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Date: 7 April 2020
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S.106A Application to amend the completed S.106 agreement to planning permission application No. AWDM/0501/12 - Nos. 79-81 Brighton Road, Shoreham

Dear Mr Jones

I write with reference to your application to amend the s106 Agreement to planning permission AWDM/0501/12, received 31 January 2020. I apologise for the delay in replying but I have been waiting for a response from West Sussex County Council. They emailed their response to me on 2nd April and I note that you were copied in.

For ease of reference I shall set out their reply below:

"*It is the Applicant's contention that there is double handling regarding the S106 contribution for highways of £87,500 which was paid to us in 2017. It is our position, having looked into this thoroughly, that there is no double-handling and no case to respond to.*

The original sum of £107,500 (later amended to £87,500) was initially proposed by Matthew Bartle in a response dated 10 December 2012. It listed various works and some of these the developer is now dealing with under a S278 agreement. However, these schemes were listed as a guide only to demonstrate the reasonable level of a financial contribution to be sought and to that extent the aim has been achieved. The applicant agreed with the sum involved and a S106 agreement subsequently signed.

The S106 itself did not list these schemes and instead in Clause 7 states that the money should be used "towards the provision of sustainable highway improvements related to the Site". If the money was intended only to be used

towards the schemes listed in the December 2012 response then the applicant would have requested they be listed as such in the S106 agreement itself when it was drafted. Instead they signed the agreement with Clause 7 as it is worded, indicating that they understood that the costed schemes were only used as an indication for the quantum of contribution to be sought to promote sustainable highway improvements related to the site.

The money has been allocated to two projects – Shoreham High Street access improvements and Norfolk Bridge improvements. Both of these fit within the description of sustainable highway improvements, as required by the S106, and are therefore suitable schemes.

There is a second argument that the schemes that the contribution is allocated to are not CIL compliant. The CIL tests state that the contribution must be necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. Most of these points have been addressed at the point at which the S106 is signed, not now, but nevertheless we are satisfied that the contribution does meet the CIL tests. The schemes listed in the December 2012 response were provided for the purpose of demonstrating the proportion of the contribution relates to the development in terms of making it acceptable (a), and related in scale and kind (c). The two schemes that the money is allocated to satisfy (b) in the regulations because the new occupants will benefit from them, they mitigate against the additional traffic caused by the development."

In the light of this response, it is not agreed that the £87,500 highway contribution should be refunded and the S.106 agreement does not therefore need to be modified. Your application is therefore refused.

Yours sincerely

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