress. As A2Dominion does not want to be in breach of the S106 Agreement, our client will be submitting a scheme for the installation of cameras for monitoring the use of the part of the Spine Road Phase 2 that will constitute the bus only link, in accordance with Clause 4.2 of Schedule 18 of the signed S106 Agreement, for OCC's consideration. On the basis that agreement cannot be reached between OCC and CDC, the scheme will be installed and we will leave it to the Council's to agree which party enforces.

We note CDC had no further comments on the proposed Heads for Clause 4.1 of the 18th Schedule.

20th Schedule: Transport (Miscellaneous)

In respect of the Travel Plan Coordinator draft Heads (20th Schedule, Clause 2.1, 2.1.1, 2.1.1), CDC has stated that the proposals as worded are vague in terms of phasing of the work in line with housing delivery. We have therefore updated the draft Heads to include the requirement for the submission of a programme. Please see updated draft Heads set out below:

“Not to cause or permit the opening of any show home to visitors (or if earlier Occupation of any Dwelling or any other building at the Site) until the Travel Plan Co-ordinator has been appointed and is in post and the Owner and the Developer further covenant that.

Travel Plan Monitoring shall be undertaken from the date of appointment of the first Travel Plan Co-ordinator up to 2 years from the date of Occupation of the final Dwelling, or if sooner, up to commencement of Travel Plan Monitoring on the wider North West Bicester site.

A Travel Plan Co-ordinator may be employed on a part time basis but the aggregate of the hours worked by the Travel Plan Co-ordinator plus his support team (which may include as appropriate consultants) shall be reviewed and phased in line with the phased delivery of the Development starting at 2 days (14 hours) per week from the Occupation of the first Dwelling, and up to no less than 22 hours per week from date of final Occupation.

Within one month of completion of the Legal Agreement, the Developer shall submit a programme for approval to the County Council setting out the phasing of the Travel Plan Co-ordinator's role.

The Travel Plan Co-ordinator or his representative will have responsibility for liaising with and assisting residents/ proposed residents of any Dwelling at the Site and those employed at premises at the Site shall be employed to work from a location at the Site where possible from first Occupation and move to the Interim Community Centre once available on no less than 2 days (14 hours) per week and preferably over 4 days per week until the Occupation of the final Dwelling and thereafter on this basis pending agreement of a revised schedule by the Developer and the Owner and the County Council (all parties acting reasonably)."

In relation to Clause 3.1, Cycling Payment, Officers have raised the following queries: (1) the proposal for the cycling payment schedule is not sufficient as it pushes the consideration of the issue later, and (2) what money had been spent to date and whether this had been agreed.

In response to the first matter, rather than delay consideration, we propose reverting back to original drafting with the following revised draft Heads:

~~***3.1 Not to cause or permit the Occupation of any Dwellings until it has placed the Cycling Payment in an interest bearing account with a major bank and provided evidence to this effect to the County Council.***~~

~~***3.2 All interest accruing to such account shall be added to the monied deposited in the account.***~~

3.1 The Developer shall deliver a cycle scheme up to a cost of £100,000 (index linked).

3.2 To use the monies deposited in the account to fund the provision of incentives for new residents at the Development as set out in paragraph 5.3.4 (bullet point 4) of the Travel Plan and which may include free bikes, free folding bikes, free bike servicing, free high visibility waterproofs, free bike lights or locks and free panniers and not to cause or permit any monies to be withdrawn from the account to be spent other than for such purposes.

3.3 Once a year to report to the County Council as to the use of the monies deposited in the account and in the event that any monies remain in the account following the Occupation of the final Dwelling at the Site, to transfer the balance to the County Council for the purposes of promoting cycle measures in Bicester.

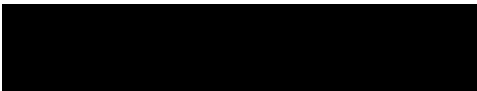
In response to the second matter, in accordance with Clause 3.4 of the signed S106 Agreement, A2Dominion has submitted annual reports to the County Council on the use of cycle monies spent to date (the last submission was made on 17 October 2017). This information is with OCC for consideration.

Appendix 17: Eco Town Standards Post Occupancy Monitoring Scheme

We note that CDC has signed off the revised Post Occupancy Monitoring Schedule issued on 6 June 2018, which will comprise part of the Deed of Variation. CDC has, however, requested that Schedule 14 of the Section 106 Agreement be updated to include timescales for the provision of monitoring results. As this information is contained in the Post Occupancy Monitoring Schedule which comprises an Appendix to the S106 Deed of Variation, we do not consider it necessary for this information to be included in Schedule 14 also.

I would be grateful if you could confirm receipt of the letter. Please do not hesitate to contact me should there be any matters arising.

Yours sincerely



ALEX WILSON
Associate

cc: Louise Caves : A2Dominion
Steve Hornblow : A2Dominion
Colette McCormack : Winckworth Sherwood
Iain Painting : Barton Willmore
Jenny Barker : Cherwell District Council

Enc. As set out above