

LAND AT LITTLE STANION

S106A : Enforceability Confirmation

NC/23/00041/RVC106

VILLAGE HALL : TIMEFRAME FOR CONSTRUCTION

FOR : JME DEVELOPMENTS LIMITED

29 June 2023

Gateley

LEGAL

1. INTRODUCTION

- 1.1 On 25 August 2016 the former Corby Borough Council (**CBC**) issued a decision notice (**the Decision Notice**) pursuant to section 106A (6) (c) and (8) of the TCPA90 (the **Current Planning Obligations**).
- 1.2 In a schedule of modifications dated 14 May 2021 a set of modifications to the Current Planning Obligations were proposed in an application under section 106A of the Town and Country Planning Act 1990 made to North Northamptonshire Council (**NNC**). NNC has ascribed reference NC/23/00041/RVC106 to this application (**the S106A Application**).
- 1.3 The purpose of this note is to set out the basis on which the timeframe for the construction of the “village hall” will be enforceable provided that the S106A Application is approved such that the relevant development again becomes *viable*.
- 1.4 Please note that in the Current Planning obligations the village hall is defined as “the NCB” namely : “ a new community building having a gross external area of a minimum of 400 square metres to be constructed on the NCB Site”. In the remainder of this note the defined term NCB is used accordingly.

2. THE MODIFICATIONS

- 2.1 References in the table below to “Section[s]” or “paragraph[s]” are to the sections and numbered paragraphs in the schedule of modifications that was attached to the Decision Notice.

Item	Section /Paragraph/Page in current planning obligations	Modification Proposed
1	INTRODUCTION Recital 3 on page 3	The expression (“the Owner”) shall be deleted where these words first appear and a defined term “the Owner” shall be added into the definitions in clause 1 and shall be there defined as: “JME Developments Limited (a company incorporated and registered in England and Wales (registered number 07137465) whose registered office address is 1 Adelaide House Corby Gate Business Park, Priors Haw Road, Corby, Northamptonshire, England, NN17 5JG or any successor in title to any part of the Residual Site”.
2	INTRODUCTION Recitals on page 3	A new recital 8 shall be added as follows : “North Northamptonshire Council of [●] is with effect from 1 st April 2021 the sole successor to all the relevant statutory functions of both the Council and the County Council and the rights and duties of the Council and the County Council hereunder are exercisable by and enforceable against the said North Northamptonshire Council accordingly”.
3	CONSTRUCTION Paragraph 2.6	The following words shall be added to paragraph 2.6 :

		“and all references to the Council and the County Council herein shall be construed as references to North Northamptonshire Council of [●] or any successor or successor to the relevant statutory functions thereof”
4	Paragraph 1 (Definitions)	The following defined terms and in every case the respective definition appearing therewith <i>shall be deleted in their entirety</i> : “Additional Dwelling Sale Profit”; “Approved EVA”; “Little Stanion Community Payment”; “Little Stanion Up-lift Sum”; “Old Agreements Deficit”; and “Provisional Uplift Calculation”.
5	The First Schedule : Part One : Paragraph 17	Paragraph 17 (The Little Stanion Payment Obligations) of PART ONE including 17.1 and 17.2 and the proviso thereto <i>shall be deleted in their entirety</i>
6	The First Schedule : Part Two : Paragraph 5	Paragraph 5 (The Little Stanion Community Payment as applicable to the Tata Land) of PART TWO including 5.1 and 5.2 and the proviso thereto <i>shall be deleted in their entirety</i>
7	The First Schedule : Part Three : Paragraphs 1-5	Paragraphs 1-5 inclusive of PART THREE (THE LITTLE STANION UP-LIFT SUM (APPLICABLE IN RESPECT OF BOTH THE RESIDUAL SITE AND THE TATA LAND) including the proviso thereto (this being for the avoidance of doubt the whole of the said PART THREE) <i>shall be deleted in their entirety</i>
8	The Fourth Schedule	The Fourth Schedule (ADDITIONAL DWELLING SALE PROFIT) <i>shall be deleted in its entirety.</i>

2.2 It will be noted that none of the proposed modifications affect the parts of the Current Planning Obligations that relate to the NCB. There is no proposal within the S106A Application to alter the commitment to deliver the NCB accordingly.

3. THE ENFORCEABLE TIMEFRAME FOR THE DELIVERY OF THE NCB

- 3.1 As previously stated, the reason for the timeframe for the delivery of the NCB becoming enforceable if the S106A is approved is that the relevant development will then be viable again.
- 3.2 Under the Current Planning obligations there is at paragraph 14 on page 17 (in the First Schedule) (emphasis added) :
“The Owner shall within six months of the Unconditional Date submit an application for planning permission for the NCB, and within two years of the NCB Planning Condition being satisfied construct the NCB and offer to transfer it for a nominal consideration to the Council on the NCB Transfer Terms together with such other terms as shall be agreed between the Owner and the Council AND insofar as it is able to do so the Owner shall not prevent access to the existing community building on the Welcome Centre Site for the local residents and the wider public unless and until the NCB has been constructed and made available in substitution therefor”.
- 3.3 The defined expression “NCB Planning Condition” means (where material) : “ (i)the grant by the Council of an Acceptable NCB Planning Permission; and...” the expression “ Acceptable NCB Planning Permission” is defined as : “ a planning permission authorising the construction and use of the NCB whose terms including without limitation the planning conditions imposed thereon and the planning obligations required in respect thereof shall be reasonably acceptable to the Owner”.
- 3.4 The planning permission authorising the NCB is not reasonably acceptable to the Owner however because it is not viable to construct it - the non-viability is a matter of evidence and it is common ground between the applicant and NCC that the development is not viable.
- 3.5 The practical effect of the non-viability of the development has therefore been that the two year timeframe for the construction and transfer of the NBC has not begun yet.
- 3.6 If the S106A Application is approved however so that the development becomes viable then the relevant planning permission will become for the first time an Acceptable Planning Permission accordingly.
- 3.7 The two year period under paragraph 14 will therefore begin from the date of formalisation of the approval of the S106A Application by the issue of a decision notice accordingly.