

Legal comments – s106 Peacemills education contribution

1. On 3 July 2017 the Council and Waters Homes Limited entered into a section 106 planning agreement which was linked to the residential development at Peacemills, Perry Road (planning ref 17/00487/PFUL3). Amongst the benefits secured by that agreement was the payment of an index linked education contribution. Under the s106 agreement, the Council is obliged to use that contribution “*towards the provision of enhanced education facilities to accommodate pupils generated by the Development at the Seeley Primary School and Oakwood Secondary School*”. Oakwood Secondary School has now been re-named Oakwood Academy. The Council received payment of the education contribution in the sum of £115,736.03 in August 2018.
2. Whilst the wording of the Peacemills s106 agreement makes clear that the Council is required to apply the education contribution towards both schools, it does not specify any breakdown as to the division of the contribution between the schools and this Decision seeks to establish that breakdown.
3. Decision 1 is concerned with the proposed allocation to Oakwood Academy and Decision 2 is ancillary to that. Paragraphs 3 and 4 of the Reasons set out the purpose to which £15,000 is to be applied, with details of the works proposed to the Oakwood Academy. It is considered that the allocation under Decision 1 is compliant with the terms of the s106 agreement from which the funding derives.
4. Decision 3 seeks approval in principle to allocation of the remainder of the available education contribution from the Peacemills s106 agreement to Seeley Primary School. However, the specific project to benefit from those monies has not been identified at this stage; nomination of a specific project at Seeley is to be the subject of a future decision by the Director of Education pursuant to the delegation at Decision 4. Seeley’s “share” of the s106 Peacemills education contribution may be used in isolation or may be topped up by other external funding which has not yet been secured. Paragraphs 7 – 10 of the Reasons set out the context and proposed arrangements for this staggered approach. When the second stage is reached, the Director of Education in exercising delegated powers under Decision 4 to nominate a specific project at Seeley will need to satisfy

himself that the project is compliant with the terms of the Peacemills s106 agreement and to minimise any risk of liability to repayment. It is recommended that legal advice be taken at that stage.

5. As it is envisaged that the allocations at both schools may involve a transfer of monies, Decisions 2 and 4 include authorisation to enter into separate agreements which will be needed to ensure that the Council's covenants in the Peacemills s106 agreement are met.
6. Under the terms of the Peacemills s106 agreement, the Council is liable (if so requested by the owner Waters Homes Limited after the expiry of 5 years from date of receipt) to make repayment of any unspent or uncommitted part of the contribution. As payment of the education contribution was received in August 2018, the opportunity for the owner to make such a request has not yet arisen and there is currently no risk of clawback of the contribution.
7. Under the Council's Constitution, the relevant Area Committee is a consultee for spending proposals of section 106 contributions in its area. The "Consultations" section of the Decision specifies how and when that consultation was undertaken (albeit that no response to it was received from the Area Committee or its community representatives) so it would appear that this requirement has been complied with.
8. It is understood that pursuant to a recent re-organisation of portfolio holder responsibilities which will be formalised by Council in due course, that the Decision comes within the remit of the Portfolio Holder for Regeneration, Schools and Communications.